



# OSHA INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

**DIRECTIVE NUMBER:** CPL 02-03-003

**EFFECTIVE DATE:** February 10, 2016

**SUBJECT:** Region I Whistleblower Program Complaint Screening Instruction

## ABSTRACT

- Purpose:** This directive formalizes the Region I complaint screening procedures. It is to be used in conjunction with the existing Whistleblower Program Complaint Intake Instruction CPL-02-03-001. This instruction formalizes a procedure developed by series of experiments which has resulted in Region I performing significantly better than the national average on one of the national performance measures: OSHA-WB-10 Average days to complete new complaint screening process (Strategic Plan).
- Scope:** This Notice applies to the Boston Regional Office.
- References:** OSHA Instruction: CPL 02-03-007, January 28, 2016 – Whistleblower Investigations Manual; Region 1 Instruction CPL 02-03-001, May 1, 2013 – Region I Whistleblower Program Complaint Intake Instruction; Region 1 Instruction CPL 02-03-002, May 15, 2015, Whistleblower Electronic Case File (ECF) Pilot.
- Cancellation:** Informal Memo: “Proposed Region 1 Whistleblower Protection Program Changes to Reduce Backlog”
- State Impact:** None
- Action Offices:** Boston Regional Office, Office of Whistleblower Protection.
- Significant Changes:** The only significant deviation from the Whistleblower Investigations Manual, January 28, 2016 CPL 02-03-007, is that we will discontinue the use of “10-day letters” in cases which are in intake status and, instead, use a screening letter (Appendix 1, Attachment C). For the reasons set forth in Appendix 1 (Days to Screen Proposal to DWPP, dated November 16, 2015), we have found that this procedure is superior to the procedure in the manual, causes no prejudice to complainants and improves the efficiency of the process.

## Executive Summary

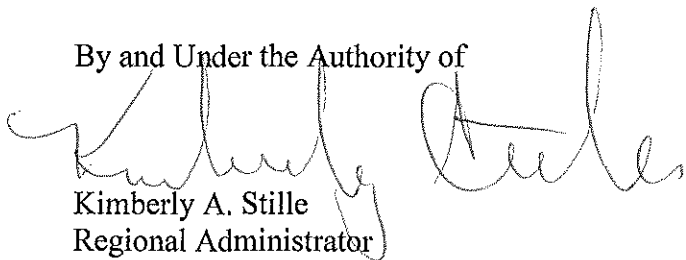
Prior to 2010, incoming whistleblower complaints were forwarded to the resident office investigator, or lacking an investigator in the particular office, were sent to an investigator in a nearby office. On occasion, complaints were lost or incomplete information was gathered which made it difficult or impossible to contact complainants. Another consequence of this practice was an uneven assignment rate with investigators in busier offices bearing the burden of a higher case load.

In 2010, Region I began to centralize whistleblower complaint intake. Under the centralized process, all complaints received in area offices and the Regional office are forwarded to the Regional Supervisory Investigators at [zzOSHA-Region1-Whistleblower@dol.gov](mailto:zzOSHA-Region1-Whistleblower@dol.gov) or faxed to the RSIs at (617) 565-9827. The centralized system allows for prompt capture of relevant information for each complaint, documentation and tracking of incoming complaints and inquiries about whistleblower matters, and assignment of cases to the appropriate investigators. The centralized whistleblower complaint intake process was formalized on May 1, 2013 in Region 1 Instruction CPL-02-03-001 Region I (Whistleblower Program Complaint Intake Instruction).

Through a series of experiments between 2013 and 2015, Region I developed a screening system which has resulted in Region I performing significantly better than the national average on one of the national performance measures: OSHA-WB-10 Average days to complete new complaint screening process (Strategic Plan). This instruction formalizes these procedures and will be used in conjunction with the existing Whistleblower Program Complaint Intake Instruction CPL-02-03-001.

Contact: Michael Mabee, ARA – Whistleblower Protection  
J.F.K. Federal Building E-340  
Boston, MA 02203  
Tel.: (617) 565-9857 Fax: (617) 565-9827

By and Under the Authority of



Kimberly A. Stille  
Regional Administrator

## Procedures

### Centralized Intake Processing

Complaints will be processed in accordance with Region 1 Instruction CPL 02-03-001, May 1, 2013 – Region I Whistleblower Program Complaint Intake Instruction. This procedure has proven to be a key factor in our success. Centralized intake and tracking are best practices in improving this performance measure.

### Tracking of screens

The Regional Supervisory Investigators will track the incoming screens by entering them immediately into a local database or IMIS.<sup>1</sup>

### Duty Officer

Each week, one investigator will be designated as the “duty officer” and will screen all incoming complaints received from 0001 hours Saturday morning through 2400 hours on the following Friday night. Normally, the investigators provide scheduling input and the duty officer schedule is compiled quarterly by a bargaining unit member. The duty officer schedule is located on the “O” drive at: O:\Region 1\Whistleblower\Screening Schedule

Except for emergencies, Investigators are responsible to cover the normal duty hours during the 5 work days in their duty week. Investigators may swap duty days or weeks as long as they inform the RSI of the change ahead of time.

Any cases docketed during an investigator’s duty week will be assigned to that investigator.

Any Complainants who call back or “change their mind” after a complaint.

While the number of screens in a week varies greatly and is generally “luck of the draw”, if it is a particularly heavy screening week, the RSI may assign other investigators to conduct some of the screenings.

### Duty Officer Duties

1. The duty officer screens complaints that are referred by the RSIs. If the complaint comes in to the Investigator directly from another source (which it shouldn’t) inform the RSI immediately so the complaint can be entered in the tracking system.
2. Call complainants promptly. (See performance measure OSHA-WB-10 Average days to complete new complaint screening process.)
3. If it appears that complaint might be docketed, conduct a recorded interview. Post recorded interview in the O drive case file.
4. Whether docketed or screened out, enter the case in IMIS immediately.
5. For screened out complaints, draft and send screen out letter. Email the letter to RSI along with the IMIS Case Summary.

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<sup>1</sup> At the time this instruction was published, IMIS did not have sufficient tracking and reporting capabilities, necessitating the use of a local MS Access database for tracking screens.

6. For docketed complaints, prepare Requests of Information, (RFI) and docket letters for mailing. NOTE: It is critical to hit the "Docket Complaint" button in IMIS as soon as you identify that a complaint needs to be docketed. The date we click the button is the date IMIS uses for the national performance measure. (See performance measure OSHA-WB-10 Average days to complete new complaint screening process.)
7. Enter complaints in IMIS and close or docket them as you do them – do not wait until the end of the week (or else we eat additional days).
8. Post all UPS delivery notices to the O drive folder.
9. Save all emails, notes and documents to the O drive folder before closing case.

### Appendix 1

Follow up. Start by Tuesday, November 17, 2015. Due by Tuesday, November 17, 2015.  
You forwarded this message on 11/17/2015 9:19 AM.

From: Mabee, Michael - OSHA  
To: Stewart, Christine - OSHA; Rosa, Anthony - OSHA  
Cc:  
Subject: Three issues for next WB-ARA call

Sent: Mon 11/16/2015 12:06 PM



Message RE: Merit/Litigation in 11c cases (49 KB) IMIS Orade Reports (59 KB) Days to Screen Proposal.docx (164 KB)

I recommend that we discuss those three issues at the next monthly call. Some background information on each issue is attached.

1. When is a case a "merit" case for IMIS purposes? The RSOL's may be trying to have OSHA not "refer" 11(c) cases until they agree to accept them. This will result in a drastic drop in the number of OSHA "merit" 11(c) cases.
2. IMIS Orade reports should count Complainants in all areas. Presently, it counts docket numbers in some areas and complainants in others, making our reports inconsistent and confusing.
3. National Performance Measure OSHA-WB-10: A simple tweak to the manual and every region can improve this figure dramatically without sacrificing quality service.

These are three very important issues that we need to address from a policy perspective. I'm happy to take the lead on presenting these on the call for discussion or to work with somebody from the DWPP staff and they can present - whichever works better for you.

Mike

Michael Mabee  
U.S. Department of Labor - OSHA  
135 High Street - Suite 361  
Hartford CT 06103  
(860) 240-3154  
Fax: (860) 240-3155  
[www.whistleblowers.gov](http://www.whistleblowers.gov)

Mabee, Michael - OSHA



### Days to Screen Proposal.docx

How to improve the metric: OSHA-WB-10 Average days to complete new complaint screening.

**Problem:**

I believe that we are eating unnecessary days on screenings by issuing 10-day letters on “screen outs” before administratively closing complaints. This proposal offers an alternative method which will reduce the number of days to screen nationally while preserving all of Complainant’s rights.

Note: This does NOT apply to docketed cases, where 10 day letters are appropriate as an investigation is already underway and the parties have already been notified of the investigation. This only applies to new complaints which have not yet been “screened.”

**Proposed Solution:**

In a new unscreened complaint, a person will frequently call an OSHA office, or file an online complaint and then lose interest. Typically, they will not return calls or emails from the investigator. It appears that the manual may require that a “10 day letter” be sent before OSHA can administratively close such an inquiry (See Appendix B). This is not a good policy for several reasons:

1. Complainant has 30 days to file an 11(c) complaint – and longer for complaints under other statutes. There is no reason to hold a screen open for 10 days when Complainant can probably file a complaint the day after we close it.
2. After the investigator makes a reasonable effort over a few days to contact Complainant by phone and email, we should administratively close the complaint. Typically, we should be able to close complaints after a few days of non-contact, rather than the two to three weeks required if we use the “10 day letter” process.
3. Sending the attached screening letter (appendix C) accomplishes the same thing as a “10 day letter” but we can close the complaint administratively on the day we send the letter – thereby improving our average days to complete new complaint screening and still preserving Complainant’s right to file a complaint within the statutory timeframes.
4. If Complainant calls back in a reasonable time after receiving the letter we would be able to use the original date filed.

I can see no downside the making this or policy. We will improve our metric OSHA-WB-10 while still preserving all rights of Complainant. There is no good policy reason for us to eat the additional time in keeping screens open.

**Attachment A: OSHA-WB-10 Average days to complete new complaint screening.**

Performance measure	Contribution to goal achievement	Q1 Target	Q2 Target	Q3 Target	Q4 Target	Annual Target
OSHA-PG-04 Federal Agency lost time case rate for injuries and illnesses	Measures outcome of efforts to reduce injuries, illnesses, and fatalities at federal workplaces (Goal 2)	NA	NA	NA	NA	1.19
OSHA-SEI-02 Percent of FAME recommendations addressed (Strategic Plan)	Measures outcome of efforts to maintain "at least as effective as" (Goal 2)	N/A	N/A	60%	N/A	60%
OSHA-ST-00 Number of personnel trained in OSHA's training programs (Strategic Plan)****	Measures training of key enforcement personnel (Goal 2, Goal 3)	200,000	245,000	265,000	225,000	935,000
OSHA-WB-01 Whistleblower investigations completed	Measures key activity for enforcing whistleblower laws (Goal 3)	721	724	727	728	2,900
OSHA-WB-09 Average age of pending whistleblower investigations (Strategic Plan)	Measures timeliness of whistleblower investigations (Goal 3)	340	340	340	340	340
OSHA-WB-10 Average days to complete new complaint screening process (Strategic Plan)	Measures timeliness of customer service to new whistleblower complaint filers (Goal 3)	17	17	17	17	17

Final targets may be revised based on budget decisions.

\*Inspections with enforcement units greater than 1 are as follows: Federal agency (2), process safety management (7), combustible dust (2), ergonomics (5), heat stress (4), non-PEL overexposure (3), workplace violence (3), fatality/catastrophe (3), health inspection with personal sampling (2), significant case (8). Otherwise, 1 inspection = 1 enforcement unit. OSHA may revise these categories in FY 2016 as priorities change or as justified by further data analysis..

\*\*In addition to inspections, 9 phone/fax complaints or processed referrals = 1 enforcement unit. In FY 2016, OSHA may also assign enforcement units to rapid response investigations (RRIs).

\*\*\*Numbers are expected outputs, not targets.

\*\*\*\*Includes all personnel trained

**Attachment B: CPL 02-03-007 (Whistleblower Investigations Manual)**

Page 2-16:

1. Whenever possible, the evaluation of a potential complaint should be completed by the investigator that the supervisor anticipates will be assigned the case, and the evaluation should cover as many details as possible. When practical and possible, the investigator will conduct face-to-face interviews with complainants. When the investigator has tried and failed to reach a complainant at various times during normal work hours and in the evening, he or she must send a letter to the complainant stating that attempts to reach the complainant have been unsuccessful, and stating that if the complainant is interested in filing a complaint under any of the statutes enforced by OSHA, the complainant should make contact within 10 days of receipt of the letter, or OSHA will assume that the individual does not wish to pursue a complaint, and no further action will be taken. This letter must be sent by certified U.S. mail, return receipt requested (or via a third-party commercial carrier that provides delivery confirmation). Proof of delivery must be preserved in the file with a copy of the letter to maintain accountability.



**Attachment C: Sample no contact screening letter**

Date

Complainant name  
Street name and number  
City, State, Zip

VIA UPS tracking # xxxxxxxxxxxxxxxx

Re: Respondent/Complainant/1-xxxx-xx-xxx

Dear Complainant:

OSHA received your inquiry about filing a complaint under Section 11(c) of the Occupational Safety and Health Act (the Act) of 1970.

Section 11(c) protects employees of private industry who complain about safety and/or health at their work place or participate in other endeavors in the furtherance of occupational safety and health and suffer retaliation as a result. We have attempted to contact you several times to obtain the details of your inquiry.

You have not responded to our efforts to contact you and so we are administratively closing this inquiry. If you wish to file a complaint, please contact us within 30 days of the alleged adverse action.

We regret that we are unable to assist you. However, I appreciate your concurrence in administratively closing this matter.

Sincerely,

Investigator Name  
Investigator

Attachment: OSHA Whistleblower Fact Sheet