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It's Time to Update Your Workplace Safety Program to Meet OSHA's New Anti-Retaliation Guidelines

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On January 13, the **U.S. Occupational Safety and Health Administration ("OSHA")** issued its latest guidelines for employers to help them keep their workplaces "free of retaliation, including retaliation against employees who engage in activity protected under the 22 whistleblower laws" that OSHA enforces. While adoption of OSHA's recommendations is not mandatory, they are intended to outline best practices for all public and private employers and employers should strongly consider incorporating them into existing policies or programs or into a newly-created workplace safety program. An anti-retaliation program should foster an environment in which all personnel (including temporary workers and other service providers) may raise concerns without fear of punishment or retaliation and allow employers to proactively address those concerns before they worsen or cause harm.



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The advisory document lists the following five key elements of an effective anti-retaliation program:

1. Management leadership, commitment, and accountability;
2. System for listening to and resolving employees' safety and compliance concerns;
3. System for receiving and responding to reports of retaliation;
4. Anti-retaliation training for employees and managers; and
5. Program oversight

The agency's guidance notes that there is some flexibility for employers to develop and modify their programs based on their size, workforce make-up, and industry. In addition, the guidance contains specific examples of the types of "subtle" retaliation that employers should prohibit and monitor as part of their compliance program, including reassignment to a less desirable position, reducing pay or hours, and isolating or falsely accusing an employee of poor performance.

Because this guidance provides a solid roadmap to assist employers in complying with their legal obligations and encouraging personnel to report hazards and injuries promptly with the security that they will be protected from retaliation for doing so, all employers would be well-served to take action to incorporate them into their programs.

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