

# FEDERAL WAGE AND HOUR OFFICIALS SET THEIR SIGHTS ON RETALIATION INVESTIGATIONS

Insights  
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The new leadership of the Department of Labor has strongly signaled its intent to pursue employers for claims of retaliation – which means that employers need to beef up their compliance initiatives to avoid committing a violation. On March 10, the Department of Labor’s Wage and Hour Division issued an enforcement directive to its regional and district offices that confirms the agency’s commitment to the retaliation initiative. What do you need to know about this development and what should you do to prepare?

## Retaliation in the Crosshairs

In Field Assistance Bulletin (FAB) [2022-02](#), the Acting Administrator of the Wage and Hour Division emphasized the agency’s commitment to fully enforce the retaliation provisions of a host of laws that it oversees. This directive to Wage and Hour’s investigative staff follows a February webinar regarding retaliation enforcement initiatives that included the Solicitor of Labor, the Chair of the Equal Employment Opportunity Commission, and the General Counsel of the National Labor Relations Board. These coordinated efforts demonstrate a high-level commitment within these agencies to investigate and litigate retaliation claims against employers.

In the FAB, the Wage and Hour Division set forth its jurisdiction to investigate and enforce retaliation accusations under the following statutes, executive orders, and trade agreements:

- The Fair Labor Standards Act

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- The Family and Medical Leave Act
- The Migrant and Seasonal Agricultural Worker Protection Act
- The H-1B, H-1B1, E-3, and H-2A nonimmigrant visa programs
- The United States-Mexico-Canada Agreement
- Executive Orders 13658 and 14026 (which establish minimum wages for federal contractors)
- Executive Order 13706 (which establishes paid sick leave for federal contractors)
- The Consumer Credit Protection Act
- The Employee Polygraph Protection Act

Broadly speaking, the retaliation provisions of these laws prohibit employers from discharging, disciplining, intimidating, penalizing, blacklisting, or otherwise discriminating against an employee based on the belief that the employee engaged in protected activity under the law at issue. Protected activity generally includes activities such as filing a complaint with the Department of Labor, speaking with a Department of Labor investigator, testifying in court or at a deposition, or complaining to or inquiring with the employer about the subject matter covered by the law (for example, complaining about overtime pay, which is covered by the Fair Labor Standards Act).

In its pursuit of full enforcement of these retaliation provisions, the Wage and Hour Division will consider all remedies and sanctions available under each law. The remedies could include back pay, punitive damages, job reinstatement, liquidated damages, and civil money penalties. Under certain statutes, the agency noted that it could pursue criminal charges for willful violations.

The FAB also makes clear the Wage and Hour Division's commitment to interagency cooperation in enforcing retaliation provisions. Specifically, it mentions a focus on working with state agencies, OSHA, EEOC, and the NLRB.

## **What Should You Do?**

In this environment of heightened scrutiny and enforcement, you should remain vigilant that you do not run afoul of the retaliation provisions of these and other laws. Importantly, you should keep in mind that your organization can be subjected to a retaliation complaint and lawsuit arising from the actions of your agents, including your managers or other representatives. It is therefore critically important to clearly and effectively communicate your prohibition on retaliatory conduct to all managers and representatives. Finally, it is imperative that you investigate any claims of retaliation promptly and take appropriate and consistent disciplinary measures to enforce your rules.

We'll monitor this situation and provide updates as warranted, so please ensure you are subscribed to [Fisher Phillips' Insight system](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our [Wage and Hour Practice Group](#).