

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 14-60

May 21, 2014

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Anne Purcell, Associate General Counsel

SUBJECT: OSHA referred charges

This memorandum is to inform you that the Agency has entered into a program with the Occupational Safety and Health Administration (OSHA). During the OSHA intake process, complainants seeking to assert an OSHA whistleblower claim often learn that their charge would be untimely under Section 11(c) of OSHA, which establishes a 30-day statute of limitations. In these situations, the complainants either decline to file charges or their charges are dismissed because they were filed outside of the 30-day period. OSHA estimates that this happens in 300 to 600 cases each year. It is likely that some of these cases may also raise claims arising under the National Labor Relations Act; for example, instances of employer retaliation for group complaints concerning unsafe working conditions. These complaints may still be timely under our six-month statute of limitations. To address these situations, on March 6, 2014, OSHA Assistant Secretary David Michaels signed a memorandum, a copy of which is attached, agreeing to notify all complainants who file an untimely whistleblower charge of their right to file a charge with the NLRB.

OSHA agents will be provided talking points briefly describing the NLRB and providing our contact information for use in telephone or in-person conversations with complainants with untimely whistleblower claims. Similar information will be included in OSHA's letters administratively closing untimely whistleblower charges. Copies of these documents are attached.

To the extent possible, we would like to track the number of contacts we receive and the number of charges we docket as a result of OSHA referrals. In cases where the IO contact indicates that there was activity relating to safety and health, or there is some other reason to believe the IO contact was referred to our Agency through this program, the IO officer should inquire if the IO contact was referred to our Agency by another agency and select "Referred by OSHA" in the Method of Contact field in the IO Inquiry record if the response is affirmative. Note that we are also adding a "Referred by Other Agency" in the pick list in the Method of Contact field. This should be used for referrals from all agencies other than OSHA. In addition, the NLRB has established a separate toll free number for use by those referred by OSHA. That number is 1-844-

762-6572.¹ While our agents will not be giving this number out, it is important to remind contacts in the local OSHA offices that they should refer employees to this number. In connection with this program, Regions may be contacted by local OSHA offices for training or information about the National Labor Relations Act, including jurisdiction and exclusions. Regions should respond to these requests as promptly as possible. We also encourage Regions to reach out to local OSHA offices to provide briefings on the NLRB and encourage referrals in appropriate cases.

If you have any questions about this memorandum, please contact your Deputy, AGC or the undersigned.

/s/
A.P.

¹ The number noted in the memorandum signed by Assistant Secretary David Marsh is the established toll free number for all calls. As noted above, OSHA referrals will be through 1-844-762-6572. The OSHA number may also be used by Wage and Hour when referring employees to the NLRB.