

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 14-60

May 21, 2014

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Anne Purcell, Associate General Counsel

SUBJECT: OSHA referred charges

This memorandum is to inform you that the Agency has entered into a program with the Occupational Safety and Health Administration (OSHA). During the OSHA intake process, complainants seeking to assert an OSHA whistleblower claim often learn that their charge would be untimely under Section 11(c) of OSHA, which establishes a 30-day statute of limitations. In these situations, the complainants either decline to file charges or their charges are dismissed because they were filed outside of the 30-day period. OSHA estimates that this happens in 300 to 600 cases each year. It is likely that some of these cases may also raise claims arising under the National Labor Relations Act; for example, instances of employer retaliation for group complaints concerning unsafe working conditions. These complaints may still be timely under our six-month statute of limitations. To address these situations, on March 6, 2014, OSHA Assistant Secretary David Michaels signed a memorandum, a copy of which is attached, agreeing to notify all complainants who file an untimely whistleblower charge of their right to file a charge with the NLRB.

OSHA agents will be provided talking points briefly describing the NLRB and providing our contact information for use in telephone or in-person conversations with complainants with untimely whistleblower claims. Similar information will be included in OSHA's letters administratively closing untimely whistleblower charges. Copies of these documents are attached.

To the extent possible, we would like to track the number of contacts we receive and the number of charges we docket as a result of OSHA referrals. In cases where the IO contact indicates that there was activity relating to safety and health, or there is some other reason to believe the IO contact was referred to our Agency through this program, the IO officer should inquire if the IO contact was referred to our Agency by another agency and select "Referred by OSHA" in the Method of Contact field in the IO Inquiry record if the response is affirmative. Note that we are also adding a "Referred by Other Agency" in the pick list in the Method of Contact field. This should be used for referrals from all agencies other than OSHA. In addition, the NLRB has established a separate toll free number for use by those referred by OSHA. That number is 1-844-

762-6572.¹ While our agents will not be giving this number out, it is important to remind contacts in the local OSHA offices that they should refer employees to this number. In connection with this program, Regions may be contacted by local OSHA offices for training or information about the National Safety Council (NSC) (6)(2)(g)(i)(ii)(A)(7)(a)(2)(b)(s)(T)-00

Section 11(c) provides that "no person shall discharge or in any manner discriminate against

employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act." Employees may file complaints with OSHA alleging retaliation prohibited by 11(c).

Although there may be some individual safety and health activities which may be protected solely under the OSH Act, many employee safety activities involve concerted activity protected under the NLRA and therefore may be protected under both Acts. Given this possible overlap, OSHA and the NLRB signed an MOU in 1975, outlining the procedures for handling worker safety retaliation complaints file with both or either agency. The MOU generally provides that

<http://www.nlr.gov> and <http://www.dhs.gov> for more information on the NLRB's new process for handling complaints.

667-NLRB. Closing letters for screened out complaints will also include information regarding contacting the NLRB, EEOC, or the State or local fair employment agency.

11(c) UNTIMELY Administrative Closure Letter

[Date]

[Complainant Name]

[Street Address]

[City, State ZIP]

Re: [Company Name] / [Complainant] / Case No. [1-2345-02-001]

Dear [Complainant]:

This is to confirm your telephone conversation of [date] with [Investigator Name] of my staff. It is my understanding that [Investigator Name] explained to you that we are unable to pursue investigation of your claim because [your complaint was not filed within the 30-day time period required by Section 11(c)(2) of the Occupational Safety and Health Act], and you concur with the decision to close the matter. However, OSHA recommends that you contact the National Labor Relations Board (NLRB) as soon as possible to inquire about filing a charge alleging unfair labor practices. The NLRB is responsible for enforcing employee rights under the National Labor Relations Act (NLRA). Employees are protected under the NLRA to act together to try to improve working conditions, including safety and health conditions, even if the employees aren't in a union. T

Referring Untimely 11(c) Complainants to the NLRB
Talking Points for Phone or In-Person Conversations

Once you have completed discussing the employee's rights and options under Section 11(c), please recommend that the employee contact the NLRB. The following points should be included in your discussion.

- OSHA recommends that you contact the NLRB as soon as possible, to inquire about filing a charge alleging unfair labor practices.
- The time limit to file a charge with the NLRB is 6 months from the unfair labor practice.
- The NLRB is responsible for enforcing employee rights under the National Labor Relations Act (NLRA). The NLRA protects employee rights to act together to try to improve working conditions, including safety and health conditions, even if the employees aren't in a union.
- OSHA may not determine whether you are covered by the NLRA. Please contact the NLRB to discuss your rights under the NLRA.
- You may reach the NLRB at 1-844-762-6572.
- You may also locate your nearest NLRB Field Office at www.nlr.gov/who-we-are/regional-offices (OSHA may want to look up the nearest office and provide the number and address).