



OSHA NOTICE

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: 23-01 (CPL 02)

SUBJECT: Whistleblower Complaint Intake Pilot

DIRECTORATE/REGION: Directorate of Whistleblower Protection Programs

SIGNATURE DATE: January 13, 2023

EFFECTIVE DATE: February 17, 2023

ABSTRACT

Purpose: The purpose of this Notice is to establish an alternative, year-long, and nationwide Whistleblower Protection Programs' pilot that will allow for a streamlined complaint intake triaging process under all statutes. This pilot will allow for administrative closure of complaints along with a letter to Complainant, if the complaint, on its face, a) is not covered by an OSHA-administered whistleblower statute, b) is untimely filed and equitable tolling is not applicable, or c) alleges safety or compliance concerns but not retaliation.

Scope: This Notice applies to any participating Regions.

References: CPL 02-03-011, Whistleblower Investigations Manual (April 29, 2022); CPL 02-03-010, Whistleblower Protection Program Pilot Procedures Directive (July 20, 2020).

Cancellation: None

State Impact: None

Action Offices: All participating Regions

Originating Office: Directorate of Whistleblower Protection Programs (DWPP)

Contact: Director
Directorate of Whistleblower Protection Programs
200 Constitution Avenue, NW, Room N4618
Washington, DC 20210
Tel.: (202) 691-2199

By and Under the Authority of

Douglas L. Parker
Assistant Secretary

Executive Summary

This Notice establishes a national, twelve-month Whistleblower Protection Programs (WPP) pilot that will allow for a streamlined complaint intake triaging process under all statutes. All incoming complaints will be evaluated to determine if they should be moved to the screening phase (during which OSHA may conduct a screening interview if needed) or administratively closed at the intake phase. Complaints will be administratively closed without conducting a screening interview if the complaint, on its face: a) is not covered by an OSHA-administered whistleblower statute, b) is untimely filed and there is no indication equitable tolling may apply, or c) alleges safety or compliance concerns but not retaliation or other prohibited activity. Such Complainants will be sent administrative closure letters by a method that can be tracked (including, but not limited to email and certified mail). The letters will inform Complainant of the administrative closure and invite them to contact OSHA if they disagree with the administrative closure and/or provide additional information that might change the closure decision. Where applicable, Complainant will be provided with referral information to other agencies and/or programs that may be able to assist them.

Complaints that move to the screening phase will be processed in accordance with current procedures established in Chapter 3 of the Whistleblower Investigations Manual (WIM). Complaints that jurisdictionally fall under and are referred to a State Plan will be processed in accordance with the procedures established in WIM Chapter 8 (i.e., “State Plan complaints”), and are not subject to this Nationwide Pilot.

- I. Subject: This Notice implements a Nationwide Pilot to implement an alternative complaint intake triaging process.
- II. Purpose: The purpose of this Notice is to establish a year-long pilot that will allow participating Regions to implement an alternative complaint intake triaging process. Participating Regions will administratively close complaints and contact Complainants in writing if the complaint, on its face, is not covered by an OSHA-administered whistleblower statute, is untimely filed and the complaint does not indicate that there are circumstances that might warrant equitable tolling or alleges safety or compliance concerns but not retaliation.
- III. Scope: This Notice applies to all participating OSHA Regional Offices.
- IV. References: [CPL 02-03-011](#), Whistleblower Investigations Manual (WIM) (April 29, 2022); [CPL 02-03-010](#), Whistleblower Protection Program Pilot Procedures Directive (Pilot Procedures Directive) (July 20, 2020).
- V. Expiration: This Notice expires one year following its effective date.

- VI. Action: OSHA personnel in participating Regions must follow the procedures contained in this notice.
- VII. Background: The current WIM requires that OSHA's whistleblower investigation staff contact every individual who files a complaint to confirm the information stated in the complaint and, if needed, conduct a screening interview (typically, by phone or video conference). The challenge of administering more than two dozen whistleblower protection laws, coupled with an ever-increasing number of new complaint filings, has resulted in an increase in pending cases. The requirement to contact Complainants before administratively closing a complaint, even where the complaint is facially unfit for investigation, has put great strain on OSHA's limited investigative resources.

In response to that strain and recommendations presented by the Department's Office of the Inspector General (OIG) in recent years, including one in 2020 regarding Region II's initial intake pilot (CPL-2020-12, May 1, 2020),¹ DWPP is implementing this national pilot program to more efficiently triage incoming complaints to determine which are appropriate for OSHA whistleblower investigations. This pilot builds on Region II's complaint intake pilot by incorporating suggestions made by DWPP following their review of the initial Region II intake pilot evaluation. Significant changes from Region II's intake pilot include removing automatic State Plan referrals (as that portion was incorporated into the WIM) and including additional information in letters to Complainants about equitable tolling of untimely complaints. This pilot will allow participating Regions to devote resources and time to pursuing cases that fall under Agency-enforced statutes, while promptly assisting Complainants who do not have an actionable complaint within OSHA by directing them to a more appropriate agency for assistance. As a national pilot, these procedures are available to all Regions who choose to participate.

The letters issued under this pilot are an efficient way to reach Complainants who have filed complaints where OSHA cannot investigate, as alleged, and provide them with a clear and concise reason why, and, if applicable, direct them to the appropriate agency for assistance. Implementing this triage process will maintain strong customer service while dedicating available resources to the investigation of docketed complaints.

VIII. Procedures:

A. Complaints that fall into the categories below will be administratively closed without entering the screening phase. An administrative closure letter, detailing the reasons for the closure, will be sent to Complainant by a method that can be tracked (including, but

1. *COVID-19: OSHA Whistleblower Report No. 19-20-010-10-105 Audit Recommendation 2: "We recommended the Principal Deputy Assistant Secretary for Occupational Safety and Health continue to monitor and evaluate the Region II triage pilot and consider extending the triage process to all regions to expedite screening whistleblower complaints."*

not limited to email and certified mail). See Appendix A for letter templates. The letter will invite Complainant to contact OSHA if they disagree with the administrative closure and/or have additional information that might change the decision to close the complaint.²

1. Complaints that, on their face, are not covered by any OSHA-administered whistleblower statutes, e.g.:
 - a. complaints about discrimination on the basis of race, color, national origin, religion, sex, disability, age, or genetic background or any other protected status or about retaliation because of protected activity related to status discrimination, which should be filed with the U.S. Equal Employment Opportunity Commission (EEOC) or a state agency enforcing laws against status discrimination; or,
 - b. complaints by federal employees about retaliation for whistleblowing, which should be filed with the U.S. Office of Special Counsel.
2. Complaints that, on their face, are not filed within the period set forth in the relevant OSHA-whistleblower statute, unless the allegations in the complaint indicate that there may be grounds for equitable tolling; and,
3. Complaints that, on their face, allege only safety or compliance concerns and do not allege retaliation.

B. In the instances noted 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 the timeframes provided by the WIM, Chapter 3, Section IV.A.2.c.

C. All complaints without a screening interview will be entered into the OIS whistleblower database and administratively closed. The following coding will be entered in the Emphasis Program field. For complaints closed for meeting the above-listed criteria of:

- Section VIII.A.1, select “Intake Pilot- Lack of Coverage”
- Section VIII.A.2, select “Intake Pilot- Untimely
- Section VIII.A.3, select “Intake Pilot- S&H Complaint

In addition, the filing date of the complaint will be entered in the Tracking Date field. If the Complainant contacts OSHA after receiving the administrative closure letter under this pilot, but the complaint remains administratively closed, enter the text “Called Back” and the call back date in the Tracking Date Field. If the complaint is transitioned to the

² If there is any indication of language or literacy barriers, the complaint should be processed under existing procedures detailed in the WIM.

screening phase (even if the complaint is not ultimately docketed), enter the text “Converted to Screening” in the Tracking Date field along with the date the complaint was converted to the screening phase.

D. In all regions not participating in the pilot, investigators will identify complaints that meet the pilot’s elements (i.e., complaints that would be processed per the procedures above if the region were participating in the pilot) and enter the appropriate code into the Emphasis Program field in OIS (see Section C above). As such, the non-participating regions will serve as a control group for this pilot evaluation.

E. A complaint that is identified or processed by an investigator in accordance with the above must receive supervisory approval. If identified or processed by the supervisor, no further review is required.

IX. Evaluation: In accordance with the Pilot Procedures Directive, at the halfway point (6 months) and again at the conclusion of the pilot (12 months), the Division Chief for Field Operations, after consultation with and input from participating Regions, shall submit an evaluation report to the DWPP Director, that will include the following:

A. The Division Chief for Field Operations will run the appropriate OIS reports (e.g., Screening Report, etc.) using the “Intake Pilot” Emphasis Code, as well as request any needed ad hoc reports and will identify the number of complaints processed under this intake pilot by region, the number of call backs, and the number of complaints converted to the screening phase. This may be done on a quarterly basis.

B. An analysis of the data for the 6-month and 12-month period of this intake pilot compared to a 12-month period prior to this pilot.

- Total number complaints received, and:
 - Total number of cases in which Complainant was redirected to the proper forum to address their complaint (closed for lack of coverage)
 - Total number of complaints referred to OSHA’s Safety and Health Enforcement division (closed for lack of a retaliation allegation)
 - Total number of complaints closed for being untimely
- Total number of complaints processed under this intake pilot, and:
 - Total number of cases in which complainant was redirected to the proper forum to address their complaint (closed for lack of coverage)

- Total number of complaints referred to OSHA's Safety and Health Enforcement division (closed for lack of a retaliation allegation)
- Total number of complaints closed for being untimely
- Total number of complaints with call-backs
- Total number of complaints converted to the screening process
- Total number of complaints docketed after call-backs for investigation

C. An analysis of the number of docketed complaint investigations completed during a 12-month period prior to the start of this intake pilot and compare to the 6-month and 12-month period of this intake pilot.

D. An analysis of the data to determine whether the pilot allowed participating Regions to devote more time to docketed complaints during the 6-month and 12-month period of this intake pilot. Data will be compiled for participating and non-participating regions so that a comparison can be made regarding the amount of time involved with processing complaints that qualify for this pilot procedure.

E. Whether the pilot resulted in the accurate administrative closure of cases.

F. Whether the pilot resulted in any adverse impact on complainants.

G. Feedback provided by stakeholders.

H. A statement whether the pilot program should be implemented as national policy, renewed, revised, or canceled.

Appendix A – Letter Templates

I. Untimely Response Letter

Complainant/Representative

Street Address

City, State Zip Code

Via email or regular mail:

Re: Online Complaint **ECNXXXXX**

Dear **firstname lastname:**

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 this information, OSHA is unable to pursue investigation of your complaint because it was not filed within the **statutory filing time period required by [enter appropriate statute]**. However, in unusual circumstances (such as debilitating illness or natural disaster), OSHA may excuse a late filing and accept a complaint that is filed after the deadline. Attached is a list of the types of circumstances that may lead OSHA to accept a late filing based on “equitable tolling” principles. If you have information that will assist us in determining whether your complaint can be accepted under these circumstances, please contact us right away, either by phone at xxx-xxx-xxxx or respond to this email.

If we do not hear from you within a reasonable timeframe (e.g., 10 calendar days from delivery of this letter), we will conclude that you concur with the decision to close your complaint. Consequently, your complaint will be permanently closed and will not be forwarded to the party/parties that allegedly retaliated against you. You will not have the opportunity to object to or request review of OSHA’s decision to close your complaint.

[NLRB Referral Information: The following paragraph should be added if the complaint is a section 11(c) complaint that appears to be untimely filed and the safety or health activity appears to have been undertaken with or on behalf of co-workers]

Based on the information in your complaint, 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 are not in a union. It is possible that your complaint may be covered by the NLRA. The NLRB time limit to file a charge is six 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

NOTICE: This is an OSHA ARCHIVE Document, and may no longer represent OSHA policy.

<http://go.usa.gov/36Ynj>. You may also locate your nearest NLRB Field Office at www.nlr.gov/who-we-are/regional-offices. If you contact the NLRB, please mention that you previously made contact with OSHA.

Sincerely,

Name
Title

Attachment

NOTICE: This document is presented here as historical content, for research and review purposes only.

Attachment

Tolling (Extending) the Complaint Filing Deadline

Whistleblower Investigations Manual, Chapter 3, Section III.D.4.

The following is a non-exclusive list of reasons that may justify the tolling (extending) of the complaint filing deadline:

- a. The employer has actively concealed or misled the employee regarding the existence of the adverse action.
- b. The employee is unable to file due to a debilitating illness or injury which occurred within the filing period.
- c. The employee is unable to file due to a natural or man-made disaster, such as a major snowstorm or flood, which occurred during the filing period.
- d. The employee mistakenly filed a timely retaliation complaint relating to a whistleblower statute enforced by OSHA with another agency that does not have the authority to grant individual relief.
- e. The employer's acts or omissions have lulled the employee into foregoing prompt attempts to vindicate their rights.
- f. OSHA will recognize private agreements between the employer and employee that expressly toll (extend) the filing deadline.

However, the following conditions do not ordinarily justify extension of the filing period:

- i. Ignorance of the statutory filing period.
- ii. Filing of unemployment compensation claims.
- iii. Filing a workers' compensation claim.
- iv. Filing a private lawsuit.
- v. Filing a grievance or arbitration action.
- vi. Filing a retaliation complaint with a State Plan state or another agency that has the authority to grant the requested relief.

II. Wrong Forum Response Letter/With Referral

Complainant/Representative
Street Address
City, State Zip Code

Via email or regular mail:

Re: Online Complaint ECNXXXXXX

Dear firstname lastname:

This is to confirm that OSHA has received your online complaint on Date. You indicated that you experienced discrimination/retaliation due to your gender/race/etc. Based on the information you provided, your complaint has been filed in the wrong forum. OSHA is unable to assist you because the allegations in your complaint do not relate to an OSHA-administered whistleblower protection statute. You may wish to contact the Equal Employment Opportunity Commission (EEOC) at (provide local contact) or (other applicable agency and contact information).

If you disagree and/or have additional information that would change this outcome, please contact this office at xxx-xxx-xxxx or respond to the email. If we do not hear from you or receive any additional information within a reasonable timeframe (e.g., 10 calendar days from delivery of this letter), OSHA will conclude that you concur with this action. Consequently, this complaint will be permanently closed and your complaint will not be forwarded to the party/parties that allegedly retaliated against you. You will not have the opportunity to object to or request review of OSHA's decision to close your complaint.

If you wish to learn more about the protections in the OSHA-administered whistleblower statutes, please visit our website, <https://www.whistleblowers.gov/>.

Sincerely,

Name
Title

III. Outside of OSHA Scope Response Letter/No Referral

Complainant/Representative

Street Address

City, State Zip Code

Via email or regular mail:

Re: Online Complaint ECNXXXXX

Dear firstname lastname:

This is to confirm that we received your 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 disagree and/or have additional information that would change this outcome, please contact this office at xxx-xxx-xxxx or respond to the email. If we do not hear from you or receive any additional information within a reasonable timeframe (e.g., 10 calendar days from delivery of this letter), OSHA will conclude that you concur with this action. Consequently, this complaint will be permanently closed and your complaint will not be forwarded to the party/parties that allegedly retaliated against you. You will not have the opportunity to object to or request review of OSHA's decision to close your complaint.

If you wish to learn more about the protections in the OSHA-administered whistleblower statutes, please visit our website, <https://www.whistleblowers.gov/>.

Sincerely,

Name

Title

IV. Federal OSHA S&H Enforcement or Other Relevant Agency Referral Letter

Complainant/Representative

Street Address

City, State Zip Code

Via email or regular mail:

Re: Online Complaint ECNXXXXXX

Dear firstname lastname:

This is to confirm that we received your online complaint on Date. Your complaint alleges occupational safety and health or other compliance concerns, but does not allege retaliation. Therefore, we have referred your complaint to [OSHA's Safety and Health Enforcement Program or enter appropriate other agency] for appropriate action. An official from that office/agency will contact you to discuss your concerns further. You may also contact them by phone at xxx-xxx-xxxx or via email at email.gov.

If you disagree and/or have additional information that would change this outcome, please contact this office at xxx-xxx-xxxx or respond to the email. If we do not hear from you or receive any additional information within a reasonable timeframe (e.g., 10 calendar days from delivery of this letter), OSHA will conclude that you concur with this action and this complaint will be permanently closed.

If your employer retaliates against you for raising safety or compliance concerns, contact OSHA immediately. There are specific timeframes for filing a complaint under the more than 20 statutes that OSHA enforces (e.g., 30 days for complaints under the OSH Act). For more information, please visit www.whistleblowers.gov.

Sincerely,

Name

Title