



# OSHA REGIONAL NOTICE

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: CPL 04 – 00  
(LEP 09-11)

EFFECTIVE DATE: MAR 02 2010

SUBJECT: Regional Emphasis Program to Implement a Pilot Program for Processing 11C Appeals at the Regional Level

REGIONAL IDENTIFIER: Region V

## ABSTRACT

**Purpose:** The purpose of this Notice is to establish a Regional Emphasis Program to develop and implement pilot program procedures that Region V will use to handle 11c appeals from complainants.

**Scope:** This Notice applies to all Area Offices in Region V.

**References:** OSHA Instruction: DIS 0-09, August 22, 2003 – Whistleblower Investigations Manual; Chapter 4 Section VI If Appeals"

**Cancellations:** None

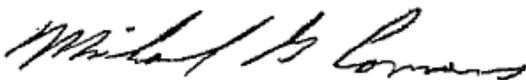
**State Impact:** None

**Action Offices:** Enforcement Programs

**Originating Office:** Chicago Regional Office

**Contact:** Assistant Regional Administrator for Enforcement Programs  
USDOL-OSHA Chicago Regional Office  
230 S. Dearborn Street, Room# 3244  
Chicago, IL 60604  
(312) 353-2220

By and Under the Authority of



Michael G. Connors  
Regional Administrator

**Executive Summary:**

This Notice establishes a Regional Emphasis Program to develop and implement pilot program procedures that Region V will use to handle 11c appeals from complainants. Currently, 11c appeals are handled through OSHA's National Office, Whistleblower Program. During this pilot program, all 11c appeals will be processed and resolved by the Regional Office.

**Significant Changes:**

Section VIII (2) Implementation, has been revised or edited to improve the readability, clarify roles and responsibilities and clarify or establish procedures applicable to the Regional 11c Pilot Appeal Program.

Item 2 (a): This section was revised to reflect the correct number of Appeals Committee members and change the committee member rotation.

Item 2 (c) (i) & (ii): These sections were revised and expanded to provide specific guidance and responsibility upon receipt of an appeal.

Item 2 (d) & (d) (i): Part of this section was moved to Item c and language was added to clarify committee members' and Area Office roles and responsibilities related to committee reviews of appealed cases.

Item 2 (e) (i) & (ii): This section was added to clarify committee members' roles and responsibilities when reviewing the applicable case files and establish procedures, responsibilities, etc. for those cases that are remanded for additional information.

Items 2(f) & (g): These two sections were moved and given their own section but remain essentially the same.

- I. **SUBJECT:** Regional Emphasis Program for the development and implementation of a pilot program for handling 11c complaint appeals at the Regional Office level
- II. **PURPOSE:** The purpose of this Notice is to establish a Regional Emphasis Program that outlines procedures to follow during a pilot program for processing and resolving 11c complaint appeals at the local Regional Office level.
- III. **SCOPE:** This REP applies to all Region. V Area Offices.
- IV. **REFERENCES:** OSHA Instruction: DIS 0-09, August 22, 2003 – Whistleblower Investigations Manual; Chapter 4 Section VI *U* Appeals"
- V. **EXPIRATION:** This Notice expires on December 1,2010, unless extended.
- VI. **ACTION:** OSHA compliance personnel shall follow the procedures contained in this Notice.
- VII. **BACKGROUND:** Currently, all 11c complaint appeals are handled through OSHA’s National Office, Office of the Whistleblower Protection Program. During this pilot program, all 11C appeals will be processed and resolved by the Chicago Regional Office.
- VIII. **PROCEDURES:**
  1. **Outreach:** None
  2. **Implementation:**
    - (a) Region V has created a four member Appeal Committee consisting of the Whistle blower Program Manager, one Area Director, one Assistant Area Director, and one Tech 13 Whistleblower Investigator. The Area Director and Assistant Area Director sitting on the Appeal Committee will be from different Area Offices. The Area Director, Assistant Area Director and Tech 13 Whistleblower Investigator will rotate bi-annually. The Regional SOL, Dorothy Stephens and/or Sandra Kramer, will serve as advisors to this committee.
    - (b) When an 11c complaint is dismissed, the complainant will be notified in writing that they may request that the Regional Administrator (RA) investigate and determine if the Area Director's decision was in accordance with current policy and procedures.
      - i. It is *OSHN* s policy to grant the right of informal review by the Regional Administrator during the pilot program.
      - ii. OSHA has administratively extended the same right of the informal review to cover the complainant's disagreement with any substantive element of the outcome of the investigation.

- iii. The Secretary's Finding has been modified (posted on the "Global" Drive) to reflect mailing instructions to the Regional Office, including the name, address and telephone number. The letter includes language that specifies the time frame (15 days) for filing an appeal.
- c) When a complainant files an appeal, the Regional Administrator will transmit to the Area Office a copy of the appeal letter.
    - i. Upon receipt of an appeal, the Area Director will review the case file to ensure the complaint was investigated in accordance with the applicable statute, regulations, manual, and directives, and that the issues raised on appeal have been properly addressed in the case file. The Area Director will prepare a response addressing the concerns that were raised in the appeal and transmit the response to the Regional Office. After reviewing the case file and all appeal issues raised by complainant, the Area Director has the option of re-opening the complaint and if so, will notify the Regional Office of this action. When completed, the Area Director will notify the Regional Office that the case file has been closed and follow the directions outlined below.
    - ii. Within 15 days upon receipt of the appeal, the Area Director shall ensure that the appealed case file is scanned according to the Regional Office procedures and electronically (i.e., a PDF file) transmitted to the designated folder on the // global" drive and notify the Regional Office upon completion.
  - d) The Appeal Committee members will individually review and be prepared to discuss each appealed case with the committee during the appeal meeting. The committee will meet or convene a conference call as necessary or once each month to discuss and make a recommendation to the Regional Administrator for the appeals received in the previous month. The Regional SOL advisor will be available for consultation. The Appeal Committee members shall not review an appeal related to their own Area Office investigations. As needed, the Assistant Regional Administrator for Enforcement Programs will serve as an alternate committee member.
    - i. The Regional Office will notify the Area Directors when appealed cases for their office are scheduled. Area Directors shall be available by telephone or in person to answer questions the Appeal Committee may have. The Appeal Committee members will discuss the merits of the case and the Area Directors will answer questions posed by the committee from their discussion.
  - e) The evidence in the case files must support the determination issued by the Area Office.
    - i. If the preponderance of the evidence supports the decision issued, the Appeal Committee will make a recommendation to the Regional Administrator to deny the appeal.

- ii. If the evidence in the case file does not support the decision issued or the case file does not contain relevant evidence that addresses the prima facie elements or test Respondent's defense, the Appeal Committee will recommend that the case file be remanded for further investigation/ clarification.
  - a) If the appealed complaint was investigated by an assisting Area Office, the Area Director for the Office of Jurisdiction shall ensure any remanded complaint by the Appeal Committee is returned to the assisting office of record for reinvestigation.
  - b) Area Directors shall ensure that all remanded complaints are completed and returned to the Appeal Committee within 30 days of the remand memo.
  - c) If a remanded complaint is not completed within 30 days, the Area Director will provide the Regional Administrator a detailed report explaining why a remanded complaint is not complete, the investigation completed to date, the remaining investigative activities and the estimated completion date.
  - d) The original members that reviewed the original appealed case file will review remanded case files returned to the Appeal Committee. The Appeal Committee will ensure that the Area Director has addressed questions presented by the Appeal Committee and that the evidence supports the determination issued.
- f) After receiving notice from the Appeal Committee, the Regional Administrator will issue a written response to the complainant's appeal either informing complainant that his/her complaint is being reinvestigated or denying the appeal. If the appeal is denied, the Regional Administrator's decision is final, not subject to further review.
- g) Gatekeeper or Non-Committee Reviews
  - a) The Whistleblower Program Manager will review all appeals related to timeliness and jurisdictional issues and render a decision without Committee Review .
  - b) The Whistleblower Program Manager will, when necessary, discuss timeliness and jurisdictional issues with the Regional SOL Committee advisor.

IX. **EVALUATION:** Quarterly, the Regional Administrator shall submit to the Directorate of Enforcement Programs a report that includes data pertaining to the following information:

- 1) Number of 11c cases processed by Region V
- 2) Number of appealed 11c cases received in Region V
- 3) Number of appeals that were returned to Area Directors for further investigation
- 4) Number of Final Determinations issued by the Regional Administrator

By October 30th of each year the Regional Administrator shall submit to the Directorate of Enforcement Programs an evaluation report that includes:

- 1) The goal of the program and the Area Director's opinion of how effective the program was in meeting its goals.
- 2) Data and information used to support the conclusions stated above.
- 3) Statement and rationale of whether the pilot program should be continued.
- 4) Description of any legal issues that arose which would necessitate a review by the Solicitor before renewal of the program.
- 5) Any other comments or recommendations, including findings, which might have an impact on how an industry conducts business.