



OSHA REGIONAL NOTICE

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: 2022-01

EFFECTIVE DATE: January 3, 2022

SUBJECT: Whistleblower Complaint Screening Pilot

REGIONAL IDENTIFIER: Region 3

ABSTRACT

Purpose: The purpose of this notice is to establish a year-long Pilot in Region 3 that will discontinue the use of “10-day letters” for cases that are in the intake status. A “no contact screening letter” will be used instead.

Scope: This Notice applies to the Region 3 Whistleblower Protection Program.

References: OSHA Instruction: CPL 02-03-007, January 28, 2016 – Whistleblower Investigations Manual; Whitepaper - Whistleblower Program Backlog, March 22, 2020.

Cancellation: None

State Impact: None

Action Offices: Philadelphia Regional Office

Originating Office: Philadelphia Regional Office

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By and Under the Authority of

Michael J. Rivera
Regional Administrator

Executive Summary

OSHA Instruction CPL 02-03-007, *Whistleblower Investigations Manual*, January 28, 2016, presently requires an Investigator to send a “10-day letter” to a complainant if they are unable to contact a complainant who has filed a whistleblower complaint with OSHA. The Manual is silent on how these cases will be entered into OITSS. The assumption, which has varied from region to region, has generally been that the complaint would be listed as “Administratively Closed” upon the expiration of the 10-day period. However, since regional procedures have varied, there has been disparity on OSHA Performance Measure OSHA-WB-10 (Average days to screen new complaints). The chart below illustrates this disparity over the past six (6) years:

Average Days to Screen New Complaints

Region	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020
Region 1	8	5	4	4	4	4
Region 2	9	6	6	4	7	6
Region 3	30	27	27	17	9	16
Region 4	15	18	22	28	20	27
Region 5	23	20	12	9	9	7
Region 6	9	9	9	23	19	12
Region 7	7	11	9	6	5	5
Region 8	14	7	8	9	8	7
Region 9	46	30	12	9	6	6
Region 10	26	15	12	6	10	8
National	16	15	13	13	11	12

 At or Below National Average
 Above National Average

Source: OITSS Key Indicators Report

Region 1 piloted a similar procedure in 2015 and, after evaluation, formalized the procedure in 2016. Presently, this procedure has enabled Region I to improve service to complainants while also reducing and maintaining a significant reduction in its average days to screen new complaints (OSHA-WB-10) over the last several years. Following suit Region 6 implemented a similar pilot in August of 2020 and was able to meet the OSHA-WB-10 goal for FY 2020. See chart above. At present, the Region 6 pilot has enabled the region to lower their days to screen to 5.4 days as of the February 2021 PVA report. Given these documented results, should Region 3 institute this pilot, its results should trend in a positive direction toward meeting its established screening goals.

The first key problem with the use of “10-day letters” for undocketed complaints is that these letters might mislead Complainants into thinking they have missed their opportunity to file a Whistleblower Complaint with OSHA. The filing periods on OSHA Whistleblower Complaints vary from 30 days to 180 days. Thus if a Complainant received a “10-day letter” on a newly filed, undocketed complaint and failed to respond, they might believe they can no longer file their complaint if they later changed their mind. In reality, Complainants could still legally file their complaint at any point during the statutory filing period under that particular statute. This pilot procedure will replace the “10-day letter” with an administrative closure letter that makes clear that Complainant still has the right to file their complaint within the statutory filing period under that particular statute.

The second key problem with the “10-day letters” on undocketed complaints is that Regions who follow this procedure struggle to meet their performance measure under OSHA-WB-10 (average days to screen new complaints). This pilot procedure will allow Region 3 to administratively close a complaint in OITSS after sending the administrative closure letter as most other Regions are currently doing. There is no impact on a Complainant’s right to file within their statutory filing period and thus, no impact on any right afforded by the whistleblower statutes. In fact, this procedure is superior in that it better informs Complainants that they still have a right to file their complaint within the statutory period.

Pilot Population Cases

The population of complaints which will fall under this pilot program are all incoming complaints from the effective date of this pilot for a period of one year.

This procedure 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 docketed for investigation.

Reporting

The Region 3 Whistleblower Program will track these cases and report out weekly to the Assistant Regional Administrator/Whistleblower and the Deputy Regional Administrator (DRA). A final report to the Regional Administrator submitted one year from the effective date will contain recommendations to continue, modify or discontinue the developed procedures.

The measurable outcome will be a reduction in Region 3’s average days to screen new complaints. At the end of FY 2021, Region 3’s average was 13.4 days. As of the October 2021 DWPP PVA report, the Region 3 average was 12.5 days. A baseline of 12 days will be used for comparison after the 1-year pilot period. Customer satisfaction issues will be monitored and considered, should they arise.

Procedure

It is Region 3’s policy that the WPP staff shall attempt to contact and interview all individuals who file a retaliation complaint.

In instances where an individual files a complaint and the Investigator or RSI is unable to contact the individual after reasonable attempts at various times during normal work hours and in the evening (by both phone and email when these contact methods are available), the investigator

shall prepare and send a “no contact screening letter” to complainant (sample attached). The letter may be sent by U.S. mail, UPS, or email; depending on the available contact information. The letter shall include a whistleblower rights fact sheet and inform the complainant that they may still file a complaint within the statutory timeframe. Additionally, the Regional Investigator will ensure that all actions taken and or pursued will be properly annotated in the Telephone Activity Log Sheet.

Once the “no contact screening letter” has been sent to the complainant, the intake may be administratively closed in OITSS. The date used for administrative closure will be the date the letter is sent.

For complaints where a statute covered by another agency may be implicated (e.g., EEOC, OSC or NLRB) the investigator should include referral contact information for that agency in the letter.

If a complainant contacts the investigator after the “no contact screening letter” letter has been sent, the following guidelines will apply:

- If a complainant calls back or contacts the investigator within a reasonable period of time (generally 10 days), the original filing date will normally be used.
- If a complainant calls back or contacts the investigator after 10 days, but still within the statutory filing period, the date of the complainant’s response may be used as the filing date.
- If a complainant calls back or contacts the investigator after 10 days and the statutory filing period has ended, the investigator will contact the complainant and determine:
 1. If complainant received the letter; and;
 2. If circumstances exist that could excuse the complainant’s failure to pursue their case in a timely manner.
- The Investigator shall then consult with their supervisor, the ARA-WPP and RSOL, as appropriate, to determine whether the complaint should be reopened or if the complaint should remain closed due to the complainant’s failure to pursue their case in a timely manner. This determination is fact-specific to each complaint.

Appendix 1: Sample no contact screening letter

Date

Complainant's name
Street name and number
City, State, Zip

VIA UPS tracking # xxxxxxxxxxxxxxxx

Re: Respondent/Complainant/3-xxxx-xx-xxx

Dear [Complainant's Name]:

OSHA received your complaint about filing a complaint under Section 11(c) of the Occupational Safety and Health Act (the Act) of 1970. [If other, use appropriate statute citation.]

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. [If other, use appropriate statute language]

We have attempted to contact you several times to obtain the details of your complaint. You have not responded to our efforts to contact you and so we are administratively closing this complaint. If you wish to pursue your complaint, please contact us as soon as possible. Failure to respond within a reasonable period of time may mean that your complaint cannot be reopened.

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

Sincerely,

[Name]
Investigator

Attachment: OSHA Whistleblower Program Fact Sheet