

CHAPTER 209
OSHA DISCRIMINATION AGAINST EMPLOYEES

[Previously Ch 8 IAC renumbered 12/24/80]

[Prior to 9/24/86, Labor, Bureau of [530]]

[Prior to 10/7/98, see 347—Ch 9]

[Prior to 7/9/25, see Labor Services Division[875] Ch 9]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/15/30

481—209.1(88) Complaints and proceedings under or related to the Iowa occupational safety and health Act.

209.1(1) Complaints about occupational safety and health, if made in good faith, are related to the Iowa occupational safety and health Act, Iowa Code chapter 88, hereinafter referred to as the Act, and an employee is protected against discharge or discrimination caused by a complaint to the employer.

209.1(2) If an employee, with no reasonable alternative, refuses in good faith to be exposed to a dangerous condition, the employee is protected against subsequent discrimination if the following conditions are met:

a. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury.

b. The employee, where possible, first sought to:

(1) Eliminate the danger through resorting to regular statutory enforcement channels unless there has been insufficient time due to the urgency of the situation, or

(2) Obtain from the employer a correction of the dangerous condition but was unable to do so.

209.1(3) Discharge of, or discrimination against, any employee because the employee "has testified or is about to testify" in proceedings under or related to the Act extends to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rulemaking or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the Act, the employee would be protected against discrimination resulting from such testimony.

209.1(4) An employee need not directly institute the proceedings. It is sufficient if the employee sets into motion activities of others that result in proceedings under or related to the Act.

209.1(5) An employer's failure to pay employees for time during which the employees are engaged in walkaround inspections or in other inspection-related activities, such as responding to questions of compliance officers or participating in the opening and closing conferences, is discriminatory under Iowa Code section 88.9(3) so long as neither the number of employees participating nor the time required to express employee concerns is excessive.

209.1(6) The employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, Iowa Code section 88.9(3) has been violated.

209.1(7) The prohibitions of Iowa Code section 88.9(3) are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. Iowa Code section 88.9(3) extends to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee.

[ARC 8449C, IAB 12/11/24, effective 1/15/25; Editorial change: IAC Supplement 7/9/25]

481—209.2(88) Unprotected activities distinguished.

209.2(1) Actions taken by an employer or others that adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of Iowa Code section 88.9(3) apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in

activities protected by the Act does not automatically render the employee immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

209.2(2) An employer would not ordinarily be in violation of Iowa Code section 88.9(3) by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

209.2(3) Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations will not ordinarily be regarded as discriminatory action prohibited by Iowa Code section 88.9(3).

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481—209.3(88) Filing of complaint for discrimination.

209.3(1) A complaint of Iowa Code section 88.9(3) discrimination may be filed by the employee or by a representative authorized to do so on the employee's behalf. No particular form of complaint is required. A complaint should be filed with the labor commissioner.

209.3(2) Complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely. However, there may be circumstances that would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances (e.g., where the employer has concealed or misled the employee regarding the grounds for discharge or other adverse action or where the discrimination is in the nature of a continuing violation). The pendency of grievance-arbitration proceedings or filing with another agency, among others, are circumstances that do not justify tolling of the 30-day period.

209.3(3) Withdrawal of complaint. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the labor commissioner's investigation. However, a voluntary and uncoerced request from a complainant to withdraw the complaint will be given careful consideration and substantial weight.

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481—209.4(88) Notice of determination. Iowa Code section 88.9(3) provides that within 90 days of the filing of a complaint, the labor commissioner is to notify a complainant whether prohibited discrimination occurred. This 90-day provision is considered to be directory in nature.

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481—209.5(88) Arbitration or other agency proceedings.

209.5(1) The labor commissioner's jurisdiction to entertain complaints related to Iowa Code section 88.9(3) complaints is independent of the jurisdiction of the other agencies or bodies. The labor commissioner may file action in district court regardless of the pendency of other proceedings. However, due deference should be paid to the jurisdiction of other forums established to resolve disputes that may also be related to complaints under Iowa Code section 88.9(3).

209.5(2) Postponement of determination is justified where the rights asserted in other proceedings are substantially the same as rights under Iowa Code section 88.9(3).

209.5(3) A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information.

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These rules are intended to implement Iowa Code sections 84A.1, 84A.2, 88.2, and 88.9(3).

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