

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210



Reply to the attention of:

APR 18 2012

MEMORANDUM FOR: REGIONAL ADMINISTRATORS
WHISTLEBLOWER MANAGERS

FROM:

Richard E. Fairfax
RICHARD E. FAIRFAX
Deputy Assistant Secretary

SUBJECT: Revised Whistleblower Disposition Procedures

This memorandum establishes new streamlined procedures for documenting the outcome of certain whistleblower complaints filed under Section 11(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. §660(c); Surface Transportation Assistance Act (STAA), 49 U.S.C. §31105; Asbestos Hazard Emergency Response Act (AHERA), 15 U.S.C. §2651; International Safe Container Act (ISCA), 46 App U.S.C. §1506; Safe Drinking Water Act (SDWA), 42 U.S.C. §300j-9(i); Federal Water Pollution Control Act (FWPCA), 33 U.S.C. §1367; Toxic Substances Control Act (TSCA), 15 U.S.C. §2622; Solid Waste Disposal Act (SWDA), 42 U.S.C. §6971; Clean Air Act (CAA), 42 U.S.C. §7622; Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §9610; Energy Reorganization Act (ERA), 42 U.S.C. §5851; Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21), 49 U.S.C. §42121; The Sarbanes Oxley Act (SOX), 18 U.S.C. §1514A; Pipeline Safety Improvement Act (PSIA), 49 U.S.C. §60129; Federal Railroad Safety Act (FRSA), 49 U.S.C. §20109; National Transit Systems Security Act (NTSSA), 6 U.S.C. §1142; Consumer Product Safety Improvement Act (CPSIA), 15 U.S.C. §2087; Section 1558 of the Affordable Care Act (ACA), P.L. 111-148; Consumer Financial Protection Act of 2010 (CFPA), Section 1057 of the Dodd Frank Wall Street Reform and Consumer Protection Act of 2010, P.L. 111-203; Seaman's Protection Act, 46 U.S.C. §2114 (SPA), as amended by Section 611 of the Coast Guard Authorization Act of 2010, P.L. 111-281, and Section 402 of the FDA Food Safety Modernization Act (FSMA), P.L. 111-353.

Results of Investigation

Effective immediately, all whistleblower complaints filed under any one of the above 21 statutes that result in a settlement, withdrawal, or dismissal for lack of cooperation will require only an entry into the Integrated Management Information System (IMIS) database, in lieu of a Report of Investigation. The notation in the IMIS narrative must contain the reasons why the case is being closed and reference the supporting exhibit(s). Upon closing the case, the investigator will print and file the IMIS Case Summary under the tab where the Report of Investigation (ROI) would have been filed.

Also, consistent with the guidance in the current manual, an abbreviated ROI is acceptable where a complaint, supplemented as appropriate through interviews of the complainant, is untimely or

does not contain a *prima facie* allegation. See Manual Chapter 2, Section III. That is, the ROI need only cover the reason why the complaint is being dismissed. For example, if the complaint is untimely, the ROI need only discuss why the complaint is untimely and why equitable tolling does not apply. The ROI does not need to discuss protected activity, employer knowledge, adverse action, etc. Likewise, where the complainant failed to engage in protected activity, the ROI does not need to discuss knowledge, adverse action, nexus, etc. See Whistleblower Investigations Manual (Manual) Chapter 5, Section IV.B.8.

Secretary's Findings

A Secretary's Finding (SF) is not required in a settlement or withdrawal disposition. Rather, the parties will receive the appropriate letters identified in Manual Chapter 4 – Case Disposition (see sample withdrawal letter), and Manual Chapter 6 – Remedies and Settlement Agreements (see sample settlement approval letter). A case that is closed for lack of cooperation will require an abbreviated SF stating that the case is being closed because the complainant has not cooperated in the investigation and informing the complainant of his or her appeal rights.

In cases where the complaint, supplemented as appropriate by interviews with the complainant, contains all of the elements of a *prima facie* case, there is no change to the current procedure and an ROI and SF are required. If OSHA is dismissing the case, the ROI must explain why the evidence does not support a merit finding.

Where the complaint results in a merit finding, there is no change to the current procedure and an ROI and SF are required. See Manual Chapter 4 and 5.

By revising the procedures for when an ROI and SF is required, OSHA will eliminate its duplication of records, reduce the administrative workload for investigators and supervisors, and increase its efforts toward investigating complaints.

The attached chart illustrates the revised documentation requirement for all disposition types, under all laws.

If you have any questions or concerns, please contact Sandra Dillon, Director, OWPP, at (202) 693-2531.

Disposition	IMIS	Report of Investigation	Secretary's Findings	Parties Receive	Manual References
Settled	Summary	None Required	None Required	Copy of signed settlement	Chapter 6, pages 6-15 to 6-18
Settled – Other	Summary	None Required	None Required	Settlement approval letter	Chapter 6, page 6-19
Withdrawn	Summary	None Required	None Required	Written confirmation of the withdrawal	Chapter 4, pages 4-10 to 4-12
Dismissal: Lack of Cooperation (LOC)	Summary	None Required	Abbreviated	Abbreviated Secretary's Findings, with appeal rights	Chapter 3, Section VI.B.5.
Dismissed without investigation; (e.g. complaint is untimely or contains no <i>prima facie</i> allegation)		Abbreviated – see Chapter 5.IV.B.8.	Abbreviated	Abbreviated Secretary's Findings, with appeal rights	Chapter 5, pages 5-23 to 5-30
Dismissed after investigation		Required	Required	Secretary's Findings, with appeal rights	Chapter 5, page 5-23 to 5-30
Merit (ALJ Statutes)		Required	Required	Secretary's Findings, with appeal rights	Chapter 5, page 5-16 to 5-22