What is Retaliation?
Retaliation occurs when an employer (through a manager, supervisor, or administrator) takes an adverse action against an employee because the employee engaged in protected activity, such as raising a concern about a workplace condition or activity that could have an adverse impact on the safety, health, or well-being of the reporting employee, other workers, or the public; or reporting a suspected violation of law. Retaliation also occurs when an employer takes an adverse action because an employee reported an injury or to dissuade an employee from reporting an injury. An adverse action is an action that could dissuade or intimidate a reasonable worker from raising a concern about a workplace condition or activity.

Because adverse action can be subtle, it may not always be easy to spot. Examples of adverse action include, but are not limited to:

- Firing or laying off
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire
- Intimidation
- Making threats

Creating an Anti-Retaliation Program
Implementing an effective anti-retaliation program is not intuitive and requires specific policies and commitments.

There are five key elements to creating an effective anti-retaliation program:

1. Management leadership, commitment, and accountability
2. System for listening to and resolving employees’ safety and compliance concerns
3. System for receiving and responding to reports of retaliation
4. Anti-retaliation training for employees and managers
5. Program oversight

In order to effectively support employee reporting and protect employees from retaliation, employers should integrate all five elements into a cohesive program.
Element 1
Management Leadership, Commitment, and Accountability
To make preventing retaliation and following the law integral aspects of the workplace culture, it is important that senior management demonstrate leadership and commitment to these values. Senior management, such as the CEO and board (if applicable), should lead by example to demonstrate a culture of valuing and addressing employees’ concerns regarding potential violations of the law and commitment to preventing retaliation. To demonstrate commitment, management should back up words with actions; written policies that are not actively practiced and enforced are ineffective. Managers at all levels should be held accountable for the quality of their response to employees’ concerns, including reports of potential violations of the law, of safety hazards, and of retaliation.

Element 2
Compliance Concern Response System
System for Listening to and Resolving Employees’ Safety and Compliance Concerns
To help prevent retaliation, employers should proactively foster an organizational culture in which raising concerns about workplace conditions and activities is valued. Employers can cultivate such an environment by listening to and resolving employees’ compliance concerns. Specifically, employers should establish procedures that enable employees to report concerns (including through confidential or anonymous channels, when possible), provide for fair and transparent evaluation of concerns raised, offer a timely response, and ensure a fair and effective resolution of concerns. In developing these policies, employers should work with employees and worker representatives (if any).

Element 3
Anti-Retaliation Response System
System for Receiving and Responding to Reports of Retaliation.
Employees who believe they have experienced retaliation should have independent channels for reporting the retaliation; they should not be required to report to the manager who they believe retaliated against them. The reporting employee should also have the ability to elevate the matter to higher levels, if necessary. There should be clearly defined roles and responsibilities for managers at all levels and others who are involved in responding to reports of retaliation, such as human resources or ethics and compliance personnel. The procedures should be known and accessible to all.

When retaliation is reported, employers should investigate the claim promptly and thoroughly, utilizing an established retaliation response system.

Element 4
Anti-Retaliation Training
Anti-Retaliation Training for Employees and Managers.
Effective training of employees and all levels of management and the board (if applicable) is key to any anti-retaliation program. Training is essential because it provides management and employees with the knowledge, skills, and tools they need to recognize, report, prevent, and/or properly address hazards, potential violations of the law, and retaliation. Training should be tailored to teach workers and managers about the specific federal whistleblower protection laws and company policies that apply to them, employees’ rights under the laws, how employees can exercise their rights using available internal and external protection programs, and the organizational benefits of such programs. Managers should learn these concepts as well as related skills, behaviors, and obligations to act. Training should be provided in accessible language(s) and at a level that can be easily understood by the intended audience.

Element 5
Program Oversight
A well-designed anti-retaliation program needs rigorous oversight to ensure that it is effective and working as intended. Employers should develop and implement a plan for oversight of the anti-retaliation program, review oversight findings, and ensure that the program is improved and modified as needed.

What are some methods of oversight that can be used to assess the anti-retaliation program? Monitoring and audits are two forms of oversight that can help employers gain insight into a program’s strengths and weaknesses and reveal whether program improvements are needed.