

## Alert | OSHA



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### Violating OSHA's Anti-Retaliation Provision Can Be Costly!

On Aug. 23, 2019, a federal judge in the United States District Court for the Eastern District of Pennsylvania awarded over a million dollars in lost wages and punitive damages to two former employees of Lloyd Industries after a jury found the company and its owner fired them in retaliation for their participation in a 2014 federal safety investigation by the Occupational Safety and Health Administration (OSHA). The company fired one of the employees after OSHA began an onsite investigation, and fired the other employee shortly after OSHA issued the Citation and Notification of Penalty, assessing monetary penalties on Lloyd Industries.

Significantly, the court's award of \$500,000 in punitive damages is the **largest punitive award** under the anti-retaliation provision (Section 11(c)) of the Occupational Safety and Health Act (OSH Act). In addition to the punitive damages, the judge awarded the former employees more than \$500,000 in front and back pay and prejudgment interest. The judge also required that the employer and its owner post an anti-retaliation notice at the plant and never again violate the OSH Act's anti-retaliation provision.

Section 11(c) of the OSH Act prohibits employers from terminating or in any manner discriminating against any employee because the employee has (1) filed a complaint under or related to the OSH Act; (2) instituted or caused to be instituted any proceeding under or related to the OSH Act; (3) testified or is about to testify in any proceeding under the OSH Act; or (4) exercised on his own behalf or on behalf of others any rights afforded under the OSH Act.

The judge's large monetary award to the former employees demonstrates the potentially significant economic consequences of violating the anti-retaliation provision of the OSH Act. Accordingly, employers should proceed with caution when considering disciplining or terminating an employee who has recently participated in an OSHA safety and health inspection or has raised workplace safety and health concerns. To assess their potential risks and liability under Section 11(c) of the OSH Act, employers should consult with counsel before disciplining or terminating such an employee. Further, it is critical that employers ensure that local management employees know that they may not dissuade employees (including other management employees) from participating in OSHA safety and health inspections or raising safety or health concerns or retaliate against them for doing so. Management employees should be aware that retaliating or discriminating against employees who participate in OSHA inspections or raise safety or health complaints could result in termination of the manager's employment.

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