

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210




Reply to the attention of:

JAN 9 2010

MEMORANDUM FOR: REGIONAL ADMINISTRATORS
WHISTLEBLOWER PROGRAM MANAGERS

THROUGH: LOREN SWEATT 
Deputy Assistant Secretary

FROM: FRANCIS YEBESI,  Acting Director
Directorate of Whistleblower Protection Programs

SUBJECT: IMIS Recording of Whistleblower Complaints Initially Filed with
Agencies Other Than OSHA

This memorandum clarifies the procedures for accepting and recording whistleblower complaints initially filed with an agency other than OSHA, including the date to be entered into the Information Management Information System (IMIS). This clarification does not affect the date by which the timeliness of a complaint is calculated.

I. BACKGROUND

When an employee mistakenly files a timely retaliation complaint relating to a whistleblower statute enforced by OSHA with another agency that does not have the authority to grant relief,¹ and OSHA receives the complaint from the other agency or the complainant after the filing period has expired under the relevant whistleblower statute,² it may consider the complaint timely-filed under equitable tolling principles. In other words, OSHA may base its timeliness determination on the date that the complaint was filed with the other agency, not the date that OSHA received the complaint.³ *Whistleblower Investigations Manual*, Chapter 2, par. IV.C.4.

¹ As examples, filing a complaint under Section 11(c) of the Occupational Safety and Health Act (Section 11(c)) with the Equal Employment Opportunity Commission (EEOC), or under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21) with the Federal Aviation Administration (FAA), or under the Seaman's Protection Act (SPA) complaint with the United States Coast Guard (USCG).

² E.g., after 30 days for Section 11(c), after 90 days for AIR 21, or after 180 days for SPA.

³ Filing a whistleblower complaint with an agency or court that can provide relief to the complainant for retaliation, such as filing with a State plan agency (where there is no dual filing) or the NLRB, does not toll the filing periods of the OSHA whistleblower statutes. Thus, if a complainant has filed a complaint with an agency or court which can provide relief for retaliation and OSHA receives the complaint after the filing period under the OSHA whistleblower statute has passed, the case must be dismissed for untimeliness. *Whistleblower Investigations Manual*, Chapter 2, par. IV. D.6.

A question has arisen regarding how the date that the complaint was filed in these cases should be recorded in IMIS in order to both (1) accurately reflect the date that the complaint was filed with the other agency (which OSHA relies on in its timeliness determination) and (2) accurately reflect the date on which OSHA received the complaint (which is a critical data point for measuring the length of OSHA's investigation and OSHA's achievement of certain performance measures). The instruction below provides guidance on entering this information in IMIS.

II. INSTRUCTION

When OSHA receives a whistleblower complaint that an employee mistakenly filed within the filing period for the relevant whistleblower statute with another agency that does not have the authority to grant relief, OSHA's staff will record in the IMIS *Date Complaint Filed* field the date that OSHA received the complaint. The date that the complaint was originally filed with the other agency will be noted in the IMIS memo field as well as in the case file (e.g., in a Report of Investigation or memo-to-file).⁴

In evaluating the timeliness of such a complaint, OSHA will continue to apply equitable tolling principles as outlined above and in the *Whistleblower Investigations Manual*.

⁴ If OSHA receives a complaint within the filing period for the relevant whistleblower statute that was initially filed with another agency, OSHA would find the complaint as timely without the need to rely on equitable tolling principles and should record the date the complaint was filed in IMIS as the date that OSHA received the complaint. See Memorandum [Coordination with Federal Partner Agencies](#) (October 3, 2017).