

# USE YOUR OSHA RIGHTS

*“One of our janitors found that a chemical had spilled from a broken bottle in a lab she was cleaning. She got a rash on her hand. The bottle wasn’t labeled and she had no idea what the chemical was. We approached the employer but got no response. So our organizing committee filed an OSHA complaint. OSHA cited the employer for not having labels and data sheets for the chemicals. All the janitors were very impressed with their success. The employer had to post the citation on the bulletin board and start a hazard communication program.”*

*—California AFSCME union organizer*

An OSHA complaint can be an effective tool for getting a health and safety problem corrected. Even a small change that makes the job safer can give workers a sense of their own power. When workers complain to OSHA, they have some legal protection from employer retaliation—an important advantage for organizing committees and others who don't yet have a strong union.

## What Is This Tool?

The Occupational Safety and Health Administration (OSHA) is a federal government agency, part of the U.S. Department of Labor. OSHA issues and enforces health and safety rules that employers must follow. These are called “standards” and cover many workplace hazards, from chemicals to electricity to noise.

Many states have their own OSHA programs, such as Cal/OSHA in California. Federal and state OSHAs take complaints from workers and unions, and may inspect the workplace. They can order the employer to correct unsafe conditions, and sometimes impose fines.

**Federal** OSHA covers most private industry workers in the U.S. It also covers some people who work for federal government agencies. It does not cover state and local government employees.

Most **state** OSHA programs cover state and local government employees as well as private industry in their states. Approximately half the states have their own OSHA programs.

If management allows an unsafe condition to exist, refuses to address a health and safety hazard, or violates an OSHA standard, consider filing a formal complaint with federal or state OSHA.

## Why Use This Tool?

### **Advantages**

- An OSHA complaint can help to resolve health and safety problems. OSHA has cited and fined thousands of employers, ordered employers to correct thousands of unsafe conditions, prevented many injuries, and saved many lives.
- You don't have to be a recognized, “official” union to file an OSHA complaint.
- If workers are fully involved throughout the process, they see that change is possible when they work together.

- A victory on a health and safety issue can bring credibility to your organization. It builds people's confidence that they can work together to take on difficult problems.
- For those without a strong union to protect them, filing a complaint affords some legal protection against retaliation by the employer.

## Challenges

- Filing an OSHA complaint is not always the best strategy for solving a health and safety problem. OSHA is not a magic solution. Always evaluate your other options as well. For example, you can assert your OSHA rights directly with the employer, without necessarily filing a complaint or waiting for an inspection.
- When you file an OSHA complaint, the resolution of the issue may be taken out of your own hands. Although workers and union representatives have the right to be included throughout the OSHA complaint process, in actual practice they don't have much say over the outcome. If you don't get what you want, morale can be hurt and your attempts to mobilize workers can be set back. An inspection that gives the employer a "clean bill of health" despite obvious problems can feel like a defeat for the workers. Or sometimes OSHA may assess the employer only small "token" fines, and the health and safety problems don't really get solved.
- There may be long delays when you involve OSHA. OSHA has insufficient funds and personnel. The AFL-CIO says that at current levels, it would take federal OSHA 106 years to inspect each workplace under its jurisdiction just once. Make sure everyone understands that it may take a while. However, OSHA is required to respond quickly if there is an immediate danger of death or serious injury.
- OSHA standards may not cover your problem. OSHA is slow to adopt new standards as technology changes, and as new research is done on job hazards. For example, there are few or no regulations covering indoor air pollution, workplace violence, heat and cold, and repetitive motion injuries.
- If an OSHA complaint is filed by union staff without involving the workers who are affected, workers don't know what the union is doing, and this increases the gulf between the union and the workers. A complaint made this way won't build participation, and it probably won't be as successful in solving the health and safety problem either.

## STORIES FROM THE FRONT LINES

**OSHA Complaint Adds Spark to Hotel Organizing Drive**

A local of the Hotel Employees/ Restaurant Employees (HERE) won a two-year organizing campaign at a San Francisco Bay Area hotel. A complaint to Cal/OSHA was an integral part of the effort to win recognition and a first contract for some 200 workers.

Laundry workers faced especially dangerous conditions. They reported malfunctioning dryers that would catch fire, and leaks that forced workers to work in water up to their ankles. Trips and falls were a regular occurrence due to puddles and cracked floors.

During the drive, union staff worked with a committee of worker leaders at the hotel. The union was concerned about protecting committee members against retaliation. Since health and safety was one of the workers' major concerns, the union looked into the "whistleblower" protection offered by the California Occupational Safety and Health Act. Then they wrote to the general manager of the hotel to announce that they had formed a health and safety committee and to demand correction of numerous dangerous conditions. They put the company on notice that they would exercise their right to file a Cal/OSHA complaint if necessary. They felt that these actions would afford some legal protection against reprisals.

The committee planned and filed their Cal/OSHA complaint, which resulted in an inspection. Cal/OSHA issued citations against the hotel, ordering management to fix equipment and put in fire extinguishers. Workers finally saw the hotel take their safety seriously.

The workers were able to start acting like a union. After seeing the success of their Cal/OSHA complaint, their commitment to organizing and winning union recognition soared. Their drive was ultimately successful. With HERE's help, workers at another local hotel also formed a committee to tackle health and safety problems.

## **Step by Step**

*The information on OSHA procedures in the sections below applies to federal OSHA and most state OSHA programs. There may be slight variations from state to state.*

### **1. Identify the health and safety problem.**

Are workers getting sick or injured as a result of some hazard? Or are they worried that certain equipment or work processes are unsafe? Try to find out what's causing the problem and decide what a good solution would be. Ask

your co-workers how concerned they are about it. It's always best if they "buy in" to the issue and see it as their own. Hold a meeting or do a survey. Some of the tools described in previous chapters of this book can help you decide whether there are issues that call for an OSHA complaint.

## 2. Document and research the problem.

Do your homework. Be prepared to explain to the employer and OSHA why the situation is unsafe or unhealthy. What hazards are present? What symptoms do workers have? How long has the condition existed? You may want to collect some evidence. (Be sure to follow workplace rules so no one gets in trouble.) If you can be clear and specific about the threat, you will get a better response from OSHA.

Research the problem. Often you can get information about a particular hazard in a library, on the web, or from your international union's health and safety department. Try to find out if an OSHA standard is being violated. All federal OSHA standards are on the web at [www.osha.gov](http://www.osha.gov). Or go to your state OSHA website. You can link to it from the federal OSHA site.

Standards can be hard to read and understand. While it's a good idea to look at them, remember that it is **not** necessary to list a specific standard when you file a complaint form. Even if you don't know of a specific violation, the OSHA law says your employer still has a "general duty" to provide a safe and healthful workplace. OSHA can cite and fine the employer if they don't.

## 3. Approach the employer.

You may or may not want to approach your employer about the problem before you go to OSHA. This will depend upon your relationship and past experience with the employer. If you do decide to go to the employer, it's more effective (and you have more protection) if you meet with the employer as a group. If you have a union, bring a shop steward or other union rep with you. Explain the problem carefully and tell the employer why it's unsafe. Propose some reasonable solutions. Suggest why it may be in the employer's best interest to solve the problem (less absenteeism, fewer workers' comp claims, etc.) Give the employer your research and your proposals in writing.

Document all meetings with the employer. Keep good records of dates, times, who was present, what was presented, and management's response. If management is uncooperative or makes threats, document this also. It will make a difference later if you give OSHA evidence that the employer knowingly and willfully violated the law.

Contact OSHA right away if there's an emergency or someone faces an immediate risk of death or serious injury, and the employer doesn't respond quickly.

#### **4. Prepare to file an OSHA complaint.**

As a group, decide if this is the right time to file a complaint. What are the pluses and minuses of filing? Should you tell management you intend to file and give them one last chance to fix the problem? Is it too dangerous to openly approach the employer? Is it time for outside intervention?

Evaluate how strong your complaint is. OSHA may not send an inspector if the complaint doesn't seem serious enough to warrant investigation, or if it seems like willful harassment of the employer.

Before you write up your complaint, consider some other possible options. For example, in many cases you can call OSHA to discuss your concern without filing a complaint. This is especially important if you are not sure your issue is covered by an OSHA standard. You can also ask for a meeting with OSHA to discuss the problem. This gives you an opportunity to explain the situation in person, which may be easier than trying to write up a clear explanation. Be sure to get the names of the OSHA representatives you talk to. They can be of help later as you continue to work on the issue.

If you go ahead with a complaint, decide who should sign it. Complaints can be made confidentially. If an individual signs the complaint and requests confidentiality, OSHA will not tell the employer who complained. Both federal and state laws say an employer may not discriminate against someone who files an OSHA complaint. If you prefer, your union or organizing committee can file the complaint rather than an individual. Another option is to treat the complaint like a petition, with multiple signers. This helps organize co-workers around the issue. Legally, everyone who signs the complaint is protected against retaliation. Consider holding an educational session to let people know about the issue and get signatures.

Finally, plan for the inspection. Review your documentation, and choose the members of your group who will be involved in meetings with the OSHA inspector. See if workers who are directly affected by the problem are willing to be interviewed by the inspector. Plan what to say to the inspector. Role playing in advance can be helpful. Also decide what specific areas and equipment you want to point out to the inspector.

#### **5. File the complaint.**

A federal or state OSHA complaint should be in writing. Keep a copy. You can get a complaint form from an OSHA office or download one from [www.osha.gov](http://www.osha.gov). The website has instructions for completing the form and filing it. If you have a state OSHA program, they probably have a state complaint form available on their website. There are a sample federal OSHA complaint form and a checklist that will help you use it at the end of this chapter.

You can file the form in person at an OSHA office, by mail, by fax, or on the web. If the problem occurs mostly in a certain part of the workplace or at a certain time of day, indicate this on the form. Attach to the complaint form any documentation you have about the problem. Make the complaint and the documentation brief and to the point.

In an urgent situation you can make a complaint by phone. Follow up by filing a complaint form later.

The complaint form allows you to name a worker representative. This can be a worker designated by co-workers, a union staff person, a steward, an attorney, or someone else the workers choose. The worker rep has the right to participate in all phases of the inspection. Discuss with your group who the designated worker rep should be. If necessary, you can list someone for each shift. Some unions keep a list of contact people on file with both the employer and OSHA, so someone can be located easily no matter when an inspector arrives.

If workers who are to be interviewed do not speak English, OSHA may be able to send a bilingual inspector or a translator if you ask.

## 6. Take part in the inspection.

Usually federal or state OSHA will send an inspector to the workplace after receiving your complaint. The law says that in most cases the inspector must arrive with **no advance notice** to the employer. The inspector will contact an employer representative and the authorized worker representative. They both have the right to participate in all phases of the inspection.

There are four parts to the inspection process:

- **Opening Conference.** This is a meeting of the employer rep, the worker rep, and the inspector. The employer's records and policies are reviewed.
- **Walkaround Survey.** This is the actual physical inspection of the workplace. The inspector talks to workers, takes notes, and may photograph hazards. The inspector may also measure noise, chemicals, etc. Both employer and worker reps have the right to accompany the inspector. The inspector might also decide to interview workers or ask them about their jobs. Be sure that your co-workers understand that the inspector is not trying to "catch" them doing something wrong and will not discipline them. Workers may request to speak to the inspector without a supervisor present, or even speak away from the workplace.
- **Closing Conference.** This is another meeting of the inspector with employer and worker reps to sum up the results of the inspection. The inspector may hold closing conferences separately with the employer

and the worker or union rep in some cases. Sometimes OSHA is willing to have a conference that includes several worker reps, such as the safety committee or the union officers.

- **Citations and Fines.** After the inspection, OSHA may issue a written citation against the employer if there are violations of OSHA standards. The employer can also be cited for an unsafe condition not covered by a standard, because the law says employers have a “general duty” to keep the workplace safe. The citation tells what the employer must do to fix the problem, and how much time the employer has to do it. Citations must be posted in the workplace. Employers can also be fined, depending on how serious the violation is.

## 7. Follow up.

The person or organization that filed the complaint will receive a written report of the results and of any action OSHA plans to take. Your group should keep track of the employer’s efforts to correct problems within the time limits OSHA has set.

The employer has the right to fight a citation. They can say there is no violation, or they can object to the size of the fine, the action OSHA told them to take to fix the hazard, or the time limit. This appeal process can go on for months or years. Workers and unions can ask to be notified of appeal hearings and speak at them. This is called “electing party status.”

If workers or the union believe that OSHA has not solved the problem, you have a limited right to appeal. Generally you can object only to the time limit for correcting hazards. If that’s not the issue, decide what other steps you will take to continue your efforts.

If the employer decides not to fight a citation, they can still request an informal conference with OSHA where they can make a case for reducing the penalty or getting more time to fix the problem. Workers or the union must be notified about the informal conference and can be included. Workers or the union can also request their own informal conference with OSHA, but the issue must be confined to the specific citations that have been issued and the period for abating the hazards.

## 8. Report back and mobilize.

- Check that any citations are posted in the workplace as required by law, and that everyone knows what they mean.
- Organize a delegation to meet with management and discuss their plans to fix the problem within the time limit OSHA has set.



- Hold a report-back meeting. Emphasize to co-workers what you have accomplished. Let people know what the employer is required to do, and when.
- If you won important gains, publicize them to workers and the community. If OSHA's response was not satisfactory, it may be even more important to publicize the fact that there is still a problem.
- If management fixes the problem promptly, celebrate your success! Throw a party for your committee, or give committee members an award.
- If management doesn't fix the problem within OSHA's time limit, contact OSHA and ask that they take further action. Failure to abate a hazard promptly can lead to more serious action by OSHA, and possibly a bigger fine.

## 9. Fight any retaliation by the employer.

If the employer disciplines anyone because they were involved in filing the complaint (whether or not the complaint was successful), challenge this action immediately. You have the right to file an OSHA complaint without fear of retaliation. Employers are prohibited from retaliating against workers for health and safety activity under both section 11(c) of the federal Occupational Safety and Health Act and section 157 of the National Labor Relations Act.

**OSHA Rights.** Workers cannot be punished for using their rights under the federal Occupational Safety and Health Act. This includes the right to file complaints with OSHA, the right to report injuries and unsafe conditions to management, and the right to engage in other health and safety activities.

Therefore, even if you don't have a union contract that prohibits retaliation, you are still legally protected when you file an OSHA complaint. This is sometimes called "whistleblower" protection. It can be especially valuable protection for workers just organizing a health and safety committee before there is a recognized union.

By law, you can't be discharged, demoted, laid off, suspended, denied a raise, denied a promotion, denied overtime, transferred, harassed, intimidated, threatened, assigned to an undesirable shift, blacklisted, have your pay or hours reduced, or have other disciplinary action against you.

If you believe your employer has discriminated against you because you exercised your OSHA rights, contact your local OSHA office as soon as possible to file a written discrimination complaint. You must file within the legal time limit, usually 30 days. You can telephone, fax, or mail your complaint to the local OSHA office listed on the OSHA website at [www.osha.gov](http://www.osha.gov). You do not need to have a lawyer.

Protection against retaliation may be problematic for undocumented workers. When you select workers to play highly visible roles in an OSHA complaint (such as walkaround rep), make sure they are not vulnerable on immigration issues.

Procedures for health and safety discrimination complaints vary in states with their own OSHA programs. For example, complaints in California are filed with the State Labor Commissioner’s office, not with OSHA. Some state laws provide better or broader protection than federal OSHA.

When you file a federal or state discrimination complaint, there will be an in-depth interview with you and possibly an investigation. If evidence supports your claim of discrimination, the employer will have to restore your job, earnings, and benefits.

Remember that it can be difficult to prove retaliation. The question is usually: What was the employer’s  *motive*  for punishing you? Your evidence will almost always be indirect. The employer won’t admit to doing anything wrong and will give another reason for taking action against you. Be prepared to counter these arguments.

**NLRA Rights.** You may also have “whistleblower” protection under the National Labor Relations Act. It provides that workers may engage in “concerted activities for the purpose of . . . mutual aid or protection” without fear of reprisal. This language applies to non-union as well as union workers, and can include health and safety activities. Complaints should be filed with the National Labor Relations Board (NLRB).

S T O R I E S F R O M T H E F R O N T L I N E S

**Shipbuilding Workers Fight Retaliation, Win Union Recognition**



Shipbuilding is the second most dangerous industry in the nation (after meatpacking). Fourteen of every 100 U.S. shipbuilding workers lose workdays each year due to job injuries and illnesses.

Recently at a shipyard in New Orleans, Louisiana, workers discovered that the yard’s safety record was so poor that federal OSHA had targeted their employer under its “high hazard” program. Lost-time injury rates were twice the national private industry average. At least one worker had died every year, dating back to the 1960s.

These workers cited safety as the number-one reason they fought for and won a union. The struggle was long and difficult. Many workers were harassed, intimidated, and unfairly fired when they stood up for health and safety and for union recognition.

One leading member of the safety committee was suspended for three days because he improperly disposed of his lunch remains in the wrong dumpster. He had been part of a delegation that traveled to Washington, D.C. to testify about the company's safety problems. Another worker, who spoke on the radio about injuries she suffered when a crane ran over her, was threatened with a cut in her workers' compensation benefits. A clerk angered the company with statements at a union rally, and was reassigned to carry out his clerical duties in the hold of a ship, with no desk, chair, or phone. In total, the company terminated 61 workers during the organizing campaign, many of whom had spoken out for health and safety.

The workers filed an NLRB complaint, and eventually the NLRB forced the company to distribute \$2 million in back pay to the 61 terminated workers. 52 workers got their former jobs back, without loss of seniority or other benefits.

The group achieved union recognition through the New Orleans Metal Trades Council, comprising 11 different unions. They also won a first contract, which included a joint labor-management health and safety committee. The current goal of this committee is to establish their workplace as "the safest shipyard in the nation."

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## **Tips for Success**

### **Keep co-workers involved.**

Throughout the process, make sure workers stay informed about what's going on. Hold frequent meetings and report-back sessions to fill everyone in. Make sure everyone feels part of your health and safety campaign.

### **Develop a good relationship with OSHA staff.**

Get to know inspectors and administrators at your local OSHA office. Meet with them about what you are trying to accomplish. Get in the habit of calling or visiting them with your questions.

### **Inform the community.**

Publicize your OSHA complaint and keep people informed of its progress. Stay in touch with local newspapers and TV stations. Distribute newsletters and flyers to the media, community organizations, and sympathetic public officials. You can hold community events like public forums, demonstrations, and picket lines, and try to get the media to cover them.

## Get your allies to help.

Ask community groups and political leaders to express their concern to the employer about unsafe conditions and the need to correct them.

## Approach other regulatory agencies.

OSHA is not the only agency with authority over workplace safety. For example, most workplaces are subject to local or state fire laws, building codes, health codes, hazardous waste regulations, and air quality standards. Some of these rules are primarily designed to protect the surrounding community, but they protect workers as well and can be an effective way to create pressure for change. Find out which agencies enforce such regulations in your area, and try to develop a relationship with them. For some ideas, see Appendix 2. If you work in a hospital or school, learn more about the agencies that accredit your institution and about the health and safety criteria they use.

## Consider an OSHA petition.

If your health and safety problem is not covered by an existing standard, consider a petition to OSHA. Both federal and state OSHAs accept petitions from workers, unions, and others asking that new standards be adopted or existing standards amended. OSHA studies these petitions and may hold hearings to get public comment on proposed changes. If you submit a petition, it is very important to include good documentation that shows how serious and widespread the problem is. Try to get active support from unions and worker groups affected by the same hazard.

## STORIES FROM THE FRONT LINES

### TV Union Coalition Wins New Safety Standard




A coalition of unions representing 40,000 journalists and TV technicians in Southern California sought help from Cal/OSHA when several members were seriously injured. The injured workers, members of electronic news gathering (ENG) crews, shoot news video for TV stations. Three different ENG crews had accidentally contacted power lines with the microwave dishes on top of their trucks. One of the accidents got major press coverage because the reporter was severely burned by 32,500 volts. She later had her left arm amputated, and had to undergo muscle transplant surgery.

Four different unions represent ENG workers in Southern California. After the incidents, the leadership of all these unions formed a coalition to address the problem. According to one union official, “Our members looked to us to provide leadership on this issue. They wanted to make sure this kind of tragic accident would never happen again. As a multi-union coalition, we could pool our resources, provide a collective voice, and mobilize actions involving members.”

The coalition investigated work procedures on ENG trucks. One ENG crew member told them he was simply “handed the keys and pointed to the truck,” and that no one at his TV station made sure that he knew how to safely operate the vehicle or its equipment.

When three major television networks refused to negotiate with the coalition, they decided to petition Cal/OSHA for a new standard mandating basic equipment, training, staffing, and operation procedures for microwave masts in the ENG industry in California. Over the next year, they mobilized members to participate in Cal/OSHA meetings. Activists from the multi-union coalition gave input on the specific language that should be in the standard. Thousands of shop stewards and executive board members across the U.S. wrote letters of support.

The Cal/OSHA Standards Board passed the nation’s first safety regulation for ENG workers. It requires specific safety devices on vehicles, adequate lighting, an audible and visual warning device when the mast is extended, and training. According to a union Executive Board member, “The solidarity put forth by the leadership of all these labor organizations was certainly a first ... The nation often looks to California to set the trends of the future, and we very well could be setting standards that will be adopted nationwide.”





## OSHA COMPLAINT CHECKLIST

These questions will help you gather necessary information that you can pass along to OSHA about a health and safety problem. It can also help you decide if filing an OSHA complaint is the best tactic.

1. Does your complaint have to do with:

An accident or single incident?

An ongoing problem?

2. What is the problem?  Check boxes that apply or write the problem in the space below.

Chemicals

Electrical hazards

Falls or slips

Fire

Heavy lifting

Infectious diseases

Mechanical equipment

Noise

Repetitive motion

Vibration

Other (describe): \_\_\_\_\_

3. When did the problem begin?

The incident took place on \_\_\_\_\_  
(Date/Time/Shift)

This is an ongoing problem that started on \_\_\_\_\_  
(Date)

4. The best time(s) to observe the problem is \_\_\_\_\_  
(Date/Time/Shift)

5. Where is/was the problem?

Address \_\_\_\_\_

Building, room, or area \_\_\_\_\_

6. Have many employees experienced this problem?

Yes. How many? \_\_\_\_\_

No     I don't know

7. Has the problem resulted in an injury or illness?

Yes. How many employees were injured or became sick? \_\_\_\_\_

No     I don't know

**8.** Is the problem covered by an OSHA standard? (Standards are at [www.osha.gov](http://www.osha.gov).)

- Yes. Which standard? \_\_\_\_\_
- No      I don't know

**9.** If not corrected, is the problem likely to result in an injury or illness?

- Yes. Explain: \_\_\_\_\_
- No      I don't know

**10.** Are supervisors or managers aware of the problem?

- Yes. If so, what actions did they take to correct the problem, if any? \_\_\_\_\_
- \_\_\_\_\_
- No      I don't know

**11.** Has OSHA been contacted about this problem before?

- Yes. When? What happened? \_\_\_\_\_
- No      I don't know

**12.** Have you decided who will sign the complaint?

- Yes. Names: \_\_\_\_\_
- No      I don't know

**13.** Have you agreed who will be listed as the designated worker rep and alternate rep that OSHA should contact regarding this complaint?

- Yes. Names: \_\_\_\_\_
- No      I don't know

**14.** Is a bilingual OSHA inspector needed to talk to workers?

- Yes. Which languages? \_\_\_\_\_
- No      I don't know



**15.** Will you request a closing conference with the OSHA inspector that interested workers can attend?

Yes       No       I don't know

**16.** Is there a different tactic, other than filing an OSHA complaint, that you will consider to solve this problem?

Yes. Suggestions: \_\_\_\_\_

No       I don't know

**17.** Are there other federal, state, or local agencies with regulations that may cover the problem?

Yes. Agencies: \_\_\_\_\_

No       I don't know

**18.** Is there language in your union contract (if any) that may cover the problem?

Yes. Sections: \_\_\_\_\_

No       I don't know