



OSHA REGIONAL NOTICE

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: CPL 04-05-2307

SUBJECT: State Plan Referral Pilot

REGION: V

SIGNATURE DATE: October 16, 2023

EFFECTIVE DATE: October 30, 2023

ABSTRACT

Purpose: This Notice establishes a twelve-month Regional Whistleblower Protection Programs (WPP) pilot that will allow Region V to pilot an alternative referral process for State Plan complaints.

Scope: This Notice applies to the Chicago Regional Office, WPP.

References: OSHA Instruction: CPL 02-03-011, April 29, 2022 – Whistleblower Investigations Manual, the Whistleblower Protection Provisions under the Occupational Safety and Health Act (Section 11(c)), 29 U.S.C. § 660(c).

Cancellations: None

State Impact: None

Action Offices: Chicago Regional Office, Directorate of Whistleblower Protection Programs

Originating Office: Chicago Regional Office

Contact: Assistant Regional Administrator, Whistleblower Protection Programs, Region V

By and Under the Authority of

William J. Donovan
Regional Administrator

Executive Summary

This purpose of this Notice is to establish a twelve-month State Plan Referral Pilot (herein referred to as “the Pilot”) to allow Federal OSHA to refer State Plan complaints without inputting a duplicative complaint into OIS. The pilot only applies to complaints within MIOSHA jurisdiction.

Significant Changes

Significant Changes: Federal OSHA will not enter a duplicative complaint into the OIS but will follow all other current procedures established in the Whistleblower Investigations Manual (WIM). OSHA will promptly refer the complaint to the State Plan via OIS. Additionally, an email will continue to be generated notifying the receiving State Plan of the complaint.

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I. Purpose.

The purpose of this Notice is to outline and implement the procedures to follow during this pilot program.

II. Scope.

The Notice applies to Region V's Whistleblower Protection Program.

III. References.

OSHA Instruction CPL 02-03-011, April 29, 2022-Whistleblower Investigations Manual and the Whistleblower Protection Provisions under the Occupational Safety and Health Act (Section 11(c)), 29 U.S.C. § 660(c).

IV. Cancellations.

None

V. Action.

A. Responsible Office.

OSHA personnel in Region V Whistleblower Program's follow the procedures contained in this notice.

B. Information Offices.

The receiving State Plan Program will be notified of the issuance of the notice.

VI. Federal Program Change.

No action will be required by the State Plan.

VII. Significant Changes.

None

VIII. Background.

In general, federally filed complaints alleging retaliation for occupational safety or health activity under State Plan authority, i.e., complaints by private-sector and state and local government employees, will be referred to the appropriate State Plan official for investigation, a determination on the merits, and the pursuit of a remedy, if appropriate. Generally, the complaint shall be referred to the State Plan where Complainant's workplace is located. The federal OSHA referral is a filing of the complaint with the State Plan. The referral must be made promptly, preferably by e-mail, fax, or expedited delivery. It should be made within the State Plan's filing period if possible (see Chapter 8.II.E.3, *Filing Periods in State Plans*, below). The administratively closed federal case file will include a copy of the complaint, the referral email (or letter) to the State Plan, and the OITSS-Whistleblower case summary.

The applicable State Plan will also enter the complaint into OIS thus creating duplicative entries. Currently, the complaint is referred to the State Plan by email, requiring the state to manually enter all the data or use the copy feature within the OIS. Federal OSHA's input and processing of these complaints is purely duplicative and is an additional unnecessary administrative task. The State Plan will still receive the

same information that they received prior to implementation of this pilot. The referral to the state will be received via the OIS system in addition to an email. Federal OSHA will save time eliminating the entry of duplicative information into the OIS. Time spent inputting and processing complaints will decrease for both Federal and State OSHA programs allowing for resources to be spent on tasks associated with investigating and or reviewing cases. Historically, Federal OSHA would need to conduct a search within the data base for the administrative closed referral to ascertain if a Complainant had originally filed with Federal OSHA for dual file purposes. Modifications to OIS will allow a report to be generated to identify which complaints were referred to the State Plans. This modification has already been made for referrals on the OSHA enforcement side. An additional box could be added to the transfer tab indicating it was a State Plan referral. Reports could then be developed and generated to display the relevant information to review and identify complaints sent to the applicable State Plan. This report will include the Complainant's name, filing date, date of referral and ECN (Electronic Complaint Number). Implementing the pilot will promote improved customer service as a result of dedicating more resources to the investigation of docketed complaints.

IX. Procedures.

- A. Following the current procedures, the receiving federal official will continue the current screening process to ascertain if a complaint requires a referral to the applicable State Plan:
 1. An ECN complaint (complaint filed electronically) will automatically be transferred via OIS to the applicable State Plan. The receiving State Plan will indicate to whom the referral will be sent via OIS. The complaint can be found on their pending intakes dashboard. An email notification will also be sent to the State Plan as well.
 2. Complaints received by Federal OSHA by mail, fax or phone will be entered into OIS and then sent via OIS and email as indicated above.
 3. The State Plan procedures have not changed, and they will handle referrals following the current WIM. The State Plan will send the appropriate letters to the Complainant. Federal OSHA will not send any acknowledgement letters noting the referral to the complainant.
 4. The complaint will be considered closed at the Federal level following the referral of the complaint to the appropriate State Plan via OIS.
 5. Federal OSHA will track all complaints transferred to the State Plan on a spreadsheet until modifications can be made to OIS.
 6. If a complaint returns to Federal OSHA for any reason (i.e. dual file activation) the spreadsheet will be reviewed to determine if the Complainant filed with Federal OSHA originally and will then be processed according to the WIM.

7. The State Plan will be notified that referrals will now be made directly through OIS and will continue by email.

- B. Modification will be made to OIS to ensure a report will be generated to identify complaints that are dually filed and to indicate the transferred complaint was a State Plan referral. A similar process has been developed for the enforcement program demonstrating that OIS can accommodate the process for the Whistleblower Protection Program as well. Region V will collaborate in the development of this function within OIS.

X. Evaluation.

At the conclusion of the pilot, the Assistant Regional Administrator shall submit to the Regional Administrator an evaluation report.

- A. The region will provide the number of complaints referred to the applicable State Plan program. It is estimated that the referring Region will save 30 minutes of time from not completing an administrative closed file and creating an electronic case file (ECF). The number of referrals will be multiplied by 30 minutes and then converted into hours saved. This will be done at six months and at the end of the pilot.
- B. A statement of rationale of whether the Pilot should be continued and/or rolled out into other Regions.
- C. Any other comments or recommendations received during the Pilot, including any feedback received by the Region from those affected by the Pilot. This will include any feedback from the receiving State Plan.

XI. Expiration.

The Notice expires one year following the date it is approved.