

South Carolina Department of Labor, Licensing, and Regulation

Division of OSHA

Office of Occupational Safety and Health

Columbia, South Carolina 29211

MEMORANDUM:

Subject: Updates to South Carolina OSHA’s Whistleblower Manual

References: OSH Directive Number [CPL 02-03-011](#)

Purpose:

This memorandum has been developed to provide revisions made to the South Carolina OSHA’s Whistleblower Manual (2021) and incorporates by reference certain policies and procedures from Federal OSHA’s Whistleblower Investigations Manual (CPL 02-03-011, April 29, 2022) (hereinafter “Federal Manual”).

Noted Revisions/Updates:

A. Generally

1. Wherever the term Integrated Management Information System (IMIS) is used, it shall also include the OSHA IT Support System (OITSS), such that it reads “IMIS/OITSS”

B. Chapter 1: Preliminary Matters

1. Chp. 1.VIII.D.8 will be added to include “Preparing and sending correspondence, subpoenas, forms, etc., as needed for whistleblower files.”

C. Chapter 2: Intake and Evaluation of Complaints

1. Chp. 2.II is amended to add the language, “SC OSHA will accept the complaint in any language.”
2. Chp. 2.III.B. is amended to add the following:
 - to the first paragraph, “If needed, the Chief Counsel will conduct a screening interview, via telephone or email, to obtain additional information. The screening interview must be documented in ReLaes;
 - in the second paragraph, “When a complaint is thus ‘screened out,’ the Administrative Staff will appropriately enter the administrative closure into the Integrated Management Information System (IMIS) or the OSHA IT Support System (OITSS), and the South Carolina Department of Labor, Licensing and Regulation’s Regulatory Licensing and Enforcement System (ReLaes).”
 - language in paragraphs D., D.1, and D.2 on pages 41-42 of the Federal Manual.

3. Chp. 2.III.C. is amended to read, “The terms ‘to docket’ or ‘track’ means to record the case in ReLaes, which automatically assigns the local case number, and IMIS/OITSS.”
4. Chp. 2.III.C.4 will be added to include the language in Chapter 3.VIII (p. 48-49) of the Federal Manual.
5. Chp 2.III.D.1.c will be amended to as follows, “A copy of the 11(c) Whistleblower complaint (redacted as appropriate and supplemented as appropriate by a summary of allegations added during the screening interview) . . .”
6. Chp. 2.V.C. is amended to add paragraph 6, which will read, “SC OSHA will recognize private agreements between the employer and employee that expressly toll (extend) the filing deadline. The agreement must b (a) in writing, (b) operate to actually extend the deadline to file a whistleblower complaint, and (c) reflect the mutual assent of both parties. The agreement will only toll the limitations period with respect to the parties that are actually covered by the agreement.”
7. Chp. 2.VI is added to include the language from Chapter 3.V. (p. 47; entire section) of the Federal Manual.

D. Chapter 3

1. Chp 3.VI.B.5 is amended and now titled “Nonresponsive/Uncooperative Complainant” and reads:
 - a. Complaints may be dismissed for lack of cooperation on the part of Complainant. These circumstances may include, but are not limited to, Complainant’s:
 - i. Failure to be reasonably available for an interview;
 - ii. Failure to respond to repeated correspondence or telephone calls from OSHA
 - iii. Failure to attend scheduled meetings;
 - iv. Other conduct making it impossible for OSHA to continue the investigation, such as excessive requests for extending deadlines;
 - v. Harassment, inappropriate behavior, or threats of violence may also justify dismissal for uncooperative behavior;
 - vi. When Complainant fails to provide requested documents in Complainant’s possession or a reasonable explanation for not providing such documents, OSHA may draw an adverse inference against Complainant based on this failure unless the documents may be acquired from Respondent. If the documents cannot be acquired from Respondent, then Complainant’s failure to provide requested documents or a reasonable explanation for not doing so may be included as a consideration with the factors listed above when considering whether a case should be dismissed for lack of cooperation.
 - b. In situations where an Investigator is having difficulty locating the Complainant to initiate or continue the investigation, the following steps will be taken:
 - i. Telephone the Complainant at various times (i.e., during normal work

- hours and in the evening). Accurate documentation of the time and date of each attempted phone call will be made by the Investigator.
- ii. Email the Complainant if an email address is on file.
 - iii. Mail a letter via certified U.S. mail, return receipt requested to the Complainant's last known address, stating that the Investigator must be contacted within 10 days of the receipt of the letter or the case will be dismissed. If no response is received within 10 days, the Chief Counsel will approve the termination of the investigation and dismiss the complaint. Proof of delivery of the letter will be preserved in the file along with a copy of the letter to maintain accountability.

In extenuating circumstances (e.g., file closure is required due to the inability to locate the Complainant), a Memo to File will be drafted detailing all attempts made to contact the Complainant and/or a copy of the ReLaes log will be added to the file.

2. Chp. 3.VI.D. is amended to add the following bullet point, "Emails, voicemails, phone records, texts, and other relevant correspondence related to Complainant's employment, as well as relevant social media posts."
3. Chp. 3.VI.E.1 is amended to include the following language, "There may be circumstances where there is reason to interview management or supervisory officials outside of the presence of counsel or other officials of the company, such as where the official has information helpful to Complainant and does not wish the company to know that they are speaking with the investigator. In that event, an interview should ordinarily be scheduled in private and the procedures for handling confidential witness interviews must be followed. See Chapter 3.VII, Confidentiality"
4. Chp. 3.VI.F. is amended to add the following subsection:
 3. A Respondent may be unresponsive due to bankruptcy or going out-of-business. In either case, the investigator should consult with Chief Counsel to determine how to proceed. In bankruptcy matters, SC OSHA should determine whether there are legal grounds to continue the investigation against successors in interest of the original Respondent.
5. Chp. 3.VI.F. is amended to add the following subsection:
 4. Uncooperative Respondent Representative. When a Respondent is cooperating with an investigation but their representative is not, the investigator should send a letter or email to both Respondent and the representative requesting them to affirm the designation of representation in the case file. If the designation of representation is not affirmed within 10 business days, the investigator may treat Respondent as unrepresented. SC OSHA should not decline to accept written information received directly from a represented Respondent.

6. Chp 3 is amended to add section VII. Confidentiality, which reads as follows:

The informer privilege allows the government to withhold the identity of individuals who provide information about violations of laws, including retaliation in violation of OSHA's whistleblower statutes. The informer privilege also protects the contents of witness statements to the extent that disclosure would reveal the witness's identity. When interviewing a witness (other than Complainant and current management officials representing Respondent), the investigator should inform the witness that their identity will remain confidential to the extent permitted by law. This pledge of confidentiality should be clearly noted in any interview statement, memo to file, or other documentation of the interview. The investigator also should explain to the witness that the witness's identity will be kept in confidence to the extent allowed by law, but that if they are going to testify in a proceeding, the existence and content of the interview may need to be disclosed. Indeed, a court may require the disclosure of the names of witnesses at or near trial. Furthermore, the witness should be advised that their identity might be disclosed to another federal agency, under a pledge of confidentiality from that agency.

Under OSHA's whistleblower statutes, any witness (other than the Complainant) may provide information to OSHA confidentially. See e.g., OSH Act section 8(a)(2), 29 U.S.C. 657(a)(2); S.C. Code Regs. 71-505(B); 71-507. There may be circumstances where there is reason to interview current management or supervisory officials outside of the presence of counsel or other officials of the company, such as where the official has information helpful to Complainant and does not wish the company to know that they are speaking with the investigator. In that event, an interview should ordinarily be scheduled in private and the above procedures for handling confidential witness interviews should be followed.

E. Chapter 4

1. Chp. 4.IV.B.1 is amended to include the following language: "Exception: SC OSHA will not accept a withdrawal when the parties have reached a private agreement until OSHA has obtained and reviewed the settlement. As part of any request, Complainant must also indicate whether the withdrawal is due to a settlement. If so, SC OSHA must inform Complainant of the requirement to submit the settlement for SC OSHA's approval."

Although Complainant's request to withdraw is usually granted, there may be situations in which approval of the withdrawal is not warranted. Situations in which approval for withdrawal may be denied include, but are not limited to, a withdrawal made under duress, the existence of similarly situated complainants other than the Complainant requesting withdrawal, adverse effects on employees in the workplace other than Complainant if the case is not pursued, and the existence of a discriminatory policy or practice.

When Complainant elects not to pursue their complaint before docketing/assignment, the complaint will be administratively closed. See

F. Chapter 5

1. Chp. 5.IV.A. amended to include a footnote after “as needed” that mirrors the language in footnote 23 of the Federal Manual (p. 70).
2. Chp. 5.IV.A.6 is amended to include the language in Chapter 5.III.B.4 (p. 71) of the Federal Manual.
3. Chp. 5.IV.B is amended to read as follows: “All telephone calls made, voicemails received, emails and documents sent/received, interviews conducted, notifications sent, investigative research, as well as, any other key steps taken during the investigation must be noted on the case activity/telephone log. The case activity/telephone log for each file will primarily be maintained in the ReLaes case management system. ReLaes entries will include the date, time, and activity (e.g., telephone calls, interviews, onsite visits, etc.). The dates of certain key activities will also be documented in IMIS/OITSS.”

G. Chapter 6

1. Chp. 6.II (beginning paragraph) is amended to include language in Chapter 6.II (p. 96) of the Federal Manual.
2. Chp. 6.II.A. is amended to include the language in the second paragraph of Chapter 6.III.B (p. 97) of the Federal Manual.
3. Chp. 6.II.B. is amended to include language in Chapter 6.IV.B, C., and E. (pp. 98-99, 100) of the Federal Manual.
4. Chp. 6.II.D is amended to include the language in Chapter 6.VI.B, C., and D. (pp. 102-103) of the Federal Manual.
5. Chp. 6.IV.C. is amended to include the language in Chapter 7.V.C. (pp. 112-114) of the Federal Manual.
6. Chp. 6.IV.E.6. is added to include the language in Chapter 7.VI.E.3. (p. 119) of the Federal Manual.
7. Chp. 6.IV.E.7. is added to include the language in Chapter 7.VI.E.4. (pp. 119-120) of the Federal Manual.
8. Chp. 6.V.E. is added to include the language in Chapter 7.VII.A.5. (p. 122) of the Federal Manual.
9. Chp. 6.X. will be added to include the language in Chapter 6.XII (p. 107) of the Federal Manual.

Effective Date:

This memorandum and all noted revisions and/or updates are effective as of the date of this memorandum and will remain in effect until canceled or superseded.