



Kentucky Labor Cabinet Occupational Safety and Health Program

RESPONSE

to

FEDERAL ANNUAL MONITORING EVALUATION

for

FEDERAL FISCAL YEAR 2020

I. COMMENT REGARDING FAME REPORT

OSHA's FY 2020 Follow-up Federal Annual Monitoring Evaluation (FAME) identified four (4) findings and seven (7) observations. This response is limited to OSHA's findings and does not address observations presented in the FAME.

II. OSHA FINDINGS, STATUS, RECOMMENDATIONS, and KENTUCKY RESPONSES

OSHA Finding FY 2020-01

"KY OSH only conducted seven programmed health inspections during this period."

OSHA Status

During FY 2020, KY OSH conducted a total of two programmed health inspections. KY OSH's response for this finding stated that they have a strategy in place to ensure programmed inspections are conducted; however, significant challenges remain. Staff turnover remains an issue. The State Plan is filling vacancies as expeditiously as possible, but training, coupled with the lag time before a compliance officer can perform solo inspections, make meeting this performance measure problematic. Other inspection priorities, such as imminent dangers, hospitalizations, as well as electronic and written complaints, are a major factor affecting resources and the ability to conduct programmed inspections. The COVID-19 public health crisis has considerably affected KY OSH's ability to conduct programmed inspections. In March 2020, the Governor ordered all State government buildings closed to in-person services and all KY OSH Program in-person activity halted except for fatality investigations, response to imminent danger complaints, and response to reports of hospitalizations and amputations. KY OSH did not conduct programmed inspections for six months during this FAME period. This finding is continued.

OSHA Recommendation

"KY OSH should develop and implement a strategy to ensure a more representative number of programmed (planned) health inspections are conducted to adequately address the scope and seriousness of the hazards found in high-hazard health industries.

OSHA Finding FY 2020-02

"In FY 2019, KY OSH only conducted a total of 15 programmed safety inspections during this period."

OSHA Status

During FY 2020, KY OSH conducted five programmed safety inspections (see FY 2020-01 on COVID-19 restrictions). This finding will be continued.

OSHA Recommendation

"KY OSH should develop and implement a strategy to ensure a more representative number of programmed (planned) safety inspections are conducted to adequately address the scope and seriousness of the hazards found in high-hazard health industries.

State Response to Finding FY 2020-01 and Finding FY 2020-02

The SARS-CoV-2 pandemic had a profound effect on the Kentucky OSH Program during the October 1, 2019-September 30, 2021 FAME review period. Due to the pandemic, all programmed inspection activity was halted for six (6) months of the review period. Kentucky informed OSHA of that fact in the state's FAME 2019 Response, throughout FY 2020, and during OSHA's FY 2020 FAME review. Kentucky also informed OSHA the pandemic's effect on Kentucky OSH Program activity will also effect 2021 programmed inspections.

Equally important, other inspection priorities, such as imminent dangers, fatalities, hospitalizations, amputations, as well as electronic and written complaints, were significant factors amplified during the pandemic that impacted the ability to conduct programmed inspections. An increase in programmed inspections in FY 2021 is not likely due to the pandemic. However, Kentucky will attempt to perform more programmed inspections.

OSHA Finding FY 2020-03

"In FY 2019, KY OSH has a significantly high average citation issuance lapse time for safety and health inspections, which are outside the FRLs."

OSHA Recommendation

"KY OSH should develop and implement a process to reduce the average lapse time for safety and health inspections to meet the FRL ranges."

State Response

Once again, the SARS-CoV-2 pandemic had a profound effect on the Kentucky OSH Program during the October 1, 2019-September 30, 2021 FAME review period. During the pandemic, an overwhelming portion of all inspection activity was conducted virtually. Virtual inspection activity was not efficient, considerably contributed to lapse time, and exacerbated the issue. Another contributing issue compounding the problem was contacting employers and employees during the pandemic. Kentucky informed OSHA of those facts throughout FY 2020 and during OSHA's FY 2020 FAME review. Kentucky also informed OSHA the pandemic's effect on 2021 KY OSH Program activity will effect lapse time. Nonetheless, decreasing lapse time is one (1) of the top goals of the Kentucky OSH Program. Kentucky will strive to do so in 2021.

OSHA Finding FY 2020-04

"In FY 2019, the case file review identified a number of cases where KYOSH failed to acquire and/or maintain correct retaliation case file documentation: to wit, (1) lack of determination letters or unsigned determination letters, (2) no case activity logs, (3) insufficient/inaccurate correspondence tracking information, and (4) erroneous IMIS entries."

OSHA Status

In September 2019, OSHA provided discrimination training at the Kentucky office. During the training, OSHA conducted a review of Kentucky's discrimination casefiles. In FY 2020 the State has hired an investigator and Assistant Director. As a result, the majority of the case files reviewed did not represent the work-product of the new staff. Additionally, as of January 1, 2020, KY OSH has adopted a new Compliance Field Operations Manual with Chapter X establishing the Discrimination program. This finding is complete, awaiting verification.

OSHA Recommendation

“KYOSH should establish procedures by which the retaliation manager routinely reviews case files and online systems to ensure a thorough investigation was conducted, ensure that case file documentation is being retained in accordance with established retention policy, and ensure the accuracy of IMIS data entries.”

State Response

During the FY 2019 FAME, Kentucky provided OSHA with information and examples of implemented discrimination program changes that implemented OSHA’s suggestions. OSHA advised Kentucky the changes were positive and corrected all issues. OSHA did not recognize or present that information in the 2019, or 2020, FAME. This issue was, and is, moot.