

# Don't let employee's whistleblower status dissuade you from legitimate discipline

When employees are disciplined for rule violations and fear they might be fired, they may try to find a way to stop the expected punishment. A worker might, for example, raise a safety issue and then claim whistleblower status.

How should an employer respond to such a scenario? Certainly, you must investigate the safety problem and fix it if it turns out to be valid.

However, you should continue the disciplinary process, just as you would for any employee. Becoming a whistleblower doesn't confer protection from legitimate discipline.

To win a retaliation case, the worker would have to prove that the discipline was motivated by a desire to punish him or her for making the report. That's unlikely to succeed if 1) the discipline began before the safety problem was reported or 2) it is clear that any other worker would have been disciplined for the same rule violation.

**Recent case:** Terrance began working for ConAgra Foods at a plant in Minnesota as a line helper on the second shift.

When he was hired, he signed a copy of ConAgra's code of conduct, which included a prohibition on engaging in disruptive behavior like harassment, swearing or fighting. The code of conduct also tells employees how to report safety concerns. It promises that such reports will not result in retaliation against the worker.

Because he was a new employee, Terrance was subject to a 45-day probationary period. During that time, he received a performance review every 15 days. The first went fine, with scores of "good" on each of seven measured areas. His second review included only five "good" scores.

Shortly after the second review, during a safety meeting, Terrance stood up and loudly complained that ConAgra was ignoring what he said was a leaking piece of equipment. ConAgra investigated and informed Terrance that the issue had already been fixed.

During the meeting called to discuss the leaky equipment, an HR representative noted that Terrance was "really hyper and animated" and "angry."

Co-workers noted that Terrance swore frequently despite being warned this was against the rules. HR set up a meeting to discuss extending his probation. That made Terrance angry, and he began yelling and berating his supervisor and waving his arms. He was suspended. An investigation uncovered numerous incidents of yelling at co-workers and generally being uncooperative. Other workers said they were afraid of Terrance.

ConAgra sent Terrance a letter informing him that he had been fired for his angry outbursts, yelling and mocking his co-workers.

Meanwhile, Terrance had filed a formal Minnesota Occupational Safety and Health Administration complaint. A copy arrived the same day he was fired, though after the company had already drafted and signed the termination letter.

Terrance sued, claiming he was a whistleblower who had been terminated in retaliation for reporting safety concerns.

The court tossed out his lawsuit. It concluded ConAgra didn't retaliate because those who made the termination decision hadn't yet seen the state safety complaint.

But it also concluded that, complaint aside, ConAgra had a legitimate, unrelated reason for firing Terrance—namely that he had an anger problem and refused to curtail his disruptive behavior despite being warned that not doing so put his employment at risk. (*Schrammen v. ConAgra Foods*, DC MN, 2018)