



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

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August 30, 2013

Mr. Kenneth Nishiyama Atha
Regional Administrator
Occupational Safety and
Health Administration
San Francisco Federal Building
90 7th Street, Suite 18100
San Francisco, California 94103

Dear Mr. Atha:

The Hawaii Occupational Safety and Health Division (HIOSH) would like to respond to the FY 2012 *Abridged Federal Annual Monitoring and Evaluation Report*. We appreciate the cooperative manner in which the onsite portion of the evaluation was conducted. Our office took steps to address each of the valid recommendations in the final report which we received on July 31, 2013. We consider this letter to be the State's official response to the FY 2012 EFAME and request that it be posted along with the FAME on your public website.

We would like to preface all of the remarks below with the comment that we received the FY 2011 EFAME on July 31, 2012 meaning that we were almost in the second month of the final quarter meaning that we had only the last month of the fiscal year to address the recommendations in the 2011 EFAME.

Recommendation 12-1: Manage the complaint process to ensure that complaint inquiries (non-formal) are initiated within one day of receipt.

Response 12-1: Managers will ensure that the clerks understand the importance of preparing phone/fax letters within a day of receipt of phone/fax complaints. As of the second quarter of FY 2013, the response time was 1.25 days.

Recommendation 12-2: Manage the complaint process to ensure that formal complaint inspections are initiated within five days of receipt.

Response 12-2: Formal complaint inspections will be assigned so that they can be opened within five days of receipt. As of the second quarter of FY 2013, the response time was 5.25 days and 96% of complaints scheduled for inspection were responded to within five days.

Mr. Kenneth Nishiyama Atha
August 30, 2013
PAGE 2

Recommendation 12-3: Focus on the annual goals set for the office and assign inspections to maximize resources.

Response 12-3: The HIOSH will match its inspection scheduling to its annual goals starting in FY 2014 since it got a final copy of the FY 2012 evaluation on July 31, 2012 which was 31 days into the last quarter of FY 2012. The HIOSH reinstated inspection scheduling on the neighbor islands, thus ensuring adequate inspection coverage of Kauai, Maui, Lanai and Molokai.

Recommendation 12-4: Improve management of inspection activity to focus on overall goals of the office.

Response 12-4: The HIOSH will match its inspection scheduling to its strategic goals starting in FY 2014 since it got a final copy of the FY 2012 evaluation on July 31, 2012 which was 31 days into the last quarter of FY 2012. Well into the third quarter, HIOSH noted that the inspection statistics which Research and Statistics were tracking did not match those in the grant. The HIOSH further noted that many of the statistics were based on counting standards which had not been clearly defined or on workers' compensation statistics which lag behind calendar time making it difficult to measure both performance and progress towards goals. The HIOSH addressed these concerns in the FY 2014 grants.

Recommendation 12-5: Properly manage case file processes in order to issue citations in a timely manner.

Response 12-5: The HIOSH will do its best to ensure that case file lapse times meet national averages.

Recommendation 12-6: Perform follow-up inspections as required and use them to aid in the training of new and inexperienced compliance staff.

Response 12-6: The HIOSH believes that an appropriate number of follow-ups have been conducted in FY 2013.

Recommendation 12-7: Ensure that union participation or declination of union participation is done and is clearly indicated in the case file.

Response 12-7: The HIOSH continues to note that unions decline the right to accompany the inspection when offered the opportunity. As of April 2012, HIOSH was notifying all unions of informal conferences in addition to requiring that the employer do so; as of August 2013, the unions have sent representatives to four informal conferences.

Recommendation 12-8: The HIOSH must ensure that health inspectors are conducting appropriate sampling during inspections and properly entering the information into IMIS.

Response 12-8: The HIOSH will ensure that its Environmental Health Specialists (EHSs) follow all policies and procedures in the HIOSH FOM and the OSHA Technical Manual. The HIOSH's experience in Hawaii with health monitoring closely parallels OSHA's. The HIOSH believes this recommendation should have been marked as completed as of FY 2011 based on the comparison to OSHA's performance in sampling in Region IX.

Mr. Kenneth Nishiyama Atha
August 30, 2013
PAGE 3

Recommendation 12-9: Ensure Standards and Federal Program Changes are responded to and adopted within the required timeframes.

Response 12-9: The HIOSH is now responding timely to the memos providing a memo is distributed. The HIOSH tries to adopt the standards within the six month time limit but the State rules promulgation process requires all rule changes be approved by the Department of Budget and Finance, the Department of Business, Economic Development and Tourism and the Governor and their response time to approve new HIOSH standards is not under HIOSH's control.

Recommendation 12-10: Ensure goals are developed and manage the program to achieve the goals.

Response 12-10: The HIOSH will do its best to ensure that it meets its goals for public sector consultation by promoting consultation during informal conferences and at any meetings it has with the public sector.

Recommendation 12-11: The HIOSH shall investigate whether there is a causal link between the protected activity and the adverse action where nexus is at issue in the discrimination investigation and evaluate the facts presented in the FIR as they relate to four elements of a violation.

Response 12-11: All EHSs expected to conduct discrimination investigations were sent to the OTI whistleblower training. The RIS and the Senior EHS were sent to Region IX's Regional Office to be trained by Federal Whistleblower staff.

Recommendation 12-12: The HIOSH will ensure that all discrimination cases opened and closed are accurately entered into and maintained in IMIS.

Response 12-12: All EHSs expected to conduct discrimination investigations were sent to the OTI whistleblower training. The RIS and the Senior EHS were sent to Region IX's Regional Office to be trained by Federal Whistleblower staff.

Recommendation 12-13: Ensure FFRs and the closeout reports are certified in a timely manner.

Response 12-13: The HIOSH will remind the Administrative Services Office of the requirements for timely certification of the FFR.

Recommendation 12-14: The 23(g) grant fund must be properly managed to support the goals of the program.

Response 12-14: The HIOSH has hired a program specialist with an accounting background who is working to develop an accounting system for grant funds.

Recommendation 12-15: Adhere to the provided timeframes for early grant submittal so that problems and issues with the grants can be addressed before they are entered into the system.

Mr. Kenneth Nishiyama Atha
August 30, 2013
PAGE 4

Response 12-15: The HIOSH submitted grants for review by the Regional Office prior to submission.

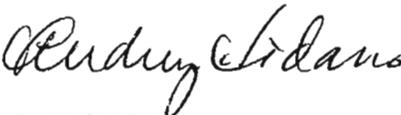
Recommendation 12-16: Ensure that CASPAs are formally responded to by the due date.

Response 12-16: The EFAME states "Both had late responses, with one (2012-H-27) still awaiting response from the state." The HIOSH submitted its response to 2012-H-27 on April 19, 2013 via email and hard copy. We are attaching the email and the scanned letter. If OSHA would like us to resend the related files again, please let us know. The HIOSH intends to respond to future CASPAs in a timely manner. The HIOSH requests, in accordance with CASPA procedures, that OSHA's conclusions be sent to HIOSH upon the close of the CASPA investigation rather than waiting until the EFAME to communicate the results.

Just as detailed closing conferences are held to discuss OSHA inspections, HIOSH would like to request that in the future a detailed closing conference be held with the State so that the results of case files reviews, areas of concern and areas of strength could be reviewed with the HIOSH staff and prompt action could be given to areas identified during the evaluation. Because this was not done, HIOSH is using this letter to request the materials which could have been reviewed during such a closing so that it can determine exactly what was a concern to OSHA and to produce work that is acceptable to OSHA auditors. The HIOSH recommends that such closing conferences become standard practice in future evaluations.

The HIOSH appreciates the opportunity to respond to the specific recommendations included in the FY 2012 EFAME Report. As always, the State is willing to continue to work with federal OSHA to address all valid concerns included in this report. We are also committed to working with OSHA to assure that all audit reports accurately reflect State activity and that they accurately document the effectiveness level of the Hawaii Occupational Safety and Health program. We look forward to a cooperative and mutually supportive relationship with Region IX, and especially with the Honolulu Area Office. Please accept our appreciation for the valuable services you have provided to the occupational community of Hawaii.

Sincerely,


for DWIGHT TAKAMINE
Director

Attachments

c: Galen Lemke



{In Archive} Fw: CASPA response
Deirdre T Yamasaki to: Lemke, Galen - OSHA
Cc: Diantha M Goo

04/24/2013 01:56 PM

From: Deirdre T Yamasaki/DLIR/StateHiUS
To: "Lemke, Galen - OSHA" <Lemke.Galen@dol.gov>,
Cc: Diantha M Goo/DLIR/StateHiUS@StateHiUS
Archive: This message is being viewed in an archive.

Galen,

The attachments was a lot to scan so they will be forthcoming in the mail.

Thanks!

Deirdre

— Forwarded by Deirdre T Yamasaki/DLIR/StateHiUS on 04/24/2013 01:54 PM —

From: Deirdre T Yamasaki/DLIR/StateHiUS
To: "Lemke, Galen - OSHA" <Lemke.Galen@dol.gov>,
Cc: Diantha M Goo/DLIR/StateHiUS@StateHiUS
Date: 04/24/2013 10:51 AM
Subject: CASPA response

hi Galen,

We are sending the hard copy of attached in the mail today.

thanks!

Deirdre



Scanned from a Xerox multifunction device.pdf



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April 19, 2013

Mr. Galen Lemke, Area Director
Honolulu Area Office
Prince Jonah Kuhio Federal Building
300 Ala Moana Boulevard, Room 5-146
Honolulu, Hawaii 96850

Dear Mr. Lemke:

The State of Hawaii Department of Labor and Industrial Relations' (DLIR) response to CASPA #2012-H-27, regarding a complainant's allegations on how her complaints against the Hawaii State Hospital were handled as follows:

CASPA Allegation #1: A complaint filed regarding workplace violence at the Hawaii State Hospital in Kaneohe was not processed properly in that letters acknowledging the complaint were not sent out, an investigation or inspection was not performed, rather the case was transferred to the safety department of the Hospital for processing.

Response: The Hawaii Occupational Safety and Health Division (HIOSH) did not correctly process this complaint when it was originally received. Upon receipt of the CASPA, HIOSH conducted an inspection of the facility and cited the employer for a violation of 12-60-2(a)(3). Please see attached case file no. 316267160.

CASPA Allegation #2: A complaint filed regarding MRSA at the Hawaii State Hospital in Kaneohe was not processed properly in that HIOSH personnel stated that there was no standard for MRSA and an inspection could not be done.

Response: The HIOSH did not properly handle this complaint when it was originally received. Upon receipt of the CASPA, HIOSH conducted an inspection of the facility. The HIOSH concluded that training for handling infectious patients was adequate. Please see attached case file no. 316267160.

Mr. Galen Lemke
April 19, 2013
PAGE 2

If you have any further questions regarding this CASPA, please feel free to contact Ms. Diantha M. Goo at 586-9116. Thank you for the opportunity to respond to this CASPA complaint.

Sincerely,

A handwritten signature in black ink, appearing to read "Dwight Takamine", written in a cursive style.

DWIGHT TAKAMINE
Director

Attachment