



OSHA REGIONAL NOTICE

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: CPL-2016-30	EFFECTIVE DATE: August 22, 2016
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SUBJECT: Administrative Dismissals ROI Pilot	
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REGIONAL IDENTIFIER: Region II	
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ABSTRACT

Purpose: The purpose of this notice is to establish a twelve-month pilot in Region II to prepare an abbreviated Report of Investigation (ROI) for all dismissed administrative statute cases.

Scope: This Notice applies to the New York Regional Office, Whistleblower Protection Program.

References: OSHA Instruction: CPL 02-03-007, January 28, 2016 – Whistleblower Investigations Manual; Memo “Revised Whistleblower Disposition Procedures” dated April 18, 2012; 29 CFR Parts 24, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988; Surface Transportation Assistance Act (STAA), 49 U.S.C. §31105; Safe Drinking Water Act (SDWA), 42 U.S.C. §300j-9(i); Federal Water Pollution Control Act (FWPCA), 33 U.S.C. §1367; Toxic Substances Control Act (TSCA), 15 U.S.C. §2622; Solid Waste Disposal Act (SWDA), 42 U.S.C. §6971; Clean Air Act (CAA), 42 U.S.C. §7622; Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §9610; Energy Reorganization Act (ERA), 42 U.S.C. §5851; Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21), 49 U.S.C. §42121; The Sarbanes-Oxley Act (SOX), 18 U.S.C. §1514A; Pipeline Safety Improvement Act (PSIA), 49 U.S.C. §60129; Federal Railroad Safety Act (FRSA), 49 U.S.C. §20109; National Transit Systems Security Act (NTSSA), 6 U.S.C. §1142; Consumer Product Safety Improvement Act (CPSIA), 15 U.S.C. §2087; Affordable Care Act (ACA), 29 U.S.C. §218C; Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §5567; Seaman's Protection Act, 46 U.S.C. §2114 (SPA); FDA Food Safety Modernization Act (FSMA), 21 U.S.C. §399d; and Moving Ahead for Progress in the 21st Century Act, 49 U.S.C. §30171.

Cancellation: None

State Impact: None

Action Offices: New York Regional Office, Office of Whistleblower Protection Programs

Originating Office: New York Regional Office

Contact: Assistant Regional Administrator for Whistleblower Protection Programs
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By and Under the Authority of -



Robert D. Kulick
Regional Administrator

Executive Summary

The purpose of this Notice is to establish a twelve-month Regional Whistleblower Protection Pilot Program that will allow Region II to pilot the use of an abbreviated Report of Investigation (ROI) for all dismissed administrative statute cases handled by OSHA through OSHA's Regional Administrators. This pilot applies to cases under the jurisdiction of OSHA's New York Regional Office.

Significant Changes: Abbreviated ROIs will be prepared for all non-merit administrative statute cases in place of full ROIs.

- I. Subject: This Notice implements a Pilot for Region II Whistleblower Protection Programs to prepare an abbreviated ROI for all dismissed administrative statute cases handled by OSHA through OSHA's Regional Administrators. It applies to cases under the jurisdiction of OSHA's New York Regional Office.
- 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, Whistleblower Protection Programs.
- IV. References: OSHA Instruction CP: 02-03-003, September 20, 2011 – Whistleblower Investigations Manual, Memo "Revised Whistleblower Disposition Procedures" dated April 18, 2012; 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 August 22, 2017.
- VI. Action: OSHA personnel in Region II must follow the procedures contained in this Notice.
- VII. Background: The Report of Investigation (ROI) is OSHA's internal summary of the investigation written as a memo from the investigator to the supervisor and is not shared outside of the Department.

Cases under nineteen of the twenty-two whistleblower laws enforced by OSHA may be heard by an Administrative Law Judge (ALJ) of the Department of Labor following OSHA's investigation. These laws are referred to as administrative statutes. After a complaint is determined to be non-meritorious and subsequently dismissed, either party has the right to file an objection with the Office of Administrative Law Judges (OALJ).

The case is heard *de novo* and the ALJ relies only on the evidence presented at the hearing. Since the ROI is not released to the parties, it is not relied upon during the hearing. OSHA normally does not participate in the hearing where a case has been dismissed.

In order to increase our efficiency and to enable the Region to meet the national performance measures, we are piloting streamlined (ROIs) on dismissed administrative statute cases. There has long been talk of further streamlining the reporting requirements on cases where there will likely be no further activity by OSHA or the Office of the Solicitor.

In order to be able to devote appropriate resources to Section 11(c) of the OSH Act, merit cases under all 22 statutes, and cases under review by DWPP, Region II is adopting this pilot for a period of twelve-months. The case types mentioned in the previous sentence will contain full ROIs.

VIII. Procedures: Format of an abbreviated ROI.

- a) The standard first page of a full ROI including the complete contact information for the parties.
- b) A chronology of the events of the case including a reference to the case file evidentiary exhibit and whether the information is a fact or an assertion.
- c) Case narrative that contains the information released in the Closing Letter.
- d) A recommendation from the investigator on the disposition of the complaint.
- e) Signature of the investigator.
- f) Signature of the supervisor indicating the investigative file has been reviewed and approved.

See Attachment A.

IX. Evaluation: Forty-Five days after the Pilot has concluded, the Assistant Regional Administrator shall submit to the Regional Administrator an evaluation report that includes:

- 1) The following data:
 - The percentage of administrative statute cases closed during the Pilot as compared to the twelve-month period prior to the Pilot.
 - The average days pending for administrative statute cases at the end of the Pilot period as compared to the average days pending at the start of the Pilot.
- 2) The Assistant Regional Administrator's opinion of how effective the Pilot was in meeting its goals.

- 3) Statement whether the pilot program should be continued and/or rolled out in other Regions and a rationale.
- 4) Other comments or recommendations received during the Pilot.