



# OSHA REGIONAL NOTICE

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

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| <b>DIRECTIVE NUMBER: CPL-2020-12</b>   | May 1, 2020 |
| <b>SUBJECT: Complaint Intake Pilot</b> |             |
| <b>REGIONAL IDENTIFIER: Region II</b>  |             |

## ABSTRACT

- Purpose:** This Notice establishes a twelve-month Regional Whistleblower Protection Programs (WPP) pilot that will allow Region II to pilot a complaint intake triaging process. All incoming complaints will be evaluated to determine if the complaints should remain in the intake phase while more information is obtained or proceed to the screening phase. If additional information is required, Complainants and/or their representatives will be contacted by letter and additional information requested. This pilot applies to only the district court statutes – Section 11(c), ISCA, and AHERA.
- Scope:** This Notice applies to the New York Regional Office, WPP.
- References:** OSHA Instruction: CPL 02-03-007, January 28, 2016 – Whistleblower Investigations Manual; Clarification of Streamlined Procedures to Close Cases that OSHA Lacks Authority to Investigate, January 12, 2017; International Safe Container Act (ISCA), 46 U.S.C. § 80507; Asbestos Hazard Emergency Response Act (AHERA), 15 U.S.C. § 2651; and Occupational Safety and Health Act (Section 11(c)), 29 U.S.C. § 660(c).
- Cancellation:** None
- State Impact:** None
- Action Offices:** New York Regional Office, Office of Whistleblower Protection Programs
- Originating Office:** New York Regional Office

Contact: Teri Wigger, Assistant Regional Administrator for Whistleblower  
Protection Programs  
US DOL OSHA New York Regional Office  
201 Varick Street, Room 670  
New York, NY 10014  
Tel.: (212) 337-2365  
Fax: (212) 337-2371

By and Under the Authority of

Richard Mendelson  
Regional Administrator

## Executive Summary

This Notice establishes a twelve-month Regional Whistleblower Protection Programs (WPP) pilot that will allow Region II to pilot a complaint intake triaging process. All incoming complaints will be evaluated to determine if they should be moved to the screening phase and assigned to an investigator or if additional information is required before the complaint can enter the screening phase. Complainants and/or their representatives will be contacted by letter requesting the additional information. This pilot applies to only the district court statutes - Section 11(c), ISCA, and AHERA.

**Significant Changes:** Complainants will be contacted by letter if on its face a complaint is not covered by one of the whistleblower statutes delegated to OSHA, has been filed outside of the statute of limitations, is lacking information to establish a basic prima facie allegation, or is on its face a dually filed complaint. Letters will be sent to complainants and/or their representatives via U.S. Postal Service regular mail or email and afforded an opportunity to provide the necessary information within ten days. If no response is received by the region, or the Complainant does not cooperate in providing the requested information, the complaint will be administratively closed and no further action will be taken. Once the requested information or other relevant information is provided to the WPP, the complaint will be assigned for screening to determine if a prima facie allegation exists. The screening of complaints will follow current procedures established in the Whistleblower Investigations Manual (WIM).

- I. **Subject:** This Notice implements a Pilot for Region II WPP to implement a complaint intake triaging process. It applies to only the district court statutes – Section 11(c), ISCA, and AHERA.
- II. **Purpose:** The purpose of this Notice is to outline and implement the procedures to follow during this pilot program.
- III. **Scope:** This Notice applies to the New York Regional Office, WPP.
- IV. **References:** OSHA Instruction CPL 02-03-003; Clarification of Streamlined Procedures to Close Cases that OSHA Lacks Authority to Investigate, January 12, 2017; all applicable directives, regulations, and all whistleblower protection statutes for which enforcement responsibility was delegated to OSHA, as listed on page 1 of the Notice.
- V. **Expiration:** This Notice expires one year following its effective date, on April 30, 2021.
- VI. **Action:** OSHA personnel in Region II must follow the procedures contained in this notice.
- VII. **Background:** The current Whistleblower Investigations Manual requires a formal screening of all complaints received, regardless of their completeness or appropriateness. With the addition of the online complaint, the National WPP has experienced a 29

percent increase in complaints (FY 2014- FY 2018)<sup>1</sup>, a majority of which are incomplete, do not present a prima facie allegation, and/or are not covered by one of the whistleblower statutes delegated to OSHA. Implementing a triaging process will maintain strong customer service while dedicating more resources to the investigation of docketed complaints.

In order to devote appropriate resources to handle the large number of incoming filings and manage the pending inventory of cases, Region II is adopting this pilot for a period of twelve months.

#### VIII. Procedures:

A. For a complaint filing to enter the screening phase, the following information must be present:

- Complainant's name and contact information, and if applicable, name and contact information of Complainant's representative,
- Respondent's name(s) and contact information (if multiple Respondents all contact information must be present),
- Worksite address (if different from employer address),
- The current or final job Complainant performed for Respondent(s),
- The alleged adverse action(s) and the date(s) Complainant learned of the adverse action(s),
- Description of the reason Complainant believes they suffered the adverse action (protected activity), and
- The alleged employer knowledge. Complainant or Complainant's representative may simply allege that Respondent knew or suspected the complainant of engaging in the alleged protected activity.

B. If any of the above information is missing, OSHA will preserve the filing date for timeliness purposes and inform the Complainant or Complainant's representative in writing that they have 10 days from the date they receive OSHA's notice to provide such information or the complaint will be administratively closed and no further action will be taken.<sup>2</sup>

C. Complaints that are on their face are filed beyond the statutory timeframe or are not covered by one of the whistleblower statutes delegated to OSHA, require referral to

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<sup>1</sup> See: OSHA's FY 2020 Operating Plan.

<sup>2</sup> Should OSHA administratively close the complaint and the 10-day response period has expired, the Complainant or Complainant's representative may be able to re-file the complaint with the missing information, depending on the statutory filing period.

a State plan, etc., will be handled in accordance with VIII.B above. OSHA will preserve the filing date for timeliness purposes and inform the Complainant or their representative in writing of the opportunity to provide additional information within ten days.

- D. All complaints will be entered into OITSS-IMIS and administratively closed. Coding will be entered on the Additional Information Page, Tracking Information section. Enter the code “Intake Pilot” in the Tracking Text field. Enter the filing date of the complaint in the Tracking Date field. If the complaint is transitioned to the screening phase, an additional coding entry will be made in the Tracking Text field, “Converted to Screening” and in the Tracking Date field, the date the complaint was converted to the screening phase.
  - F. A complaint that is processed by an investigator in accordance with the above must receive supervisory approval. If processed by the supervisor, no further review is required.
  - G. All complaints entering the screening phase will follow current procedures<sup>3</sup>.
- IX. Evaluation: At the conclusion of the pilot, the Assistant Regional Administrator shall submit to the Regional Administrator an evaluation report.
- A. The region will request an OITSS-IMIS ad hoc report that will identify the number of complaints processed under this intake pilot by the region and the number of complaints converted to the screening phase. This may be done on a quarterly basis.
  - B. The report will include the following data:
    - The number of complaints that were processed under the instructions of this intake pilot,
    - The total number of administratively closed complaints processed by the region during the pilot period compared to the previous 12-month period
    - The number of total complaints received by the region during the pilot period compared to the previous 12-month period, and
    - Number of complaints converted from the intake phase to the screening phase.
  - C. The Assistant Regional Administrator’s opinion of how effective the Pilot was in meeting its goals.

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<sup>3</sup> WPP has the discretion to convert a complaint to the screening phase at any point during the processing of the complaint.

- D. A statement whether the pilot program should be continued and/or rolled out in other Regions and a rationale.
- E. Other comments or recommendations received during the Pilot.

**U.S. DEPARTMENT OF LABOR**

Occupational Safety and Health Administration  
New York Regional Office  
201 Varick Street, Room 670  
New York, NY 10014



Complainant/Representative  
Street Address  
City, State Zip Code

Via email or regular mail

Re: Online Complaint ECNXXXXXX

Dear Mr./Mrs.:

This is to confirm that your complaint filed on **xxx** against **xxx**, is being referred to [state plan] [acronym]. [Acronym for state plan] operates an OSHA-approved state plan and will evaluate your complaint to determine if an investigation is appropriate. Since you filed this complaint with Federal OSHA, we will consider it as dually-filed with both Federal OSHA and [state plan].

After the state has issued a final determination and you disagree with that determination, you may request a federal review of your retaliation claim. The request for a review must be made in writing to this office within 15 calendar days after receipt of the state's final determination. If you do not request a review in writing within the 15- day period, OSHA cannot proceed with a federal review.

If you have additional information or evidence, which would change this outcome, please contact this office at (212) 337-2368 or respond to the email within ten business days of receiving this letter. If we do not hear from you or receive any additional information within the specified time, OSHA will conclude that you concur with this action and this complaint will be closed.

Sincerely,

Name  
Title



Complainant/Representative  
Street Address  
City, State Zip Code

Via email or regular mail:

Re: Online Complaint ECNXXXXX

Dear Mr./Mrs.:

This is to confirm that OSHA has received your retaliation complaint ECNXXXXX on **Date**. In order for OSHA to process your complaint, the following information is necessary:

**(include only the missing information)**

- Complainant's name and contact information, and if applicable, name and contact information of Complainant's representative
- Employer/Respondent name(s) and contact information (if multiple Employers/Respondents provide contact information for all listed)
- Worksite Address (if different from employer address)
- The current or final job Complainant performed for Respondent(s)
- The adverse action(s) and the date(s) Complainant learned of the adverse action(s)
- Describe why you believe you suffered this adverse action(s)
- Do you believe the employer/respondent knew you engaged in this activity
- If so, why do you believe the employer/respondent knew you engaged in this activity

Once we obtain this needed information, we can proceed with your complaint. Please contact this office at (212) 337-2368 or respond to the email within ten days of receiving this letter. If we do not hear from you or receive any additional information within the specified time, OSHA will conclude that you concur with this action and this complaint will be administratively closed.

Sincerely,

Name  
Title

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New York Regional Office  
201 Varick Street, Room 670  
New York, NY 10014



Complainant/Representative  
Street Address  
City, State Zip Code

Via email or regular mail:

Re: Online Complaint ECNXXXXX

Dear Mr./Mrs.:

This is to confirm that we received your retaliation complaint on **Date**. You indicated in your on-line complaint that you were **(adverse action)** on **(date)**. Based on the information you provided, this matter falls outside of the scope of OSHA's Whistleblower Protection Programs. Unfortunately, OSHA is unable to assist you further in this matter, because [explain why OSHA cannot assist].

If you have additional information or evidence that would change this outcome, please contact this office at (212) 337-2368 **or respond to the email** within ten days of receiving this letter. If we do not hear from you or receive any additional information within the specified time, OSHA will conclude that you concur with this action and this complaint will be closed.

Sincerely,

Name  
Title

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Occupational Safety and Health Administration  
New York Regional Office  
201 Varick Street, Room 670  
New York, NY 10014



Complainant/Representative  
Street Address  
City, State Zip Code

Via email or regular mail:

Re: Online Complaint ECNXXXXX

Dear Complainant or Representative:

This is to notify you that OSHA received your retaliation complaint on (date) filed against (ER) and that we are referring this complaint to (state plan). [Acronym for state plan] operates an OSHA-approved state plan and will evaluate your complaint to determine if an investigation is appropriate. OSHA will maintain a record of this filing.

If you have additional information or evidence, which would change this outcome, please contact this office at (212) 337-2368 or respond to the email within ten business days of receiving this letter. If we do not hear from you or receive any additional information within the specified time, OSHA will conclude that you concur with this action and this complain will be closed.

Sincerely,

Name  
Title

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New York Regional Office  
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Complainant/Representative  
Street Address  
City, State Zip Code

Via email or regular mail:

Re: Online Complaint ECNXXXXX

Dear Mr./Mrs.:

This is to confirm that we received your retaliation complaint on **Date**. You indicated in your on-line complaint that you were (adverse action) on (date). OSHA is unable to pursue investigation of your claim because your complaint was not filed within the **30-day time period required by Section 11(c)(2) of the Occupational Safety and Health Act (or appropriate statute)**.

However, OSHA recommends that you contact the National Labor Relations Board (NLRB) as soon as possible to inquire about filing a charge alleging unfair labor practices. The NLRB is responsible for enforcing employee rights under the National Labor Relations Act (NLRA). The NLRA protects employees who are working together to try to improve working conditions, including safety and health conditions, even if the employees aren't in a union. It is possible that your claim may be covered by the NLRA. The NLRB time limit to file a charge is 6 months from the unfair labor practice. You may reach the NLRB at **1-844-762-6572**. It is possible to file a charge online at <http://go.usa.gov/36Ynj>. You may also locate your nearest NLRB Field Office at [www.nlr.gov/who-we-are/regional-offices](http://www.nlr.gov/who-we-are/regional-offices). If you contact the NLRB, please mention that you previously made contact with OSHA.

If you have additional information or evidence which would change this outcome, please contact this office at (212) 337-2368 or respond to the email within ten days of receiving this letter. If we do not hear from you or receive any additional information within the specified time, OSHA will conclude that you concur with this action and this complaint will be administratively closed.

Sincerely,

Name  
Title

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Complainant/Representative  
Street Address  
City, State Zip Code

Via email or regular mail:

Re: Online Complaint ECNXXXXX

Dear Mr./Mrs.:

This is to confirm that OSHA has received your retaliation complaint ECNXXXXX on **Date**. You indicated that you experienced retaliation due to **your gender/race/etc.** Based on the information you provided it appears that your complaint is not covered by one of the whistleblower statutes delegated to OSHA. You may wish to contact the **Equal Employment Opportunity Commission (EEOC) at (provide local contact) (applicable agency).**

If you have additional information or evidence, which would change this outcome, please contact this office at (212) 337-2368 or respond to the email within ten days of receiving this letter. If we do not hear from you or receive any additional information within the specified time, OSHA will conclude that you concur with this action and this complaint will be closed.

Sincerely,

Name  
Title