



August 1, 2011

The ability of workers to speak out and exercise their legal rights without fear of retaliation is essential to many of the legal protections and safeguards that all Americans value. Whether the safety of our food, drugs, or workplaces, the integrity of our financial system or the security of our transportation systems, whistle blowers have contributed to ensuring that our laws are fully and fairly executed.

OSHA enforces 21 whistleblower laws covering areas as diverse as workplace safety, the environment, consumer products, nuclear safety, the financial system, food safety, and transportation infrastructure (see below laws). In 2009 and again in 2010, the Government Accountability Office (GAO) audited OSHA's Office of Whistle blower Protection Program on its program performance. The GAO found significant problems with OSHA's transparency and accountability, training for investigators and managers, and the internal communication and audit program.

OSHA is committed to correcting these problems. To identify the best ways to address these issues, and to identify additional problems with the program, OSHA commissioned an internal "Top to Bottom" review of the program. This was an extensive review that examined national and regional program structure, operational procedures, investigative processes, budget, equipment, and personnel issues. The review confirmed many of the GAO's conclusions, identified additional administrative and organization problems, and made a number recommendations.

Based on the GAO audits and OSHA's Top to Bottom review, the agency is announcing the following significant changes in the program.

Restructuring

OSHA's Whistleblower Protection Program will report directly to the Assistant Secretary instead of being housed in the Directorate of Enforcement. In addition, earlier this year, OSHA launched a pilot program for one of its regional whistleblower offices that realigns all of its investigators under regional supervisory investigators and an Assistant Regional Administrator. The prospective of this restructure is to increase consistency, timely investigations, and better customer service.

Since FY 2011, OSHA has hired more than 25 new investigators and appointed a new Acting Director. For its FY 2012 budget, OSHA established a separate line item for the whistleblower program to better track and hold accountable its activities and accomplishments, and requested a \$6.1 million increase that will fund an additional 45 investigators.

In FY 2012, OSHA will implement a more robust outreach program that increase transparency and collaboration with stakeholders. Based on current investigations data, OSHA will provide education and compliance assistance to those industries with significant complaint activity.

Training

To begin to address its training deficiencies, OSHA held a two-week basic investigative course, and hosted four separate webinars on its new statutes, e.g., Food Safety Modernization Act, Consumer Financial Protection Act, and amendments to Sarbanes Oxley Act (SOX) made by the Dodd-Frank Act.

Next month, OSHA will hold a national whistleblower training conference in September which will be attended by all whistleblower investigators from both Federal and State plans, as well as by DOL solicitors that work on whistleblower cases. In addition, OSHA will offer several other investigator training events, and will strive to ensure that all investigators and supervisors who have not received the mandatory training courses will receive them by the end of the calendar year.

Program Policy

OSHA revised and will soon issue a new edition of the Whistleblower Investigations Manual that updates current procedures and includes information on the new laws enacted since the Manual was last updated in 2003. This new manual will provide further guidance on the enforcement program to help ensure consistency and quality of investigations. Some of the key changes include:

- Requirement that investigators make every attempt to interview the complainant in all cases; and that as part of the intake process, the supervisor verify that applicable coverage requirements have been met and that the *prima facie* elements of the allegation have been properly identified.
- Clarification that whistleblower complaints under any statute may be filed orally or in writing, and in any language.
- Additional clarifications of the investigative process including method and recording of interviews, and processing of dually-filed 11 (c) complaints in state plan states.
- New chapters for processing complaints filed under Federal Railroad Safety Act (FRSA), 49 U.S.C. §20109, National Transit Systems Security Act (NTSSA), 6 U.S.C. §1142, and Consumer Product Safety Improvement Act (CPSIA), 15 U.S.C. §2087, as well as significant updates to the Surface Transportation Assistance Act (STAA) and SOX chapters, which incorporate statutory amendments and developments in the law.
- Expanded guidance on dealing with uncooperative respondents and issuing administrative subpoenas during whistleblower investigations.

Internal Systems

In order to improve the program's internal control procedures, the data collection system has been modified and the audit program is being strengthened to ensure that complaints are properly handled and on a timely basis. Specifically, OSHA has revised its information database (IMIS) to include additional information about screened-out whistleblower complaint cases, and their reasons. In FY 2012, OSHA will complete an audit on the effectiveness and results of this new feature.

In addition, OSHA has also revised its Management Accountability Program (MAP), to include a more expanded section on its whistleblower complainant activities. This new MAP or audit program now includes 21 specific areas that OSHA will be reviewing. In FY 2011/2012, OSHA will supplement the whistleblower section of the MAP to include a regional self-audit requirement, a national focus audit process, a national comprehensive review, and expansion of its IMIS fields that will better track the progress of the investigations.

OSHA eliminated its backlog of more than 150 complaints on appeal; some of these cases were on appeal since 2008. The agency is now developing a written directive to ensure consistency and timeliness of the appeals process.

I believe these changes, combined with recent hiring of 25 new investigators, will significantly improve the effectiveness of the program and will strengthen OSHA's enforcement of the 21 whistleblower laws that Congress has given OSHA to administer.

A handwritten signature in black ink, appearing to read 'D. Michaels', written over a horizontal line.

David Michaels, PhD, MPH
Assistant Secretary of Labor for OSHA

Whistleblower Laws Enforced by OSHA

1. Section II(c) of the Occupational Safety and Health Act, 29 U.S.C. §660(c)
2. Asbestos Hazard Emergency Response Act (AHERA), 15 U.S.C. §2651
3. International Safe Container Act (ISCA), 46 U.S.C. §80507
4. Surface Transportation Assistance Act (STAA), 49 U.S.C. §31105
5. Clean Air Act (CAA), 42 U.S.C. §7622
6. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §9610
7. Federal Water Pollution Control Act (FWPCA), 33 U.S.C. §1367
8. Safe Drinking Water Act (SDWA), 42 U.S.C. §300j- 9(i)
9. Solid Waste Disposal Act (SWDA), 42 U.S.C. §6971
10. Toxic Substances Control Act (TSCA), 15 U.S.C. §2622
11. Energy Reorganization Act (ERA), 42 U.S.C. §5851
12. Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21), 49 U.S.C. §42121
13. Corporate and Criminal Fraud Accountability Act, Title VIII of the Sarbanes-Oxley Act (SOX), 18 U.S.C. §1514A (SOX)
14. Pipeline Safety Improvement Act (PSIA), 49 U.S.C. §60129
15. Federal Railroad Safety Act (FRSA), 49 U.S.C. §20109
16. National Transit Systems Security Act (NTSSA), 6 U.S.C. §1142
17. Consumer Product Safety Improvement Act (CPSIA), 15 U.S.C. §2087
18. Affordable Care Act (ACA), 29 U.S.C. §218C
19. Consumer Financial Protection Act of 2010 (CFPA), Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 12 U.S.C. §5567
20. 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
21. FDA Food Safety Modernization Act (FSMA), 21 U.S.C. §399d