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## When You Feel Under Threat for Speaking Out or Protecting Yourself During the COVID-19 Pandemic: What U.S. Health Care Workers Need to Know

As the COVID-19 pandemic overwhelms medical institutions, reports have been growing about health care workers (HCWs) around the world who have been subjected to retaliation for speaking out about Personal Protective Equipment (PPE) shortages, dangerous hospital conditions, inconsistent guidance, and even for bringing their own PPE to work. While legal and regulatory conditions vary by state and country, the following document outlines procedures U.S. health workers seeking to express safety concerns might follow.

HCWs have raised concerns in a variety of ways, including with fellow colleagues, to hospital management, to government officials, to the press, and to the general public. The retaliatory measures taken against them have included formal warnings, reassignment, suspension, or even termination. This has occurred despite that fact that many HCWs have been acting from a sense of professional, moral, and ethical duty to protect themselves and others and/or to report what they consider to be gaps in safety that could impact their own health as well as the health of their colleagues, patients, and communities.

Although numerous U.S. [associations](#) of health professionals have issued [statements](#) calling on employers to refrain from such retaliation, the actual protections and recourses for HCWs are not always evident, often varying from state to state and even from one institution to another.

Yet, as a health care professional, you do have a range of supports and protections, as well as the ability to defend yourself and make changes at your institution. Physicians for Human Rights (PHR) has compiled a few suggestions below on what should be considered. The text is also available on [PHR's website](#).

### **Ensure Patient Confidentiality**

Importantly, you are always bound by patient privacy laws and broader ethical obligations regarding how you treat all patients. In speaking publicly on matters of concern, you must practice great caution and avoid violations of a patient's right to privacy. Disclosing information that might lead to the identification of a patient should be done only with the explicit consent of that individual. As long as you do not reveal individual patient data or specific information which might lead to the identification of a patient, these privacy rules do not prevent you from speaking about general workplace safety concerns.

### **Review Your Employee Handbook**

As applicable, check the employee handbook of your institution for sections about public speaking and internal processes for grievances. Make sure that it is the latest version, as health systems and institutions often assert the right to change the content of these at will and without notifying employees. Nevertheless, this review will likely be useful to inform your understanding of internal processes. Also, check your letter of employment or contract to see whether there is a non-disparagement clause. If so, you may need to consult with a lawyer before speaking out.



### **Beware of Information Security**

Under all circumstances, be careful about *the manner* in which you communicate, including with a union representative, colleagues, government regulator, journalist, or even a lawyer, unless it is your own lawyer, in which case, the conversation is privileged. To be safe, assume that any communications from work devices (e.g., emails, texts, calls) or on work premises can be monitored and stored. Be careful about using Gmail or other private email services from a work computer (which could still be monitored, whether or not that is allowable). If you intend to submit a tip anonymously, consider using an online service or smartphone app (or a public phone) for more secure communications. Conversations with an attorney should be confidential and protected by attorney-client privilege, but it is still inadvisable to have such conversations from a work device or account.

### **Know How to Document Your Concerns**

For almost all rights and remedies discussed below, it helps to have some written documentation to support your concerns or claims. This can take the form of contemporaneous notes, calendar entries, diaries, written statements, audio or video recordings, photos, emails, or other documents. Ideally, this documentation should be contemporaneous (dated) and have some useful level of detail. Again, be especially careful not to implicate patient data or privacy, even inadvertently. Some hospitals may have policies or contractual provisions about bringing files from work to home. Most hospital computer systems are likely to maintain an archive of messages (e.g., forwarded emails) or log unusual activity, such as the copying of large amounts of files to an external device. Most hospitals are likely to view hospital documents and files as company property. Review your contract to see if there is an applicable confidentiality clause. Be aware that accessing an employer's files which you do not have the right to access or misappropriating them can result in firing, litigation, or, in extreme situations, criminal charges for violations of the Computer Fraud and Abuse Act.

### **Understand the Reasonable Allowance for Self-Correction**

In deciding on your first steps when you observe lapses in safety, it is generally advisable to first research and seek remedies using your institution's internal channels. HCWs who identify errors or misjudgments should work to see such mistakes corrected by internal processes rather than through public reporting, if at all possible. If institutions and individuals are responsive and willing to correct such failures on a permanent basis when they are identified, public disclosure may not serve a useful purpose and may ultimately even cause more harm than good. However, when such efforts do not lead to necessary changes, depending upon your situation, you may choose to exercise some of the options below to protect yourself, your patients, your colleagues, and the general community.

### **Act Swiftly**

If you are fired or retaliated against, consult an attorney or check the relevant deadline(s) (known as a "statutes of limitation") as quickly as possible. In several jurisdictions, the time limit for filing a retaliation claim under the workplace safety and health laws is only *thirty* (30) days.

### **Understand OSHA Workplace Protections**

Workplace protections for speaking out about safety concerns have traditionally been within the jurisdiction of OSHA, the Occupational Safety and Health Administration, as well as under



various state equivalent organizations. Under Section 11(c) of the Occupational Safety and Health Act, private sector workers – including in the health care sector – are protected from retaliation if they raise health- and safety-related concerns about their workplace.

Unfortunately, by all reports, OSHA (or the Department of Labor leadership) has to date either been unwilling or unable to address many of the complaints that have stemmed from the COVID-19 pandemic. Nor, to date, has OSHA issued a further emergency temporary standard to definitively protect health care workers in the current context. In reporting to OSHA, it is best at this time to:

- **Submit an anonymous complaint to OSHA.** While this will not aid you directly, it will be entered into a national database and may inform future research and legislation. Thousands of complaints to OSHA have been filed by HCWs since March 2020. Link here: [https://www.osha.gov/workers/file\\_complaint.html](https://www.osha.gov/workers/file_complaint.html)
- **Know your rights under the Occupational Safety and Health Act.** This is a federal law that protects workers from retaliation for complaining to their employer, OSHA, or other government agencies about unsafe conditions in the workplace. If you have reported unsafe or unhealthy working conditions, and your employer has retaliated against you for it, you can file an OSHA whistleblower complaint [online](#).
- **Know Your Rights in Your State.** Your state may have its own occupational and health requirements. Here is a list state-based [OSHA](#) safety plans.

### **Be Aware of Key Legislation**

- **The National Labor Relations Act (NLRA).** Under Section 7 of the NLRA, a *nonsupervisory* employee (even in a nonunionized environment) has the right to engage in concerted activity to effect change to improve working conditions. As quoted from the National Labor Relations Board (NLRB):

“You have the right to act with co-workers to address work-related issues in many ways. Examples include: talking with one or more co-workers about your wages and benefits or other working conditions, circulating a petition asking for better hours, participating in a concerted refusal to work in unsafe conditions, openly talking about your pay and benefits, and joining with co-workers to talk directly to your employer, to a government agency, or to the media about problems in your workplace. Your employer cannot discharge, discipline, or threaten you for, or coercively question you about, this "protected concerted" activity. A single employee may also engage in protected concerted activity if he or she is acting on the authority of other employees, bringing group complaints to the employer's attention, trying to induce group action, or seeking to prepare for group action. However, you can lose protection by saying or doing something egregiously offensive or knowingly and maliciously false, or by publicly disparaging your employer's products or services without relating your complaints to any labor controversy.”

**If you believe that these rights have been violated, you may file a complaint with the NLRB.** Complaints under the National Labor Relations Act should be made with the [NLRB](#).



- **The Labor Management Relations Act of 1947.** Under Section 502 of the Labor Management Relations Act (the Taft-Hartley Act), workers may refuse to work under “unusually dangerous conditions.” You may need to consult with an attorney to assess how this will likely be defined in your situation.

## **Other Things You Can Do**

### **Contact Your Union Representative** (If you are a union member)

You might find that there are ongoing actions on behalf of bargaining units that are attempting to address your complaints and may be helpful to you personally. If not, you will still be alerting the union to what you have observed.

### **Consider Contacting an Attorney**

Consider contacting an attorney who specializes in employment law. In addition to situations mentioned above, an attorney may be able to advise you on the individual characteristics of your situation. Additionally, some firms have been taking cases on a *pro bono* (free) or contingency basis (you usually only pay if you win) and may be able to help in various ways, ranging from writing a letter to hospital CEOs or managers to entering into settlement negotiations, advising you in detail about your personal circumstances and protections, or initiating a full-blown lawsuit for wrongful termination in violation of public policy. Your local legal aid society or bar *pro bono* center may be able to provide further assistance and direction.

### **Talk to Your Colleagues**

There can be strength in numbers. If possible, and the problem is widespread, consider taking action as a group. If other HCWs in your institution share the same concerns, submit an internal letter with multiple signatures or ask for a group meeting with administrators.

### **Raise Concerns to Your Health System’s Ethics Committee**

Many of these safety issues fall within the boundary of professional ethics when actions are taken to protect the health of your patients and the public. A committee decision supporting your and your colleagues’ concerns and demands may hold sway with administrators. Under certain circumstances, you may be able to approach the committee and have your identity be protected if you fear retaliation.

### **Consider Speaking to Your Institution’s Ombudsperson**

You may be able to submit anonymous complaints if your institution has an ombudsperson. As more people from the institution use this option, the likelihood of a response increases.

### **Organize**

Consider partnering with other local groups, including HCWs from the same area or health systems experiencing similar situations. Work with experienced community organizers to launch a letter-writing campaign to those who may be able to improve the safety situation, targeting local representatives (i.e., mayor, state legislator, congressperson, or governor).

### **Approach Your Member Organization or Society**

Many of these organizations have already issued statements supporting HCWs and their backing, national voice, and advocacy prowess may be important and useful. These can be



shared with colleagues and also with managers at your institution to explain and justify your actions. Some have created [databases](#) for complaints. Contacting them will add weight to the concerns that you are raising.

### **Speak to the Media**

You can contact reputable and trusted journalists to offer anonymous tips and provide background information. You may ask to speak “off the record” (meaning that the information you disclose cannot be reported), or “on background” (meaning that the information you disclose can be reported, but only around parameters you define, such as “according to one source in the hospital...” rather than “according to Dr. Smith in the hospital”), but make sure to mutually agree to those parameters *before* you speak to the reporter. You may also speak “on the record” (both the information you disclose and your name can be reported) with a reporter or publicly, but that obviously carries a greater degree of risk. Keep in mind that employers have varying policies related to speaking to the media. Before approaching or speaking to a reporter, read their past coverage to better understand their tone and reporting style. Most news outlets offer secure and confidential methods to share information (e.g. through secure messaging apps like Signal and Proton Mail). Here are a few links for well-known news organizations where you can provide news tips:

[Washington Post](#)

[ProPublica](#)

[New York Times](#)

[Boston Globe](#)

[Los Angeles Times](#)

[San Francisco Chronicle](#)

[Miami Herald](#)

[Atlanta Journal-Constitution](#)

[Philadelphia Inquirer](#)

[Chicago Tribune](#)

[CBS News](#)

### **File an Official Whistleblower Complaint**

Whistleblowers are individuals who decide to expose illegal or unethical activities within their institution (private or public), often where finances are at issue. Note that [OSHA](#) has its own, multiple whistleblower statutes. Whistleblowers often have special protections, but the process may at the same time carry significant risks for the whistleblower. As such, this may be a last-resort action. National Nurses United has compiled a state-by-state list of [whistleblower protection laws](#) for health care workers. There are a number of attorneys who specialize in this litigation who can advise you. Additionally, there are independent organizations who may support you if this is the path you wish to take, including:

[The Government Accountability Project](#)

[The National Whistleblower Center](#)

[Whistleblower Aid](#)

*NOTE: This document neither offers nor constitutes legal advice or legal work product and it should not be relied upon as such. Your circumstances, risks, and applicable laws may vary. When in doubt, consult an attorney who can provide you legal advice.*