



OSHA INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: CPL 02-03-010

EFFECTIVE DATE: 07/20/2020

SUBJECT: Whistleblower Protection Program Pilot Procedures

ABSTRACT

- Purpose:** The intent of this directive is to establish policies and procedures for the creation, implementation, and evaluation of whistleblower protection pilot programs.
- Scope:** OSHA-wide for whistleblower protection pilot programs initiated after the effective date of this Instruction.
- References:** OSHA Instruction: CPL 02-03-007, January 28, 2016 – OSHA Whistleblower Investigations Manual (WIM); OSHA Instruction: ADM 8-0.2, OSHA Policy Issuances, December 11, 2000; OSHA Instruction: ADM 8-0.3, OSHA Directives System, December 11, 2000.
- Cancellations:** None
- State Impact:** None
- Action Offices:** Directorate of Whistleblower Protection Programs (DWPP)
OSHA Regional Offices
- Originating Office:** Directorate of Whistleblower Protection Programs
- Contact:** Directorate of Whistleblower Protection Programs
200 Constitution Ave., NW, N4618
Washington, D.C. 20210
(202) 693-2199

By and Under the Authority of

Loren Sweatt
Principal Deputy Assistant Secretary

Executive Summary

This Instruction formalizes the policies and procedures that the Occupational Safety and Health Administration (OSHA) will use in the creation, implementation, evaluation, and either permanent nationwide adoption or termination of Whistleblower Protection Program pilot programs. Formalizing the process for Whistleblower Protection Program pilots will ensure consistency with existing regulations, policies, directives, and laws, which will ensure greater efficiency.

Significant Changes

This Instruction implements a new program.

Table of Contents

I.	Purpose.....	1
II.	Scope.....	1
III.	References.....	1
IV.	Cancellations.....	1
V.	Action Information.....	1
A.	Responsible Offices.....	1
B.	Action Offices.....	1
C.	Information Offices.....	1
VI.	State Plan Impact.....	1
VII.	Background.....	1
VIII.	Definitions.....	2
IX.	Roles and Responsibilities.....	2
A.	Office of the Assistant Secretary (OAS).....	2
B.	Regional Administrator (RA).....	2
C.	Directorate of Whistleblower Protection Programs (DWPP).....	2
D.	Directorate of Administrative Programs (DAP).....	3
E.	Assistant Regional Administrator for Whistleblower Protection Programs (ARA).....	3
F.	Regional Supervisory Investigator (RSI).....	3
X.	Process.....	3
A.	Proposing a Pilot.....	3
B.	Adopting a Pilot by Other Regions.....	3
C.	Evaluation.....	4
D.	Amending a Pilot.....	4
E.	Conclusion.....	4
1.	Making a Pilot Permanent.....	4
2.	Terminating a Pilot.....	5

I. Purpose.

The purpose of this Instruction is to establish formal policies and procedures for the creation, implementation, and evaluation of Whistleblower Protection Program pilot programs in the Regions and in DWPP, as well as procedures for the adoption of completed and successful pilots following analysis and evaluation.

II. Scope.

This Instruction applies OSHA-wide for whistleblower protection pilot programs initiated after the effective date of this Instruction.

III. References.

OSHA Instruction: CPL 02-03-007, January 28, 2016 – OSHA Whistleblower Investigations Manual (WIM).

OSHA Instruction: ADM 8-0.2, OSHA Policy Issuances, December 11, 2000.

OSHA Instruction: ADM 8-0.3, OSHA Directives System, December 11, 2000.

IV. Cancellations.

None.

V. Action Information.

A. Responsible Offices.

Directorate of Whistleblower Protection Programs (DWPP);
OSHA Regional Offices;
See “Roles and Responsibilities” for further information.

B. Action Offices.

Directorate of Whistleblower Protection Programs (DWPP);
Directorate of Administrative Programs (DAP);
OSHA Regional Offices;
See “Roles and Responsibilities” for further information.

C. Information Offices.

Directorate of Cooperative and State Programs (DCSP).

VI. State Plan Impact.

This Instruction establishes formal policies and procedures that apply solely to federal OSHA. There is no impact on State Plans. State Plans are not required to adopt this Instruction.

VII. Background.

This is the first Instruction to be issued on this topic.

This Instruction articulates the policies and procedures that the Occupational Safety and Health Administration (OSHA) will use in the creation, implementation, evaluation, and either permanent nationwide adoption or termination of Whistleblower Protection Program pilot programs. Creating formal, standard procedures for pilots will ensure consistency with existing regulations, policies, directives, and laws, which will ensure greater efficiency.

VIII. Definitions.

Pilot: a new or revised process or procedure proposed by a Region, multiple Regions, and/or DWPP to be tested for a specific period of time, and designed to identify greater efficiencies in the investigative process, which may deviate from existing policies or procedures outlined in the Whistleblower Investigations Manual (WIM), OSHA directives, or similar guidance documents. The length of time for each pilot will be dependent on the process or procedure being implemented. After the time period has concluded, the pilot will be evaluated and either implemented nationwide under a national directive and/or incorporated in the WIM, extended for a defined period of time, or cancelled.

IX. Roles and Responsibilities.

A. Office of the Assistant Secretary (OAS).

OAS will approve all pilot proposals.

B. Regional Administrator (RA).

The RA or his/her designee is responsible for:

1. Determining whether their respective region will participate in a pilot. RA approval is required.
2. Notifying the Directorate of Administrative Programs (DAP) of all pilots prior to implementation.
3. Coordinating local union notification and any questions from the union through the regional servicing Office of the Assistant Secretary for Administration and Management (OASAM).

C. Directorate of Whistleblower Protection Programs (DWPP).

DWPP is responsible for:

1. Reviewing proposed pilots to ensure consistency with existing regulations and laws.
2. Proposing necessary revisions to pilot proposals.
3. Coordinating, as necessary, with the Office of the Solicitor for legal review and guidance on policy deviations noted in proposed pilots.
4. Presenting proposed pilots to OAS.

5. Notifying DAP of pilots as appropriate.

D. Directorate of Administrative Programs (DAP).

DAP is responsible for:

1. Discussing pilot programs with the RA(s) and/or the Director of DWPP and determining if union notification is required.
2. Coordinating union notification with Departmental OASAM for National pilots and/or revised permanent procedures that affect National Office employees or multiple Regional Offices prior to implementation.

E. Assistant Regional Administrator for Whistleblower Protection Programs (ARA).

The ARA is responsible for proposing, managing, evaluating, and reporting on pilots. This includes the development of the pilot's directive (Notice) following the instructions in ADM 8-0.2, OSHA Policy Issuances, December 11, 2000 and ADM 8-0.3, OSHA Directives System, December 11, 2000.

F. Regional Supervisory Investigator (RSI).

The RSI is responsible for implementing, evaluating, and supervising the day-to-day operations of a pilot.

X. Process.

A. Proposing a Pilot.

1. Pilots will be proposed via an OSHA Notice following the instructions in ADM 8-0.2, OSHA Policy Issuances, December 11, 2000 and ADM 8-0.3, OSHA Directives System, December 11, 2000. The proposed pilot's directive should describe the existing process, proposed change, expected benefit (such as improved efficiency), potential drawbacks on how WPP plans to measure success (including data points); the resulting impact on existing policies, regulations, and laws; a time frame; and evaluation points that will take place on specific days over the course of the pilot. Evaluations will be conducted at the end of the pilot period and at any other time throughout the pilot as noted in the individual pilot notices.
2. Pilots may be proposed by RAs, or their designees, or by DWPP. Pilots must be reviewed by the respective Region's RA and the Director of DWPP, and approved by the Office of the Assistant Secretary.

B. Adopting a Pilot by Other Regions.

Any newly approved pilot will be shared with all regions and DWPP prior to launch. Regions may choose to join the pilot from the initial notification until the halfway point of the pilot. Any Region that joins after a pilot has been implemented must also evaluate the pilot at its conclusion. The pilot conclusion

date will not be changed solely because a new Region has joined the pilot. However, with the approval of DWPP and the initiating Region's RA, a pilot may be extended for a defined period of time.

C. Evaluation.

1. Each pilot will be evaluated. The evaluation will be supported by data. The data to be collected will depend on the nature of the pilot and will be outlined in the pilot proposal.
2. A pilot shall be evaluated at the halfway point (e.g., at three months for a six-month pilot; at six months for a one-year pilot) of the pilot period, using evaluation tools such as a survey or data analysis. Additional evaluations, such as at the one-month point, may be done if it makes sense under the circumstances (e.g., a problem with the pilot is found during initial implementation). If a survey will be used, it must be included in the pilot proposal. Each pilot will indicate who will be surveyed (e.g. RSIs, ARAs, or other staff).
3. Pilots may also be evaluated by the responsible ARA, RSI and investigators (or DWPP staff if a DWPP pilot). Pilots shall also be evaluated at their conclusion using the same format that was used at the halfway point. The evaluating office will develop the survey or data metric. The final evaluation will be submitted to DWPP.

D. Amending a Pilot.

If, during the mid-way evaluation or prior, a region believes a pilot requires revision, a change may be submitted in a memorandum to DWPP.

E. Conclusion.

1. Making a Pilot Permanent.
 - a. At the conclusion of the pilot, if some or all of the participating Region(s) propose adoption of a pilot as a permanent policy change, that proposal should be made by memorandum, supplemented by an evaluation report, and be submitted to DWPP for review. The timeframe for submission of the evaluation report will be outlined in the individual pilot(s). The evaluation report will include data and anecdotal information, as appropriate, to support the recommendation to implement nationwide. Dissenting Regions should also file a report so that a comprehensive evaluation can be completed prior to reaching a decision about nationwide adoption.
 - b. DWPP will discuss the recommendation with Agency leadership and the RA. If the pilot is approved for nationwide use, DWPP

will prepare an approval memorandum for the Office of Assistant Secretary (OAS).

- c. Upon the recommendation's approval by OAS, DWPP will develop an OSHA Instruction (following the instructions in ADM 8-0.2, OSHA Policy Issuances, December 11, 2000, and ADM 8-0.3, OSHA Directives System, December 11, 2000) outlining the new procedures to be implemented nationwide, and DWPP will hyperlink those procedures to the appropriate section of the WIM. Note: Prior to implementing any nationwide instruction, proper union notification must be made through DAP. Upon issuance of a new WIM, these procedures may be incorporated accordingly.

2. Terminating a Pilot.

- a. At any time during the life of the pilot, if all participating Regions find that the pilot has produced unsatisfactory results, the pilot will be terminated. A memorandum recommending termination, along with any supporting information, will be prepared and submitted to DWPP.
- b. At the conclusion of the pilot, after an evaluation as outlined above, if the participating Region(s) report that the pilot did not achieve the desired outcome; the pilot will be terminated and will not be recommended for nationwide adoption. A memorandum and the evaluation report will be submitted to DWPP.