



## Call Me, Maybe? Court Rules that Phone Call to OSHA Constitutes Filing of Whistleblower Complaint

Insights

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It might sound crazy, but the Occupational Safety and Health Administration (OSHA) may now be receiving whistleblower complaints over the phone. This follows a recent ruling from a federal court in Wisconsin, which made it easier for employees to file whistleblower complaints against their employers.

Under section 11(c)(2) of the Occupational Safety and Health Act of 1970, an employee who believes he or she has been discharged or discriminated against because he or she engaged in protected activity under the Act has 30 days to “file a complaint” with OSHA regarding the discrimination. After receiving a complaint, OSHA may investigate it and, if it determines the employer has violated the Act, may later bring a lawsuit in federal court against the employer for the violation.

In *Acosta v. Dura-Fibre, LLC*, Case No. 17-C-589, the Secretary of Labor filed such a lawsuit on behalf of OSHA against Dura-Fibre in the U.S. District Court for the Eastern District of Wisconsin. In that case, Dura-Fibre fired the employee after he had accumulated too many disciplinary points under the company’s policies. The accumulation of points was related to whether the employee had engaged in unsafe acts and had appropriately reported those acts to his superiors.

Twelve days after he was terminated, the employee called the local OSHA office to complain about his termination. An OSHA compliance officer reduced the complaint to writing and forwarded the complaint to an investigator, who then took an oral statement from the employee. The investigator later reduced the statement to writing, and the employee signed the statement, but not until 50 days after he was terminated.

While Dura-Fibre argued that the lawsuit should be dismissed because the employee did not file any form of written complaint with OSHA until more than 30 days had gone by since the termination, on May 30, 2018, the court issued an order holding that the employee’s call to OSHA constituted “filing a complaint” under § 11(c)(2) of the OSH Act and let the case proceed. The court found that the OSH Act’s text was unclear whether complaints were required to be in writing, and therefore it deferred to OSHA’s interpretation that the language encompassed both oral and written complaints.

If other courts follow the precedent established in *Dura-Fibre*, it will now be easier for employees to file whistleblower against employers. A simple phone call is a much simpler task that completing

an on-line or paper form. Employers should be mindful of this decision when defending a whistleblower claim.

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