

U.S. Department of Labor

Office of Inspector General—Office of Audit

**REPORT TO THE OCCUPATIONAL
SAFETY AND HEALTH
ADMINISTRATION**



**COVID-19: OSHA NEEDS TO IMPROVE
ITS HANDLING OF WHISTLEBLOWER
COMPLAINTS DURING THE PANDEMIC**

**DATE ISSUED: AUGUST 14, 2020
REPORT NUMBER: 19-20-010-10-105**



BRIEFLY...

COVID-19: OSHA NEEDS TO IMPROVE ITS HANDLING OF WHISTLEBLOWER COMPLAINTS DURING THE PANDEMIC

August 14, 2020

WHY OIG CONDUCTED THE AUDIT

The COVID-19 pandemic has raised concerns about the safety and health of workers, and the protections afforded to workers who report potential workplace safety violations, including those violations involving social distancing and personal protective equipment.

The Occupational Safety and Health Administration's (OSHA) Whistleblower Program enforces 23 statutes that prohibit employers from retaliating against employees when they report employer violations of various workplace safety, consumer product, environmental, financial reform, and securities laws. This is important because if OSHA finds merit to an employee's allegations, the employee may be entitled to reinstatement, back pay, restored benefits, or other remedies.

WHAT OIG DID

As part of Phase 1 of the OIG's Pandemic Oversight Response Plan, we conducted this audit to answer the following question:

What impact have COVID-19 whistleblower complaints had on OSHA, and how has OSHA addressed COVID-19 whistleblower complaints?

To answer this question, we conducted interviews, reviewed internal notifications, and analyzed whistleblower complaint data.

WHAT OIG FOUND

We found the pandemic has significantly increased the number of whistleblower complaints OSHA has been receiving. OSHA was challenged to complete investigations in a timely manner before the pandemic, and the potential exists for even greater delays now.

While the pandemic has increased significantly the number of whistleblower complaints OSHA has received, the Whistleblower Program's full time employment has decreased. According to investigators we interviewed, no more than 20 open investigations at once would be the optimal caseload per investigator. Depending on the region, investigators reported the number of open investigations ranged from 15 to 40 in 2019, but 19 to 45 in 2020. Consequently, the potential exists for even greater delays in closing investigations.

Amid this challenge, OSHA needs to improve its handling of whistleblower complaints. When OSHA fails to respond in a timely manner, it could leave workers to suffer emotionally and financially, and may also lead to the erosion of key evidence and witnesses.

Prior to the pandemic, OSHA began a triage pilot intended to expedite the complaint screening process and also reassigned older complaints from regions with large backlogs to regions with lesser backlogs. However, OSHA had not utilized a similar approach during the pandemic to more evenly distribute whistleblower complaints.

WHAT OIG RECOMMENDED

We made recommendations to OSHA regarding staff vacancies, continued assessment of the Region II triage pilot, and development of a caseload management plan to evenly distribute whistleblower complaints among investigators.

OSHA agreed with our recommendations.

READ THE FULL REPORT

<http://www.oig.dol.gov/public/reports/oa/2020/19-20-010-10-105.pdf>

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INSPECTOR GENERAL'S REPORT

Loren Sweatt
Principal Deputy Assistant Secretary
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U.S. Department of Labor
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This report presents the results of the Office of Inspector General's (OIG) audit of the COVID-19 response by the Occupational Safety and Health Administration's (OSHA) Whistleblower Protection Program. Due to the COVID-19 pandemic, the President declared a national emergency on March 13, 2020. As of July 6, 2020, the Centers for Disease Control and Prevention had reported more than 2.8 million confirmed COVID-19 cases and more than 129,000 COVID-19 related deaths in the United States.

The pandemic has raised concerns regarding the safety and health of the workforce, and the protections afforded to those who report potential workplace safety violations. News articles have depicted alleged employer retaliation against employees who reported potential workplace safety violations during COVID-19, including social distancing and personal protective equipment violations. Employees who believe they have been subject to retaliation may file a complaint with the Whistleblower Program.

The Whistleblower Program enforces 23 whistleblower statutes¹ that prohibit employers from retaliating against employees when they report violations of various workplace safety, consumer product, environmental, financial reform, and securities laws. As part of this function, the Whistleblower Program investigates complaints of discriminatory actions taken against employees who "blow the whistle" under any of the 23 statutes. If the evidence supports the employee's

¹ The investigators we interviewed stated most of the whistleblower complaints received during the COVID-19 pandemic were OSHA related.

allegation, the employee may be entitled to reinstatement, back pay wages, restored benefits, and other possible remedies to make the employee whole.

As part of Phase 1 of the OIG's Pandemic Oversight Response Plan, we conducted this audit to answer the following question:

What impact have COVID-19 whistleblower complaints had on OSHA, and how has OSHA addressed COVID-19 whistleblower complaints?

To answer this question, we conducted interviews with OSHA management, a regional supervisory investigator, and other whistleblower program investigators. We also reviewed internal notifications and analyzed whistleblower complaint data OSHA provided, as of June 5, 2020, to determine the whistleblower complaint numbers identified throughout the report.

We found the pandemic has significantly increased the number of whistleblower complaints OSHA has been receiving. OSHA was challenged to complete investigations in a timely manner before the pandemic and the potential exists for even greater delays now. As COVID-19 illnesses and deaths continue to rise, OSHA needs to act quickly to investigate whistleblower complaints so employees feel protected when reporting unsafe working conditions.

RESULTS

The pandemic has significantly increased the number of whistleblower complaints OSHA has received, and at the same time, the Whistleblower Program's full-time equivalent employment (FTE) has decreased. Based on interviews with investigators and a regional supervisory investigator, no more than 20 open investigations at one time would be the optimal caseload per investigator. Depending on the region, the investigators reported that open investigations ranged from 15 to 40 in 2019, but 19 to 45 in 2020. As a result, the potential exists for an even greater delay in the average days to close an investigation. Amid this challenge, OSHA needs to improve its handling of whistleblower complaints during the COVID-19 pandemic.

When OSHA fails to respond in a timely manner, it could leave workers to suffer emotionally and financially. Failure to investigate a whistleblower complaint promptly may also lead to the erosion of key evidence and witnesses.

**SIGNIFICANT INCREASE IN
WHISTLEBLOWER COMPLAINTS
POTENTIALLY LEADS TO FURTHER DELAYS
TO INVESTIGATE**

OSHA's Whistleblower Program received 30 percent more whistleblower complaints during the first 4 months of the COVID-19 pandemic than during the same period in 2019, causing an increase in whistleblower complaint screenings for appropriate coverage requirements, timeliness of filing, and the presence of a prima facie² allegation. At the same time, the Whistleblower Program's FTE decreased from 126 in 2019 to 120 in 2020, causing an increase in the average number of whistleblower complaints per investigator and potentially delaying the completion of whistleblower complaint investigations even further beyond the statutory requirements of 30, 60, or 90 days, and the current 9-month average.

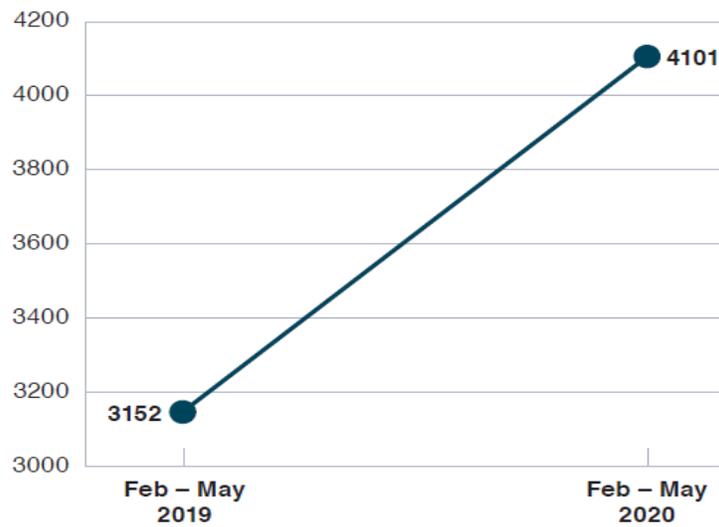
Prior to the COVID-19 pandemic, the Whistleblower Program and DOL's Office of the Solicitor authorized a triage pilot to expedite the screening process, and assigned older whistleblower complaints from regions with large backlogs of investigations to regions with lesser backlogs. However, Whistleblower Program officials have not utilized a similar approach during the pandemic to more evenly distribute whistleblower complaints.

**SIGNIFICANT INCREASE IN WHISTLEBLOWER
COMPLAINTS**

During the first 4 months of the pandemic, February 1, 2020, through May 31, 2020, data from OSHA's Integrated Management Information System (IMIS) showed the Whistleblower Program received 4,101 complaints, which was 949, or 30 percent more, than during the same period in 2019 (see Figure 1).

² Merriam-Webster defines prima facie as legally sufficient to establish a fact or case unless disproved. <https://www.merriam-webster.com/dictionary/prima%20facie>

FIGURE 1: TOTAL WHISTLEBLOWER COMPLAINTS RECEIVED

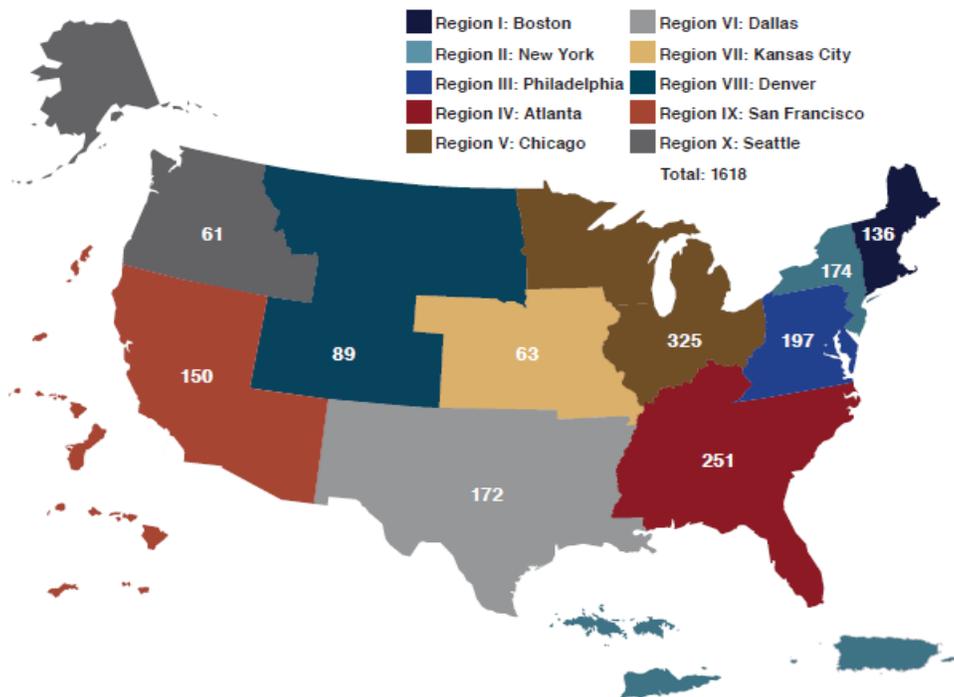


Source: OSHA Whistleblower Data – Unaudited

From February 1, 2020, to May 31, 2020, the Whistleblower Program received 1,618 COVID-19 whistleblower complaints.³ The COVID-19 whistleblower complaints received per region varied from 61 in Region X to 325 in Region V (see Figure 2).

³ According to OSHA officials, as of June 30, 2020, the Whistleblower Program received 1,900 COVID-19 whistleblower complaints.

FIGURE 2: COVID-19 COMPLAINTS PER REGION (FEBRUARY – MAY 2020)



Source: OSHA COVID-19 Whistleblower Data - Unaudited

Although tied to the pandemic, COVID-19 whistleblower complaints are processed the same as non-COVID-19 whistleblower complaints. To notify staff of the only procedural changes due to the COVID-19 pandemic, OSHA issued 3 internal notifications. The 3 notifications included the Office of Administrative Law Judges' (OALJ) notice of suspension of pending hearings,⁴ the Federal Motor Carrier Safety Administration's (FMCSA) Hours of Service (HOS) direct assistance emergency declaration,⁵ and the guidance to refer Family First Coronavirus Relief Act (FFCRA) related whistleblower complaints to DOL's Wage and Hour Division (WHD).⁶ Beyond those 3 notifications, the investigators continued to follow the policies and procedures outlined in the Whistleblower Investigations Manual (WIM)⁷ to review all whistleblower complaints.

⁴ In Re: Suspension of Hearings and Procedural Deadlines Due to COVID-19 National Emergency, dated March 19, 2020

⁵ Expanded Emergency Declaration Under 49 CFR §390.23, dated March 18, 2020

⁶ FFCRA Referral Guidance, dated May 12, 2020

⁷ Whistleblower Investigations Manual, effective January 18, 2016

OSHA WHISTLEBLOWER COMPLAINT INVESTIGATIONS NOT COMPLETED TIMELY

OSHA's Performance Measures and Key Indicator report for the quarter ending March 31, 2020, showed it took an average of 279 days to close an investigation. This average was an increase of 41 days from the 238 days reported by OIG in a 2015 audit,⁸ and an increase of 129 days from the 150 days reported by OIG in a 2010 audit.⁹

The WIM states investigators should generally schedule investigations in chronological order of the dates whistleblower complaints are filed, while giving priority to cases according to statutory time frames. Depending on which of the 23 whistleblower statutes the whistleblower complaint pertains to, the investigator has 30, 60, or 90 days from the filing date to complete the investigation. OSH Act 11(c) whistleblower complaint investigations are to be completed within 90 days of the filing date.

OSHA held a whistleblower stakeholder meeting on May 12, 2020. Members of the public were given the opportunity to discuss their experiences with the Whistleblower Program and to provide input on ways to strengthen the program. The experiences were compelling, with some complainants describing how an investigation took 2.5 years to complete.

INCREASE IN COMPLAINTS AND REDUCTION IN RESOURCES LIKELY TO CAUSE FURTHER DELAYS

With the increase in whistleblower complaints received during the COVID-19 pandemic, the priority to screen whistleblower complaints as soon as possible upon receipt, and the decrease in FTEs from 2019, the potential exists for an even greater delay in the average days to close an investigation.

According to the WIM, whistleblower complaints are generally assigned to an OSHA regional office for review based on the complainant's location, or where the majority of witnesses appear to be located. Due to the nature of how whistleblower complaints are assigned, whistleblower complaints received by region varied from February to May in both 2019 and 2020. However, each

⁸ DOL OIG Report Number 02-15-202-10-105, OSHA Needs to Continue to Strengthen Its Whistleblower Protection Programs, September 30, 2015.

⁹ DOL OIG Report Number 02-10-202-10-105, Complainants Did Not Always Receive Appropriate Investigations Under the Whistleblower Protection Program, September 30, 2010.

region experienced an increase of whistleblower complaints received during the same time period in 2020 (see Table 1).

Table 1: Whistleblower Complaints Received By Region

Region	Feb – May 2019	Feb – May 2020	Number of Investigators
Region I: Boston	189	277	8
Region II: New York	244	350	9
Region III: Philadelphia	361	451	7
Region IV: Atlanta	595	665	14
Region V: Chicago	535	785	15
Region VI: Dallas	334	475	7
Region VII: Kansas City	186	200	4
Region VIII: Denver	214	262	5
Region IX: San Francisco	363	471	5
Region X: Seattle	131	165	3

Source: OSHA Whistleblower Data - Unaudited

Simultaneously, as whistleblower complaints increased in 2020, Whistleblower Program FTEs decreased from 126 in 2019, to 120 in 2020. Subsequently, OSHA requested 10 new whistleblower investigator FTEs in its FY 2021 budget request to Congress. As of February 28, 2020, the Whistleblower Program had 84 investigator positions available nationwide; however, only 77 positions were filled and 1 of those 77 was military leave. A newly hired investigator started for Region VII effective May 24, 2020, and Region VIII had plans to onboard an investigator in June 2020. Thus, the 5 remaining investigator positions available remain vacant.

The 30 percent increase in whistleblower complaints received during February 1, 2020, through May 31, 2020, caused screenings of whistleblower complaints to proportionately increase as well. As soon as possible upon receipt,

the WIM requires investigators to screen whistleblower complaints for appropriate coverage requirements, timeliness of filing, and the presence of a prima facie allegation, which usually requires preliminary contact with the complainant to obtain additional information.

The 3 investigators we interviewed substantiated this process, stating they prioritized screening of whistleblower complaints received over investigating open cases.

From February 1, 2020, to May 31, 2020, investigators screened and administratively closed 2,220 of the 4,101 whistleblower complaints received, referred 568 to State Plans,¹⁰ and docketed¹¹ 1,133, while 180 whistleblower complaints were still pending screening. On average, it took investigators 10 days from the date a whistleblower complaint was filed to screen and administratively close the 2,220 whistleblower complaints.

Notably, of the 4,101 whistleblower complaints received, 1,618 were COVID-19 whistleblower complaints. Investigators screened and administratively closed 858 of the 1,618, and referred 276 to State Plans. On average, it took investigators 7 days to administratively close COVID-19 whistleblower complaints. In addition, investigators docketed 404 COVID-19 whistleblower complaints for further investigation and 80 whistleblower complaints remained pending a determination as of May 31, 2020 (see Table 2).

¹⁰ State Plans are OSHA-approved workplace safety and health programs operated by individual states or U.S. territories. There are currently 22 State Plans covering both private sector and state and local government workers, and there are six State Plans covering only state and local government workers.

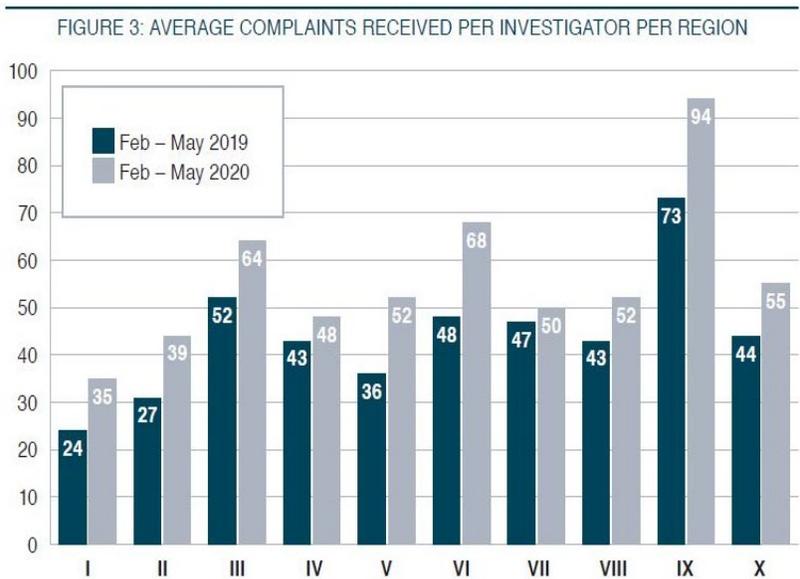
¹¹ To “docket” means to record the case in IMIS, which automatically assigns the local case number, and to formally notify both parties in writing of OSHA’s receipt of the whistleblower complaint and intent to investigate (Whistleblower Investigations Manual, January 28, 2016).

Table 2: 2020 Whistleblower Complaints

	All Whistleblower Complaints	COVID-19 Whistleblower Complaints	%
Received	4,101	1,618	39%
Screened & Administratively Closed	2,220	858	39%
Screened & Referred to State Plans	568	276	49%
Docketed for Investigation	1,133	404	36%
Remain Pending	180	80	44%

Source: OSHA Whistleblower Data – Unaudited

While the total number of whistleblower complaints received increased between February 1, 2020, and May 31, 2020, the average number of whistleblower complaints received per investigator also increased — from 41 between February and May 2019, to 53 during the same period in 2020. All 10 regions experienced an increase in the average number of whistleblower complaints received per investigator. Region I, with the lowest average whistleblower complaints per investigator, increased from 24 to 35, while Region IX, with the highest average whistleblower complaints per investigator, increased from 73 to 94 (see Figure 3).



Source: OSHA Whistleblower Data and Whistleblower Program Roster – Unaudited

As of May 31, 2020, investigators docketed 1,133 whistleblower complaints for further investigation and closed 252 of those investigations. On average, investigators closed those 252 whistleblower complaint investigations within 42 days. However, 881 docketed cases remained open as of May 31, 2020.

Specifically, 404 of the 1,133 whistleblower complaints docketed for further investigation were COVID-19 whistleblower complaints. Investigators closed the investigations on 62 of the 404 whistleblower complaints, leaving 342 COVID-19 whistleblower complaint investigations open as of May 31, 2020 (see Table 3).

Table 3: 2020 Docketed Whistleblower Complaints

	All Whistleblower Complaints	COVID-19 Whistleblower Complaints	%
Docketed Whistleblower Complaints	1,133	404	36%
Closed Investigations	252	62	25%
Remain Open	881	342	39%

Source: OSHA Whistleblower Data - Unaudited

The investigators we interviewed stated most of the whistleblower complaints they screened and docketed for investigation during the COVID-19 pandemic were OSH Act 11(c) related, requiring completion within 90 days of the date the whistleblower complaint was filed.

Our interviews with investigators and a regional supervisory investigator revealed the average open investigations per investigator increased in 2020 due to the COVID-19 whistleblower complaints received. Depending on the region, the investigators reported that open investigations ranged from 15 to 40 in 2019, and 19 to 45 in 2020. Additionally, the investigators stated, in order to screen all the whistleblower complaints being received, they delayed conducting work on already open investigations. The investigators and the regional supervisory investigator believed no more than 20 open investigations at one time would be the optimal caseload per investigator.

OSHA'S ACTIONS TO MANAGE CASELOADS

Prior to the COVID-19 pandemic, the Whistleblower Program and DOL's Office of the Solicitor authorized a triage pilot in Region II.¹² The Region II triage pilot, effective May 1, 2020, was intended to expedite the screening process by allowing an investigator who screens a whistleblower complaint and determines it untimely or needing to be referred to a state plan, to send a notification letter to the complainant that includes the reason(s) for closure, instead of requiring the investigator to contact the complainant for more information. The pilot only applies to 11(c) whistleblower complaints.

¹² Region II covers New Jersey, New York, Puerto Rico, and U.S. Virgin Islands.

Additionally, to help address and mitigate the impact of lengthy whistleblower complaint investigations, Whistleblower Program officials reassigned older whistleblower complaints from regions with large backlogs of investigations to regions with lesser backlogs. Although whistleblower complaints generally have been assigned to an OSHA regional office based on the complainant's location or where the majority of witnesses appeared to be located, for the most part, investigators have conducted whistleblower complaint investigations remotely via telephonic interviews and emailed supporting documentation. However, Whistleblower Program officials have not utilized a similar approach during the COVID-19 pandemic to more evenly distribute whistleblower complaints.

OIG'S RECOMMENDATIONS

We recommend the Principal Deputy Assistant Secretary for Occupational Safety and Health:

1. Fill the 5 current whistleblower investigator vacancies.
2. Continue to monitor and evaluate the Region II triage pilot and consider extending the triage process to all regions to expedite screening whistleblower complaints.
3. Develop a caseload management plan to more equitably distribute whistleblower complaints received amongst investigators.

SUMMARY OF OSHA'S RESPONSE

OSHA agreed with our recommendations. OSHA's response discusses its recent and continued hiring efforts and its planned use of the pre-pandemic process to address the disparity of whistleblower investigator workloads across regions. OSHA also issued its first directive¹³ on July 20, 2020, to establish policies and procedures for the creation, implementation, and evaluation of whistleblower protection pilot programs.

OSHA's written response to our draft report is included in its entirety in Appendix B.

¹³ OSHA Instruction CPL 02-03-010, "Whistleblower Protection Program Pilot Procedures," issued July 20, 2020

We appreciate the cooperation and courtesies OSHA extended us during this audit. OIG personnel who made major contributions to this report are listed in Appendix C.



Elliot P. Lewis
Assistant Inspector General for Audit

EXHIBIT 1: WHISTLEBLOWER RETALIATION STATUTES

Year	Name	Statute
1970	Section 11(c) of the OSH Act (OSHA)	29 U.S.C. § 660(c)
1972	Federal Water Pollution Control Act (FWPCA)	33 U.S.C. § 1367
1974	Energy Reorganization Act of 1974 (ERA)	42 U.S.C. § 5851
1974	Safe Drinking Water Act (SDWA)	42 U.S.C. § 300j-9(i)
1976	Solid Waste Disposal Act (SWDA)	42 U.S.C. § 6971
1976	Toxic Substances Control Act (TSCA)	15 U.S.C. § 2622
1977	Clean Air Act (CAA)	42 U.S.C. § 7622
1977	International Safe Container Act (ISCA)	46 U.S.C. § 80507
1980	Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)	42 U.S.C. § 9610
1982	Surface Transportation Assistance Act (STAA)	49 U.S.C. § 31105
1986	Asbestos Hazard Emergency Response Act (AHERA)	15 U.S.C. § 2651
2000	Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21)	49 U.S.C. § 42121
2002	Pipeline Safety Improvement Act (PSIA)	49 U.S.C. § 60129
2002	Sarbanes-Oxley Act (SOX)	18 U.S.C. § 1514A
2007	Federal Railroad Safety Act (FRSA)	49 U.S.C. § 20109
2007	National Transit Systems Security Act (NTSSA)	6 U.S.C. §1142
2008	Consumer Product Safety Improvement Act (CPSIA)	15 U.S.C. § 2087
2010	Affordable Care Act (ACA)	29 U.S.C. § 218c
2010	Consumer Financial Protection Act (CFPA)	12 U.S.C. § 5567
2010	Seaman's Protection Act (SPA)	46 U.S.C. § 2114
2011	FDA Food Safety Modernization Act (FSMA)	21 U.S.C. § 399d]
2012	Moving Ahead for Progress in the 21 st Century Act (MAP-21)	49 U.S.C. § 30171
2019	Taxpayer First Act (TFA)	26 U.S.C. § 7623(d)

APPENDIX A: SCOPE, METHODOLOGY, & CRITERIA

SCOPE

Our audit covered the OSHA Whistleblower Program’s actions to address the risks and challenges presented by the COVID-19 pandemic to the whistleblower complaint process. In addition, our audit covered whistleblower complaint data from February 1, 2019, to May 30, 2019, and also from February 1, 2020, to May 31, 2020, provided by OSHA as of June 5, 2020.

METHODOLOGY

To answer our audit objective, we conducted interviews with management officials from OSHA’s Whistleblower Program, one regional supervisory investigator, and 3 investigators; and reviewed internal notifications issued in response to COVID-19 and other related documentation. We also reviewed prior audit reports, news articles related to possible COVID-19 impacts on the Whistleblower Program, and recent legislation passed to address COVID-19. Additionally, using the data OSHA provided, we analyzed and compared whistleblower complaint data from February 1, 2019, to May 30, 2019, and February 1, 2020, to May 31, 2020, to determine the whistleblower complaint numbers identified in this report.

We assessed the reliability of computer-processed data provided by OSHA. Through our testing, we noted insignificant differences between the whistleblower complaints documented in IMIS versus the number of whistleblower complaints Whistleblower Program officials provided during interviews.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

CRITERIA

- Whistleblower Investigations Manual, dated January 28, 2016
- OSH Act of 1970 Section 11(c)
- Section 11(c) AHERA and ISCA Appeals Program Directive
- OSHA COOP Plan Appendix V: Pandemic Influenza Response Plan

APPENDIX B: AGENCY'S RESPONSE TO THE REPORT

U.S. Department of Labor

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



August 10, 2020

MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General for Audit

FROM: LOREN E. SWEATT *Loren Sweatt*
Principal Deputy Assistant Secretary

SUBJECT: Response to OIG's Draft Report "COVID-19: OSHA Needs to Improve Its Handling of Whistleblower Complaints during the Pandemic"

This memorandum is in response to your July 23, 2020, transmittal of the Office of the Inspector General (OIG) Audit Report, "OSHA Needs to Improve Its Handling of Whistleblower Complaints during the Pandemic." I appreciate this opportunity to provide comments on the findings and recommendations in the draft report.

Strengthening the Whistleblower Protection Program (WPP) continues to be one of OSHA's top priorities. I appreciate the OIG's recognition that the COVID-19 pandemic has significantly increased the number of whistleblower complaints OSHA has been receiving, adding to the challenge of completing investigations in a timely manner. I also appreciate the OIG's recognition that OSHA is constantly looking for ways to improve the WPP, including through the proper utilization of pilot initiatives and by seeking public input through stakeholder meetings.

OSHA is constantly working to strengthen the WPP, and has made significant progress since the OIG's previous audits of the program. As the data show, OSHA has already processed more than 50 percent of COVID-19-related complaints, with an average screening time of 10 days, which is below the Agency's FY 2020 Operating Plan performance measure of 13 days. In addition, OSHA continues to implement proven strategies to improve its efficiency and effectiveness, despite the added workload created by the pandemic. An example of this is the successful Alternative Dispute Resolution (ADR) Program. In addition, updates to the Whistleblower Investigations Manual (WIM) are close to completion, an update of which has not been done since September 2011. In the meantime, the agency continues to issue new guidance to investigative staff, strengthen our collaborative relationships with our partner agencies, and develop new customer service and outreach tools, including a formal Outreach Plan.

The OIG's draft report in multiple places uses a phrase to the effect of workers' reporting of "workplace safety violations, including those violations involving social distancing and personal protective equipment." We would recommend this language be refined as "potential violations." Whether a violation has occurred is a fact-intensive inquiry, especially under the general duty clause, which also requires a determination of whether reasonable means of abatement are available. Thus we do not believe it is accurate to state that an employee complaint, including one regarding COVID-19 guidelines, necessarily means a workplace-safety violation has occurred.

The OIG's draft report presents three recommendations. OSHA agrees with them. The following responses and/or action items outline OSHA's actions regarding these recommendations:

Recommendation 1: Fill the five current whistleblower investigator vacancies.

OSHA Response: OSHA agrees with this recommendation. The agency is focused on implementing proven strategies to improve the overall performance of its WPP. To this end, OSHA was approved to hire five ADR Coordinator positions in Regions that did not have ADR Coordinators in the FY 2020 budget. OSHA has filled two of these positions and is actively recruiting to fill the remaining appropriated vacant positions. This can take the form of a promotion, converting a position to ADR, or USA Jobs posting. OSHA regions are working to fill these positions quickly while still following all federal hiring procedures. As mentioned above, ADR has proven beneficial to the program and OSHA remains committed to ensuring that the parties have alternative methods to resolve complaints. Furthermore, OSHA has requested an additional ten whistleblower investigator FTE in the FY 2021 Budget request; these additional resources are critical to attaining OSHA's goal of improved customer service and worker protection.

Recommendation 2: Continue to monitor and evaluate the Region II triage pilot and consider extending the triage process to all regions to expedite screening whistleblower complaints.

OSHA Response: OSHA agrees with this recommendation. Just recently, on July 20, 2020, OSHA issued the first directive on developing, monitoring, and evaluating pilot programs, CPL 02-03-010, Whistleblower Protection Program Pilot Procedures. This OSHA Instruction provides standard procedures for developing, approving, implementing, and monitoring WPP-related pilots throughout the agency, as well as evaluation procedures at the end of a pilot. OSHA will ensure that the Region II triage pilot, and any other pilot, whether regional or national, follows the prescribed instructions provided in this directive and an evaluation will be conducted at the conclusion of the pilot.

Recommendation 3: Develop a caseload management plan to more equitably distribute whistleblower complaints received amongst investigators.

OSHA Response: As noted in the OIG's report, OSHA began a process, pre-pandemic, to address the disparity of whistleblower investigative workload across Regions. This process entails assessing regional workloads and reassigning cases across Regional boundaries in order to more effectively and efficiently complete whistleblower investigations. The resulting outcomes are improved customer service, reduced case inventories and reduced case backlogs, and improved/shorter investigative lapse times. This process began early this year. The agency plans to continue this process until a more reasonable balance exists across the Regions.

I appreciate, once again, the OIG's evaluation of OSHA's WPP, especially during the COVID-19 pandemic, and look forward to continue working together to further improve this important program.

APPENDIX C: ACKNOWLEDGEMENTS

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