

# **Chapter 2**

## **Intake and Evaluation of Complaints**

- I.** **Scope.** This chapter explains the general process for receipt of discrimination complaints under 88.9(3); screening and docketing of complaints; initial notification to complainants and respondents; the scheduling of investigations; and recording the case data in OSHA's Integrated Management Information System (IMIS).
- II.** **Receipt of Complaint.** Any applicant for employment, employee, former employee or their authorized representative is permitted to file complaints under IOSH, either orally or in writing with any official of the Iowa Division of Labor (IDOL). If the complainant is unable to file the complaint in English, Iowa OSHA will accept the complaint in any language. Complaints under the jurisdiction of federal discrimination statutes will be forwarded to the U.S. Department of Labor, OSHA Regional Office.
  - A. When a complaint is received, basic information about the complaint must be recorded. Alternatively, the complaint may be referred by telephone to the Investigator for intake. In the Investigator's absence a cover letter with the initial contact date and a Discrimination Questionnaire, with a Release form will be sent to the Complainant and the initial contact information will be put in a pending file.
  - B. Complaints received at the OSHA Regional Office or through other Federal or State governmental units normally are forwarded to the IA.
  - C. Whenever possible, the minimum complaint information should include: the complainant's full name, address, phone number and e-mail address; the respondent company's name, address, phone number and e-mail address; date of filing; date of adverse action; a brief summary of the alleged discrimination addressing the *prima facie* elements of a violation (protected activity, respondent knowledge, adverse action, and a nexus); and, if known, whether a safety, health, or environmental complaint has also been filed with IOSH or other State or Federal enforcement agency.

### **III. Screening and Docketing.**

- A. As soon as possible upon receipt of the complaint, the available information should be reviewed for appropriate jurisdictional requirements, timeliness of filing, and the presence of a *prima facie* allegation. This may require telephone screening with the complainant to obtain additional information. The complainant will be told if the complaint falls under another jurisdiction. Complaints that fall under one of the federal "whistleblower" statutes will be

referred to the USDOL Regional OSHA office. A file of such complaints will be made and logged in the Discrimination Call Tracker and copies kept. The original documents will be sent to the Regional OSHA office and data will not be entered in the IMIS.

- B. Complaints which do not allege a *prima facie* allegation, or are not filed within the statutory time limit, will not be logged if the complainant indicates concurrence with the decision. If the complainant refuses to accept this determination, the case will be logged and subsequently dismissed with appeal rights. Complaints which are not logged, based on the initial screening, will not be assigned a case number or entered into the IMIS. A memorandum will be prepared documenting the screening interview and placed in the dead file.
- C. Cases that are assigned for investigation will be given a Local Case Number which uniquely identifies the case. The IMIS automatically designates the case number when a new complaint is entered into the system.
- D. An opening letter will be sent to the Complainant with all pertinent information for the complaint, date of initial contact, and dual filing rights (if applicable). The name, address, telephone number and e-mail address of the Investigator will be included in the letter.
- E. The respondent notification letter may be hand delivered in person by the Investigator. The letter will be marked “Hand Delivered”. The investigator will attempt to identify and interview Respondent’s witnesses while at the employer’s facility.
  - 1. In certain instances the respondent notification letter with requests for information may be mailed by certified mail, return receipt requested. Notice by mail may be appropriate when authorized by the IA.
  - 2. Prior to sending the notification letter, the investigator will first determine if a compliance inspection is pending under IOSHA. If such an inspection is pending, and the IA requests a short delay, the notification letter will not be delivered/mailed until such inspection has commenced in order to avoid giving advance notice of a potential inspection or interfere with an inspection in progress.

#### **IV. Timeliness of Filing.**

- A. Discrimination complaints must be filed within a specified statutory time frame (30 days) which generally begins when the adverse action takes place. If the discrimination is of a continuing nature, such as harassment or blacklisting, the time period begins when the last act of discrimination occurs. The first day of the time period is the day after the alleged adverse action. Generally, the date a complaint is considered filed is the day the complainant visits, emails, faxes or

telephones an IDOL staff person or verbally tells a CSHO during an inspection. For complaints sent by mail, the date filed is the date of the postmark. If the postmark is absent or illegible, the date filed is the date the complaint is received. If the last day of the statutory filing period falls on a weekend or a State/Federal holiday, or if the IDOL office is closed, the next business day will count as the final day.

- B. Complaints must be filed within 30 days of the adverse action. Complaints filed after this deadline will normally be closed without further investigation. However, there are certain extenuating circumstances which could justify tolling the statutory filing period for equitable principles. If the complainant does not withdraw, a dismissal must be issued if the complaint was untimely and there was no valid extenuating circumstance. The general policy is outlined below, but each case must be considered individually.
- C. An investigation must ordinarily be conducted if evidence establishes that a late filing was due to any of the following (including, but not limited to):
  - 1. The employer has actively concealed or misled the employee regarding the existence of the adverse action or the retaliatory grounds for the adverse action in such a way as to prevent the complainant from knowing or discovering the requisite elements of a *prima facie* case, such as presenting the complainant with forged documents purporting to negate any basis for supposing that the adverse action was relating to protected activity. Mere misrepresentation about the reason for the adverse action is insufficient for tolling.
  - 2. The employee is unable to file within the statutory time period due to debilitating illness or injury and has satisfactory proof of such.
  - 3. The employee is unable to file within the required period due to a natural disaster such as a tornado or flood. Conditions should be such that a reasonable person, under the same circumstances, would not have been able to communicate with an appropriate agency within the filing period.
  - 4. The employee mistakenly filed a timely discrimination complaint with another agency that does not have the authority to grant relief to the whistleblower.
- D. Conditions which will not justify extension of the filing period are, among others:
  - 1. Ignorance of the statutory filing period,
  - 2. Filing of unemployment compensation claims,
  - 3. Filing of workers' compensation claims,
  - 4. Filing a private law suit,
  - 5. Filing a grievance or arbitration action.

**V. Scheduling the Investigation.**

- A. As part of the case process, the investigator will prepare a case file containing the original complaint and other evidentiary materials supplied by the complainant.
- B. The investigator will generally schedule investigations in chronological order of the date filed, taking into consideration economy of time and travel costs, unless otherwise directed by the IA.
- C. When assistance is needed to interview witnesses or obtain evidence, the investigator will contact the IA/Legal Staff who will coordinate as appropriate.