

OSHA[®] FactSheet

HIPAA and OSHA Whistleblower Complaints

HIPAA stands for the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191. The HIPAA privacy regulation requires “covered entities” to protect the privacy of individuals’ health information.

Protected Health Information (PHI)

The HIPAA privacy regulation provides that individually identifiable information about a person’s physical or mental health or health care (in any written or oral form) – including computer records – is protected from unauthorized disclosure.

Keeping Health Information Private

The privacy regulation requires “covered entities” (which for OSHA purposes means health care providers who transmit any health information in electronic form in connection with carrying out health care-related financial or administrative activities) to establish policies and procedures addressing the use and disclosure of protected health information. “Disclosure” means revealing information to someone outside the entity holding the information. Thus, HIPAA does not ban an employee of a covered entity from revealing information to his or her supervisor or to another management official.

When Health Information Can Be Disclosed

Under normal circumstances, an individual must give written consent to disclose his or her health information. However, a covered entity’s employees or business associates may disclose protected health information to a public health authority (such as federal OSHA or a state agency operating under a federal OSHA-approved state plan, both of which are hereinafter referred to as “OSHA”) that is authorized to investigate a covered entity’s conduct, to an attorney retained to deal with a case involving such conduct, or to a health care accrediting organization. These disclosures are permitted as long as the employee believes in good faith that the conditions he is reporting are unlawful or endanger employees, among other things. Employees who are crime victims may also disclose protected health information to a

law enforcement official if the information is about the suspected perpetrator and the information is limited to that listed in the privacy regulation at 45 CFR § 164.512(f)(2)(i). Also, an employee may report a serious and imminent threat to the health and safety of a person if the recipient of the report is reasonably able to prevent or diminish the threat. Such recipients include law enforcement officials, OSHA, and union officials.

Employees are protected from retaliation for making disclosures authorized by HIPAA in connection with an occupational safety or health complaint. They may file whistleblower complaints with OSHA under Section 11(c) of the Occupational Safety and Health Act. The whistleblower complaint must be filed within 30 days of the retaliation.

OSHA’s Role

OSHA is charged with regulating health and safety in the workplace, and is considered a public health authority and a health oversight agency under HIPAA. The agency sometimes has to use and disclose protected health information to conduct investigations, litigate cases, and engage in other activities. Although OSHA is not a “covered entity” under HIPAA and is not bound by the use and disclosure requirements included in the privacy regulation, it complies with applicable laws and regulations protecting privacy, such as the Privacy Act, 5 U.S.C. § 552a.

How to File a Complaint

An employee, or representative of an employee who believes that he or she has been retaliated against for disclosing HIPAA-protected information in the course of reporting or complaining about a workplace safety or health issue, may file a complaint with OSHA within 30 days of the retaliation. The complaint should be filed with the OSHA office responsible for enforcement activi-

ties in the geographical area where the employee resides or was employed, but may be filed with any OSHA officer or employee. For more information, call your closest OSHA Regional Office:

- *Boston* (617) 565-9860
- *New York* (212) 337-2378
- *Philadelphia* (215) 861-4900
- *Atlanta* (404) 562-2300
- *Chicago* (312) 353-2220
- *Dallas* (972) 850-4145
- *Kansas City* (816) 283-8745
- *Denver* (720) 264-6550
- *San Francisco* (415) 625-2547
- *Seattle* (206) 553-5930

Addresses, fax numbers and other contact information for these offices can be found on OSHA's website, www.osha.gov, and in local directories.

To Get Further Information

For more information on employee whistleblower protections administered by OSHA, including copies of the statutes and regulations, go to www.osha.gov and click on the link for "Whistleblower Protection."

This is one in a series of informational fact sheets highlighting OSHA programs, policies or standards. It does not impose any new compliance requirements. For a comprehensive list of compliance requirements of OSHA standards or regulations, refer to Title 29 of the Code of Federal Regulations. This information will be made available to sensory impaired individuals upon request. The voice phone is (202) 693-1999; teletypewriter (TTY) number: (877) 889-5627.

For more complete information:



U.S. Department of Labor

www.osha.gov

(800) 321-OSHA

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