

BRIEFLY...

Highlights of Report Number 02-10-202-10-105, to the Assistant Secretary for Occupational Safety and Health.

WHY READ THE REPORT

The Occupational Safety and Health Administration (OSHA) created the Whistleblower Protection Program to enforce Section 11(c) of the Occupational Safety and Health (OSH) Act of 1970, which prohibits employers from retaliating against employees who exercise their rights under the OSH Act which include reporting safety or health violations to OSHA and participating in any proceeding related to an OSHA inspection. Since 1983, OSHA has been assigned whistleblower provisions under 16 additional statutes related to the trucking, nuclear power, pipeline, environmental, rail, consumer product safety, and securities industries. OSHA investigates complaints of discriminatory actions taken against employees who “blow the whistle” under the OSH Act or any of these additional whistleblower statutes.

WHY OIG CONDUCTED THE AUDIT

Over the past 20 years, we have issued three reports related to OSHA’s whistleblower program. Our findings ranged from incomplete case files to settlement procedures that may have deprived complainants of full and appropriate relief. In addition, GAO issued an audit report in January 2009 and found that OSHA lacked reliable data on investigations and its investigators lacked the resources, training and legal assistance required to perform investigations.

We conducted an audit of OSHA’s whistleblower program to answer the question: To what extent did OSHA ensure that complainants received appropriate investigations under the Whistleblower Protection Program?

READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to:
<http://www.oig.dol.gov/public/reports/oa/2010/02-10-202-10-105.pdf>.

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COMPLAINANTS DID NOT ALWAYS RECEIVE APPROPRIATE INVESTIGATIONS UNDER THE WHISTLEBLOWER PROTECTION PROGRAM

WHAT OIG FOUND

During the audit period, 77 percent of the Whistleblower complaints under OSHA 11(c), Sarbanes-Oxley Act (SOX), and Surface Transportation Assistance Act (STAA) were either dismissed or withdrawn. Settlements which accounted for 21 percent were generally minimal, and the remaining 2 percent were found to have merit.

OSHA did not always ensure that complainants received appropriate investigations under the Whistleblower Protection Program. We estimate that 80 percent of applicable investigations under OSHA 11(c), SOX and STAA did not meet one or more of eight elements from the Whistleblower Investigations Manual that were essential to the investigative process. OSHA can improve investigations under the Whistleblower Protection Program if it (1) supervises investigations adequately, (2) manages regional investigators’ caseloads adequately, (3) oversees and monitors investigations for compliance with policies and procedures, (4) develops performance measures or indicators for the whistleblower program, and (5) provides adequate guidance to investigators. As a result of not providing complainants with thorough investigations, OSHA could not provide assurance that complainants were protected as intended under the various whistleblower protection statutes.

WHAT OIG RECOMMENDED

We recommended that the Assistant Secretary for Occupational Safety and Health implement controls to oversee and monitor investigations and caseloads, develop specific performance measures, update the Whistleblower Investigations Manual, and designate subject matter experts with technical competencies in specific whistleblower statutes.

In response to our draft report, the Assistant Secretary stated that he agreed with the recommendations. OSHA is in the process of performing a top-to-bottom review, including assessing whether to restructure the Office of the Whistleblower Protection Program. The Assistant Secretary stated the review will incorporate the valuable perspective and recommendations received from this audit report.