



# OSHA REGIONAL NOTICE

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

<b>DIRECTIVE NUMBER: CPL-2021-01</b>	<b>EFFECTIVE DATE: March 29, 2021</b>
<b>SUBJECT: Complaint Intake Pilot</b>	
<b>REGIONAL IDENTIFIER: Region VII</b>	

## ABSTRACT

- Purpose:** This Notice establishes a twelve-month Regional Whistleblower Protection Programs (WPP) pilot that will allow Region VII to pilot a complaint intake triaging process. All incoming complaints will be evaluated to determine if the complaints should remain in the intake phase while more information is obtained or proceed to the screening phase. If additional information is required, Complainants and/or their representatives will be contacted by letter and additional information requested. This pilot applies to only the district court statutes – Section 11(c), ISCA, and AHERA.
- Scope:** This Notice applies to the Kansas City Regional Office, WPP.
- References:** OSHA Instruction: CPL 02-03-007, January 28, 2016 – Whistleblower Investigations Manual; Clarification of Streamlined Procedures to Close Cases that OSHA Lacks Authority to Investigate, January 12, 2017; International Safe Container Act (ISCA), 46 U.S.C. § 80507; Asbestos Hazard Emergency Response Act (AHERA), 15 U.S.C. § 2651; and Occupational Safety and Health Act (Section 11(c)), 29 U.S.C. § 660(c).
- Cancellation:** None
- State Impact:** None
- Action Offices:** Kansas City Regional Office, Office of Whistleblower Protection Programs
- Originating Office:** Kansas City Regional Office

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By and Under the Authority of

Kimberly Stille  
Regional Administrator

## Executive Summary

This Notice establishes a twelve-month Regional Whistleblower Protection Programs (WPP) pilot that will allow Region VII to pilot a complaint intake triaging process. All incoming complaints will be evaluated to determine if they should be moved to the screening phase and assigned to an investigator or if additional information is required before the complaint can enter the screening phase. Complainants and/or their representatives will be contacted by letter requesting the additional information. This pilot applies to only the district court statutes - Section 11(c), ISCA, and AHERA.

**Significant Changes:** Complainants will be contacted by letter if on its face a complaint is not covered by one of the whistleblower statutes delegated to OSHA, has been filed outside of the statute of limitations, is lacking information to establish a basic prima facie allegation, or is on its face a dually filed complaint. Letters will be sent to complainants and/or their representatives via UPS (United Parcel Service) or email and afforded an opportunity to provide the necessary information within ten days. If no response is received by the region, or the Complainant does not cooperate in providing the requested information, the complaint will be administratively closed and no further action will be taken. Once the requested information or other relevant information is provided to the WPP, the complaint will be assigned for screening to determine if a prima facie allegation exists. The screening of complaints will follow current procedures established in the Whistleblower Investigations Manual (WIM).

- I. **Subject:** This Notice implements a Pilot for Region VII WPP to implement a complaint intake triaging process. It applies to only the district court statutes – Section 11(c), ISCA, and AHERA.
- II. **Purpose:** The purpose of this Notice is to outline and implement the procedures to follow during this pilot program.
- III. **Scope:** This Notice applies to the Kansas City Regional Office, WPP.
- IV. **References:** OSHA Instruction CPL 02-03-003; Clarification of Streamlined Procedures to Close Cases that OSHA Lacks Authority to Investigate, January 12, 2017; all applicable directives, regulations, and all whistleblower protection statutes for which enforcement responsibility was delegated to OSHA, as listed on page 1 of the Notice.
- V. **Expiration:** This Notice expires one year following its effective date on March 28, 2022.
- VI. **Action:** OSHA personnel in Region VII must follow the procedures contained in this notice.
- VII. **Background:** The current Whistleblower Investigations Manual requires a formal screening of all complaints received, regardless of their completeness or appropriateness. With the addition of the online complaint, the National WPP has experienced an increase

in complaints, a majority of which are incomplete, do not present a prima facie allegation, and/or are not covered by one of the whistleblower statutes delegated to OSHA. Implementing a triaging process will maintain strong customer service while dedicating more resources to the investigation of docketed complaints.

In order to devote appropriate resources to handle the large number of incoming filings and manage the pending inventory of cases, Region VII is adopting this pilot for a period of twelve months.

#### VIII. Procedures:

A. For a complaint filing to enter the screening phase, the following information must be present:

- Complainant's name and contact information, and if applicable, name and contact information of Complainant's representative,
- Respondent's name(s) and contact information (if multiple Respondents all contact information must be present),
- Worksite address (if different from employer address),
- The current or final job Complainant performed for Respondent(s),
- The alleged adverse action(s) and the date(s) Complainant learned of the adverse action(s),
- Description of the reason Complainant believes they suffered the adverse action (protected activity), and
- The alleged employer knowledge. Complainant or Complainant's representative may simply allege that Respondent knew or suspected the complainant of engaging in the alleged protected activity.

B. If any of the above information is missing, OSHA will preserve the filing date for timeliness purposes and inform the Complainant or Complainant's representative in writing that they have 10 days from the date they receive OSHA's notice to provide such information or the complaint will be administratively closed and no further action will be taken.<sup>1</sup>

C. Complaints that are on their face are filed beyond the statutory timeframe or are not covered by one of the whistleblower statutes delegated to OSHA, require referral to a State plan, etc., will be handled in accordance with VIII.B above. OSHA will

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<sup>1</sup> Should OSHA administratively close the complaint and the 10-day response period has expired, the Complainant or Complainant's representative may be able to re-file the complaint with the missing information, depending on the statutory filing period.

preserve the filing date for timeliness purposes and inform the Complainant or their representative in writing of the opportunity to provide additional information within ten days.

- D. All complaints will be entered into OITSS-IMIS and administratively closed. Coding will be entered on the Additional Information Page, Tracking Information section. Enter the code “Intake Pilot” in the Tracking Text field. Enter the filing date of the complaint in the Tracking Date field. If the complaint is transitioned to the screening phase, an additional coding entry will be made in the Tracking Text field, “Converted to Screening” and in the Tracking Date field, the date the complaint was converted to the screening phase.
  - E. A complaint that is processed by an investigator in accordance with the above must receive supervisory approval. If processed by the supervisor, no further review is required.
  - F. All complaints entering the screening phase will follow current procedures.<sup>2</sup>
- IX. Evaluation: At the conclusion of the pilot, the Assistant Regional Administrator shall submit to the Regional Administrator an evaluation report.
- A. The region will request an OITSS-IMIS ad hoc report that will identify the number of complaints processed under this intake pilot by the region and the number of complaints converted to the screening phase. This may be done on a quarterly basis.
  - B. The report will include the following data:
    - The number of complaints that were processed under the instructions of this intake pilot,
    - The total number of administratively closed complaints processed by the region during the pilot period compared to the previous 12-month period
    - The number of total complaints received by the region during the pilot period compared to the previous 12-month period, and
    - Number of complaints converted from the intake phase to the screening phase.
  - C. The Assistant Regional Administrator’s opinion of how effective the Pilot was in meeting its goals.
  - D. A statement whether the pilot program should be continued and/or rolled out in other Regions and a rationale.

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<sup>2</sup> WPP has the discretion to convert a complaint to the screening phase at any point during the processing of the complaint.

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E. Other comments or recommendations received during the Pilot.