

OSHA Pilots New, Expedited Whistleblower Review Process In Western Region

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Agency allows complainants to request judicial review to speed process

The U.S. Department of Labor is launching a new pilot process in its Western region. The “Expedited Case Processing Pilot” allows a complainant covered by certain statutes to ask the department’s [Occupational Safety and Health Administration](#) to cease its investigation and issue findings for the department’s [Office of Administrative Law Judges](#) to consider.

The move is possible only if the case meets certain criteria. Administrative law judges may order the same remedies as OSHA, including back pay, compensatory damages, punitive damages where authorized, attorneys’ fees and reinstatement.

The department acknowledges that OSHA’s investigation process can take time, and complainants may be able to receive a determination more quickly without losing their rights to a hearing by electing to expedite OSHA’s processing of their claims.

“The ultimate goal is to bring about quicker resolution for whistleblowers and their employers regarding claims of retaliation for reporting safety and other concerns on the job,” said Barbara Goto, OSHA’s regional administrator in San Francisco.

The pilot became effective Aug. 1, in the agency’s San Francisco region, which includes California, Nevada, Arizona, Hawaii, and the islands of American Samoa, CNMI and Guam.

Once a complainant requests expedited processing, the case will be assessed for the following criteria:

- The claim is filed under a statute that allows for *de novo* review by an administrative law judge.
- Depending on the statute, 30 or 60 days have passed from the date the complainant first filed with the claim with OSHA.
- OSHA has interviewed the complainant.

- Federal investigators have evaluated the complaint and the complainant's interview to determine if the basic elements of a retaliation claim exist.
- Both the complainant and the respondent have had the opportunity to submit written responses, meet with an OSHA investigator and present statements from witnesses.
- The complainant has received a copy of the respondent's submissions and had an opportunity to respond.

Once OSHA officials determine that these criteria are met, they will evaluate the claim to determine – based on the information gathered up to the date of the complainant's request for expedited processing – whether reasonable cause exists to believe that a violation of the statute occurred. OSHA officials will then take one of three actions: dismiss the claim and inform the complainant of the right to proceed before an administrative law judge; issue merit findings as expeditiously as possible; or deny the request.

OSHA enforces the whistleblower provisions of 22 statutes protecting employees who report violations of various airline, commercial motor carrier, consumer product, environmental, financial reform, food safety, health care reform, nuclear, pipeline, worker safety, public transportation agency, railroad, maritime and securities laws.

Employees who believe that they have been retaliated against for engaging in protected conduct may file a complaint with the secretary of labor to request an investigation by OSHA's Whistleblower Protection Program. Detailed information on employee whistleblower rights is available at <http://www.whistleblowers.gov>.

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