



# A Guide to Knowing Your Rights:

How Employment Law Protects You  
From Employer Retaliation



Are you an overworked, underpaid restaurant employee who is the victim of illegal tip interference? If you've established that you have a legitimate case (read through our **Employer Tip Interference** is a Crime Ebook), then the next step is to call our office and speak with an attorney. If you haven't done that yet, it may be because you're anxious about the potential of employer retaliation.

If you're feeling uncertainty about whether or not to file legal action against your employer, we want you to know that you're not alone. Most of our clients initially come to us with this same concern:

***What will my employer do if I file a complaint?***

**Here's your answer: Nothing, as long as we're representing you.** You have legal rights under the Fair Labor Standards Act and our office will help educate you on those rights and protect you against any illegal employer retaliation. You are secure in your job and protected against any form of retaliation.

## Retaliation is Prohibited by Law

### Here's the Bottom Line:

Employees who have filed complaints or provided information concerning illegal tip interference at a restaurant cannot be discriminated against or discharged on account of such activity. If adverse action is taken against an employee for engaging in protected activity, the affected employee or the Secretary of Labor may file suit for relief, including reinstatement to his/her job, payment of lost wages, and damages.

### Here are the Specifics:

Section 15(a)(3) of the FLSA states that it is a violation for any person to *"discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee."*



Employees are protected regardless of whether the complaint is made orally or in writing. Complaints made to the Wage and Hour Division are protected, and most courts have ruled that internal complaints to an employer are also protected. Any violation of this protection for employees constitutes interfering with, restraining, or denying the exercise of rights provided by the FLSA.

## Coverage Under the FLSA

### What if my employer is not covered by the FLSA?

Because of the broad coverage of this Act, more than 130 million American workers are protected by the FLSA, which is enforced by the Wage and Hour Division of the U.S. Department of Labor.

All hospitals, businesses providing medical or nursing care for residents, schools and preschools, and government agencies are bound by the FLSA. In addition, any businesses with an annual dollar volume of sales of at least \$500,000 are also included.

Even when an employee's workplace is not technically covered, the FLSA covers individual workers who are engaged in interstate commerce or in the production of goods for commerce across state lines. For example, those who:

- ***produce goods (such as a worker assembling components in a factory or a secretary typing letters in an office) that will be sent out of state***
- ***regularly make telephone calls to persons located in other States***
- ***handle records of interstate transactions***
- ***travel to other States on their jobs***
- ***do janitorial work in buildings where goods are produced for shipment outside the State.***

In addition, domestic service workers (such as housekeepers, full-time babysitters, and cooks) are normally covered by the law.



**The bottom line:** because section 15(a)(3) prohibits “any person” from retaliating against “any employee”, the protection applies to all employees of any employer - even in those instances in which the employee’s work and the employer are not covered by the FLSA.

### **What if I don’t work for that employer anymore?**

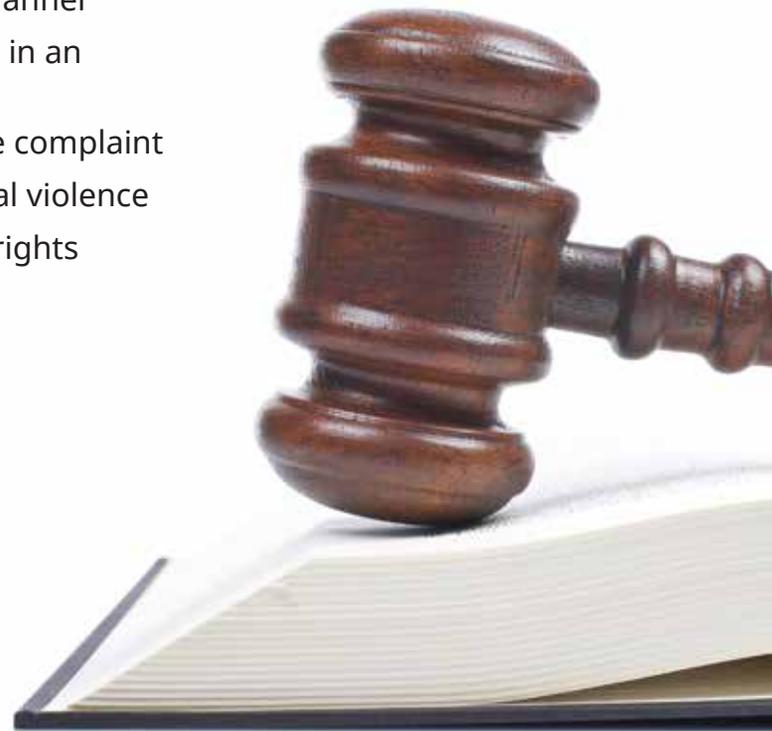
Section 15(a)(3) also applies in situations where there is no current employment relationship between the parties; for example, it protects an employee from retaliation by a former employer.

## **Prohibitions: How the Law Protects the Employee**

An employer is prohibited from interfering with, restraining, or denying the exercise of, or the attempt to exercise, any FLSA right. In addition, the employer may not discriminate or retaliate against an employee who files a charge, causes a legal proceeding, provides information during an investigation, or testifies to unlawful conduct concerning rights maintained by the FLSA.

### **Common Examples of Prohibited Conduct:**

- Terminating an employee
- Discriminate against an employee in any manner
- Discourage an employee from cooperating in an investigation
- Disrupting the workplace on account of the complaint
- Making threats of any kind or using physical violence
- Discouraging an employee from pursuing rights protected by the FLSA



# Enforcement: Your Security is Backed by the Law

The Wage and Hour Division of the Department of Labor administers and enforces the FLSA, the federal law of most general application concerning wages and hours of work. If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring action in court to compel compliance. An employee may also be able to bring a private civil action against an employer for violations. **In general, any allegation must be raised within two years from the date of violation.**

Any employee who is “discharged or in any other manner discriminated against” because, for instance, he or she has filed a complaint or cooperated in an investigation, **may file a retaliation complaint with the Wage and Hour Division or may file a private cause of action seeking appropriate remedies including**, but not limited to:

- employment reinstatement
- promotion
- lost wages
- additional equal amount as liquidated damages

Restaurant employees (or other service sector workers who are regularly tipped) who believe they have an FLSA claim should contact our office as soon as possible. Remember, under the law, you are secure in your job and protected from any threats or discriminatory treatment.

Don't be afraid and don't wait. Doing the right thing now can stop your employer from exploiting others in the future. You have a right to the money you're owed and we can help protect you in the process.

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**Sources:**

<http://www.dol.gov/whd/regs/compliance/whdfs15.pdf>  
U.S. Department of Labor  
Wage and Hour Division  
Fact Sheet #15: Tipped Employees Under the Fair Labor Standards Act (FLSA)

<http://www.dol.gov/whd/regs/compliance/whdfs14.htm>  
U.S. Department of Labor  
Wage and Hour Division  
Fact Sheet #14: Coverage Under the Fair Labor Standards Act (FLSA)

<http://www.dol.gov/whd/regs/compliance/whdfs77a.htm>  
U.S. Department of Labor  
Wage and Hour Division (WHD)  
Fact Sheet # 77A: Prohibiting Retaliation Under the Fair Labor Standards Act (FLSA)