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Proposed Changes to DOL's Administration of Whistleblower Protections: Will OSHA Only Be Investigating Retaliation Complaints Under the OSH Act?

BY HEMA STEELE

The Occupational Safety and Health Act (OSH Act) has long protected employees who raise concerns about workplace health and safety. Indeed, Section 11(c) of the Act, codified at 29 U.S.C. § 660(c), requires the Secretary for the United States Department of Labor (DOL) to investigate allegations from an employee who claims they were discriminated against because they filed a complaint or otherwise engaged in protected activity related to safety or health conditions at work. Historically, the Occupational Safety and Health Administration (OSHA) has been the agency responsible for investigating such retaliation claims under the OSH Act. But over time, Congress has repeatedly expanded the Secretary of Labor's whistleblower enforcement authority. Today, OSHA investigates retaliation complaints not only under the OSH Act, but also under 24 additional federal statutes covering a wide range of industries and activities, including: consumer products, motor vehicles, food safety, environmental protection, fraud and financial issues, health insurance, and transportation services.

But OSHA's Fiscal Year 2027 Budget Justification included a little-noticed provision suggesting that responsibility for administering the retaliation provisions of those 20+ other, non-OSH Act statutes will be transferred to a new DOL Office of Civil Rights.

How OSHA's Whistleblower Protection Programs Works

Responsibility for investigating retaliation claims currently falls to OSHA's Directorate of Whistleblower Protection Programs (WPP). It is staffed by investigators across the country who investigate retaliation allegations under all 25 federal retaliation statutes within OSHA's jurisdiction. Those investigations typically include several core steps.

First, investigators evaluate whether the complaint meets the minimum statutory and regulatory requirements to proceed. If the threshold requirements are met, OSHA solicits a position statement from the employer and allows the complainant to submit a rebuttal. Investigators may then interview the complainant, management representatives, current or former employees, and other individuals who may have relevant information. Documentary evidence is reviewed, and in some cases, OSHA attempts to facilitate a pre-litigation resolution

through mediation.

At the end of the process, the investigator prepares a written narrative summarizing the evidence and concluding whether there is sufficient evidence to suggest that retaliation occurred. If the investigator finds no reasonable cause to believe retaliation occurred, OSHA dismisses the complaint. The complainant may appeal that dismissal by requesting a review from OSHA's Directorate of WPP. The directorate may uphold the dismissal, send the matter back for further investigation, or refer the case to the Office of the Solicitor for litigation.

If the investigator instead finds reasonable cause to believe retaliation occurred, the case is referred directly to the Office of the Solicitor, which determines whether to pursue litigation on the complainant's behalf.

Staffing and Caseload Pressures

OSHA currently employs approximately 114 full-time employees dedicated to the WPP. In recent years, the program has seen a notable increase in workload. In 2025, OSHA docketed 3,352 whistleblower complaints across the statutes it enforces. That figure represents a significant increase over the average of 3,027 complaints per year that were docketed from 2018 through 2023.

Notably, OSH Act cases continue to dominate OSHA's whistleblower docket. According to the agency, on average 70% of the retaliation complaints it receives are related to the OSH Act, while the remaining 30% of complaints come from the other 24 anti-retaliation provisions that OSHA administers.

OSHA's FY 2027 Budget Proposal and Organizational Changes

Against this backdrop, OSHA recently submitted its FY 2027 budget proposal that includes a \$49.6 million reduction in agency funding. A component of that proposed reduction involves restructuring how whistleblower investigations are administered.

Under the proposal, OSHA would shift 38 of its 114 full-time whistleblower employees to a newly created Office of Civil Rights (OCR). This office would oversee whistleblower investigations for retaliation claims arising under non-OSH Act statutes. In addition to administering those non-OSH Act whistleblower programs, OCR is slated to absorb DOL's existing Civil Rights Center, which enforces civil rights laws protecting DOL employees, applicants, and participants in DOL-funded programs. OCR will also take over administration of the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) and Rehabilitation Act Section 503 – the remaining vestiges of the Office of Federal Contractor Compliance Program that was abolished by President Trump through Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*. DOL has requested funding for 110 full-time employees on behalf of OCR for FY 2027.

If the proposal were implemented, OSHA would retain 76 full-time employees – approximately 67% of its current whistleblower staff – to continue handling retaliation claims arising under the OSH Act. Given that OSH Act complaints represented 62-76% of all docketed whistleblower cases from 2018 through 2023, reallocating investigators in roughly the same proportion tracks with recent enforcement data and may be intended to align resources more closely with workload.

Key Takeaways for Employers

While the proposal does not eliminate whistleblower protections or investigative authority, it signals a meaningful shift in how DOL may organize its enforcement resources going forward. For employers, the practical impact may include changes in investigator assignment, internal processes, and potentially the pace of investigations for non-OSH Act retaliation claims.

Regardless of any restructuring, the fundamental risk to employers remains unchanged: DOL continues to field a steady stream of retaliation claims, and the Conn Maciel Carey team's own interactions with whistleblower investigators confirms that investigators' caseloads continue to increase. Indeed, the ranks of full-time employees supporting OSHA's WPP dropped from 145 in 2023 down to 114 in 2025, despite a steady rise in the agency's receipt of docketed complaints in that time period. These investigations often involve extensive document production, multiple interviews, and coordination with the investigator. Employers should therefore continue to train managers on retaliation risks, carefully document their adverse employment decisions, and consult counsel early when faced with a whistleblower complaint.

The practical effect of this proposal is currently unknown. The DOL has not yet published any preliminary guidance on how operations of the OCR might differ from DOL's current WPP. Moreover, it's unclear if or how investigative duties might be shared by OSHA and OCR investigators if a complaint were to allege retaliation under the OSH Act and one or more other whistleblower statutes.

As the budget process moves forward, Conn Maciel will monitor whether these proposed changes are adopted and how they are ultimately implemented.