

Appendix A

FY 2009 Kentucky State Plan (KY-OSH) Enhanced FAME Report prepared by Region IV Summary of Findings and Recommendations

Italics = paraphrase

| | Findings | Recommendations |
|-----------|---|---|
| 1 | <i>The State conducts inspections for all formalized complaints regardless of the nature of the hazard. 49% of the 245 complaint inspections were in-compliance. (p. 15)</i> | Management should evaluate all complaints including formal complaints to determine when an investigation, rather than an inspection, would be more appropriate to allow a more effective use of their resources. |
| 2 | <i>Several standard IMIS reports were reviewed, but IMIS is not updated accurately and consistently. (p. 15)</i> | The state should accurately enter and update all complaints and complaint related actions in the IMIS in accordance with the IMIS manual. IMIS reports should be used on a weekly basis to track the status and complaint due dates. |
| 3 | <i>Complaints addressed through the phone and fax process were not coded as such which will prevent them from being tracked. In addition, complaints filed through OSHA's E-mail Complaint System were not coded as an electronic complaint. (p. 14-16)</i> | All electronic complaints (e-complaints) and complaints handled by phone, fax, and letter should be coded with the applicable national, local, and strategic codes. |
| 4 | <i>All complaints investigated by letter were addressed appropriately in accordance with the State's directive. Complainants were notified of the result of the investigation, but this only included that the employer response was adequate. Complainants were never provided with a copy of the employer's response and a checklist in each file indicated that the employee did not agree with the employer's response, but no further action was taken.(p. 15)</i> | All complainants should be timely notified and provided a copy of the employer's response following a complaint investigation. The notification should provide the complainant with the opportunity to dispute the employer's response. In addition, employer responses that are disputed should be considered, appropriately responded to, and documented in the file. |
| 5 | <i>The complainants were not made aware of specific official findings. (p. 15)</i> | All complainants should be timely notified of the inspection results addressing the state's findings of each complaint item. The notification should provide the complainant with the opportunity to appeal the inspection results. |
| 6 | <i>In fatality cases, compliance officers are required to contact the next of kin by phone and inform them of the investigation, provide contact information for the CSHO and OSHA office, solicit input or information regarding the investigation, and explain the inspection process. (p. 17)</i> | KY OSH should send written correspondence to the next of kin providing them with information regarding the investigation. This letter should be signed by the Director of OSH Compliance or the Commissioner. |
| 7 | <i>Mid-FY 2009, The Region IV Regional Administrator inquired about this process and KY OSH revised its procedures to include a follow-up letter. However, these procedures have yet to be fully implemented and the final letter sent to family members at the conclusion of the investigation was a generic letter indicating that citations were or were not issued with a copy of the citations attached. (p. 17)</i> | At the conclusion of the fatality investigation the letter sent to the next of kin should be signed by the Director of OSH Compliance or Commissioner and explain the state's findings or the results of the investigation with a copy of the citations if any are issued. The next of kin should be informed of informal conferences, as well as any changes in the citations as a result of a settlement. |
| 8 | <i>Settlement agreements did not contain employer commitments or justifications for changes or penalty reductions other than "for settlement purposes only." (p. 17)</i> | Settlement agreements need to include employer commitments and justification for penalty reductions and/or modifications documented in the case file. |
| 9 | <i>Of the 50 programmed inspection case files in general industry, 48% were in compliance. (p. 18-19)</i> | It is recommended that the state evaluate and determine the cause of the high in-compliance rate for programmed inspections. |
| 10 | <i>Inspection files were only coded for multi-employer and construction. Inspections were not coded with the appropriate emphasis and strategic codes. (p. 19)</i> | It is recommended that all inspections be coded with the applicable national, local, and strategic codes. |
| 11 | <i>The average lapse time from opening conference to citation issuance was 57.13 days for safety and 98 days for health, which is much higher than the national rate of 43.8 days for safety and 57.4 days for health. (p. 20)</i> | Evaluate and determine the cause of the high citation lapse time for safety and health. |

| | Findings | Recommendations |
|----|--|---|
| 12 | <i>Kentucky does not have a written procedure for abatement verification or a tracking mechanism. At the time of review, there were 80 cases with open abatements for FY 2009, many of which were greater than 60 days. There were a total of 546 cases without abatement. Many cases had abatement, but officials were not updating IMIS when abatement was received or verified. (p. 21)</i> | A tracking system for abatements should be implemented to ensure abatements are tracked and followed up on in a timely manner. |
| 13 | <i>Kentucky only uses a few of the available IMIS reports and has established internal logs, but these were found to be "minimally effective." Audit reports were run using the earliest date on the system and found cases dating back to 1993, where IMIS shows no action taken due to information not being entered into the system. (p. 22)</i> | Ensure data is entered and updated in the IMIS and timely corrections are made from opening to closing of inspection files. Utilize IMIS reports weekly to track and manage enforcement activity. <ul style="list-style-type: none"> ▪ Action: Region IV conducted IMIS training in Kentucky at the end of April. |
| 14 | <i>Kentucky has procedures for the receipt of payments and handling of past due penalties, but these are followed inconsistently. In addition, final contest dates have not been entered into IMIS and IMIS reports are not utilized to track debt collection. (p. 23)</i> | Develop and implement a debt collection procedure to ensure debts are collected. In addition, IMIS generated reports should be utilized to track cases with penalties due. |
| 15 | <i>Discrimination case files did not contain a telephone log or any other documentation to show what transpired during the course of the investigation even though the State's Field Operations Manual requires the use of a telephone log to record contact with parties involved in the investigation. (p. 27-28)</i> | Whistleblower investigators should document all contacts related to the investigation in a telephone log. |
| 16 | <i>A majority of the discrimination cases did not document personal interviews of Complainants and/or Respondents. (p. 27)</i> | Conduct personal interviews (as much as possible) with Whistleblower complainants, witnesses and management and memorialize all interviews in signed statements. If signed statements are not possible, at a minimum make a memo to the file regarding the interview. |
| 17 | <i>The Final Investigative Reports (FIR) in discrimination case files were incomplete and only contained short scripted sentences confirming or refuting whether the element was met. (p. 27-28)</i> | Clearly record Whistleblower investigation findings in the final investigative report to include at a minimum: tell the story about what happened that led to the adverse action, to include protected activity; include complainant's allegations, respondent's assertions and what was found to be factual; analyze the timing of the adverse action to the protected activity; analyze whether respondent was angry at complainant for participating in protected activity; and analyze whether complainant was treated different than other employees similarly situated. |
| 18 | <i>Discrimination case files lacked copies of the Settlement Agreements, back pay amounts, and explanations of the settlements in the FIR. In addition, Kentucky is not reviewing the settlement provisions to ensure the complainant's rights are protected and does not have any guidelines related to cases settled between the two parties. (p. 27)</i> | When a Whistleblower case is settled between the parties and a Kentucky OSH settlement agreement is not used, the investigator should obtain a copy of the agreement for the file. In addition, the state should develop guidelines to review and approve all settlement agreements to ensure that the complainant's rights are protected. |
| 19 | <i>From a review of 20 consultation files, the Region found that the time from the closing conference to the date the employer received the report ranged from three to six months. (p. 29)</i> | The Consultation Program should identify the factors affecting the issuance of the reports in order to reduce the time from the closing conference to the date the employer receives the report. |
| 20 | <i>Kentucky does not have an internal evaluation program as required by the State Plan Policies and Procedures Manual. (p. 32)</i> | Kentucky should develop and implement a formal program for conducting periodic internal evaluations. The procedure should assure that internal evaluations possess integrity and independence. Reports resulting from internal evaluations will be made available to federal OSHA. |