



August 14, 2013

Nick Walters, Regional Administrator
Occupational Safety and Health Administration
230 S. Dearborn St., Room 3244
Chicago, IL 60604

Dear Mr. Walters:

RE: Minnesota's Response to the FY 2012 FAME Report

I have received the Minnesota FY 2012 FAME report, dated July 31, 2013, which includes detailed findings and recommendations for the Minnesota OSHA (MNOSHA) Program. I am pleased to submit Minnesota's attached response to that report.

Audits are an important part of managing both state and federally run programs. Consequently, I appreciate the opportunity to provide feedback to the findings.

While I give credit and respect to the four recommendations, I believe our MNOSHA staff is performing well and is highly effective at ensuring compliance and providing consultative assistance. They are very dedicated to ensuring the health and safety of our state's workers. The result has been safer Minnesota workplaces. In addition, I appreciate that there was mention in the report the state's fatalities declined and the total recordable cases also declined by 14 percent. It should also be mentioned that the FY 2012 Fame Report's recommendations do not directly affect the safety and health of Minnesota workers. Instead, all four of the recommendations are based upon MNOSHA not following federal OSHA's written policies or practices about data sharing.

For purposes of providing more information to complainants, the first two findings recommend that MNOSHA should seek to change the state's data practices law. Specifically, Minnesota Statutes § 13.39, subd. 2, MNOSHA Instruction ADM 3.7 and *Westrom v. Minnesota Department of Labor and Industry*, 686 N. W.2d 27 (Minn. 2004). In *Westrom*, the Minnesota Supreme Court ruled data that qualifies as civil investigative data is classified as "protected nonpublic" or "confidential" data under Minn. Stat. § 13.39, subd. 2(a). The Supreme Court also determined administrative orders, such as citations, are civil investigative data until the citations are a final order of the commissioner.

Complainants receive thorough responses today from MNOSHA, so I do not believe that dramatically changing the state's data practices law is necessary. MNOSHA's current policy is to send each complainant a letter stating whether the employer has been issued citations. MNOSHA also has a rule requiring that citations be posted in the workplace and if they are not posted an employee should contact MNOSHA for an on-site inspection to be conducted. In addition, all MNOSHA citations are posted on the federal website within 30 days of issuance. MNOSHA has a specific rule, Minnesota Rules 5210.0539 that allows for an affected employee or an authorized union representative to participate in a contested case. Both the affected

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employee and the authorized union representative have the ability to contest the citation, type of violation, abatement and penalty. Accordingly, although copies of the citations are not provided to the complainant, the complainant has sufficient access to the citations via the workplace, the federal website or as a party in the contested case.

The third and fourth findings are recent changes to the federal OSHA Discrimination Manual. MNOSHA is not following the precise federal policy, but believes it is following an equivalent policy.

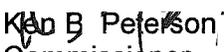
For the third finding, MNOSHA interviews screened and closed discrimination complaints. MNOSHA enters every interview related to a screened and closed complaint into a MNOSHA database. MNOSHA asks each person interviewed if they would like a letter stating why their discrimination case is screened and closed. If the interviewee would like a copy, MNOSHA sends one. If they state they do not want a copy, MNOSHA enters that in its database.

The fourth finding asks MNOSHA to enter administratively closed cases into the federal database. MNOSHA enters every case into its own database. All information is retained in the MNOSHA computer system and is available to federal OSHA upon request. Federal OSHA is asking MNOSHA to enter data into two computer systems. Furthermore, a summary of the number of stakeholder contacts is provided to the federal area director during the quarterly audit meetings. MNOSHA is willing to have the data transferred electronically into the federal OSHA WebIMIS system from its computer system, but cannot dedicate personnel resources to enter data into two databases. This past year, MNOSHA hired an additional discrimination investigator to do investigations in order to complete its current cases within 90 days, which is the priority.

MNOSHA is also asking federal OSHA to add a link to MNOSHA's redacted SOAR, which is posted on MNOSHA's website at www.dli.mn.gov/OSHA/PDF/annualreport12.pdf.

In closing, I appreciate the numerous positive comments contained within the report as well as MNOSHA's positive working relationship with you and others at the area and regional level.

Sincerely,


Kevin B. Peterson
Commissioner

cc: Doug Kalinowski, USDOL
Eric Lahaie, USDOL
M. Hysell, Area Director, USDOL
C. Valentine, Workplace Safety Manager MNOSHA
J. Krueger, Director, MNOSHA Compliance