
MIOSHA

Michigan Occupational Safety and Health Administration (MIOSHA)
Department of Labor and Economic Opportunity (LEO)

AGENCY INSTRUCTION

DOCUMENT IDENTIFIER:

MIOSHA-ADM-22-3R1

DATE:

November 12, 2024

SUBJECT: Whistleblower Investigations Manual

- I. Purpose. This instruction establishes policies and procedures for the whistleblower program.
- II. Scope. This instruction applies to the Appeals Section and the General Industry Safety and Health Division (GISHD), Employee Discrimination Section (EDS).
- III. References.
 - A. Michigan Occupational Safety and Health Act, MCL 408.1001 et. seq., [P.A. 154](#) of 1974, as amended.
 - B. Occupational Safety and Health Administration (OSHA) Directive CPL 02-03-011, April 29, 2022, [Whistleblower Investigations Manual](#) (WIM).
- IV. Distribution. MIOSHA Staff; Federal OSHA; S-drive Accessible; MIOSHA Messenger; and Internet Accessible.
- V. Cancellations. All previous versions of this agency instruction.
- VI. Next Review Date. To be reviewed in five (5) years from date of issuance.
- VII. History. History of previous versions includes:
 - MIOSHA-ADM-22-3, December 1, 2022
 - GISHD-ADM-16-1R2, January 8, 2021
 - GISHD-ADM-16-1R1, April 6, 2016
 - GISHD-ADM-16-1, January 21, 2016
 - GISHD-MEMO-ADM-11-2, December 9, 2011
- VIII. Contact. [April Strahan](#), Rights Representative Manager, and [Katrina DeBose](#), Director, Appeals Section
- IX. Originator: Barton G. Pickelman, Director
- X. Significant Changes. Added four exceptions to MIOSHA's adoption of OSHA's revised WIM. Three exceptions are to WIM Chapter 3, Intake and Initial Processing of Complaints, Section IV. Untimely Complaint or Incomplete Allegations: Administrative Closures and Docket-and-Dismissals; Withdrawal, A. Administrative Closures. The fourth exception is to WIM Chapter 4, Conduct of Investigation, Section VII. On-site Investigation, Telephonic and Recorded Interviews. In this MIOSHA instruction, see Section XI. Action, B, C, D, and I.
- XI. Action. On April 29, 2022, OSHA again revised its WIM, in Directive CPL 02-03-011. The WIM contains OSHA's procedures for handling retaliation complaints under the various whistleblower statutes for which it has responsibility. With this MIOSHA

Agency Instruction, MIOSHA adopts that OSHA Directive and the most recent version of the OSHA WIM except as listed below.

- A. For Chapter 3, Section II. Incoming Complaints, 2. How to file, a. Written Complaints, MIOSHA intends to require OSHA-87 form (known as a MIOSHA Discrimination Complaint Form) to be completed, including when the complaint has been submitted in writing.
- B. For Chapter 3, Section IV. Untimely Complaint or Incomplete Allegations: Administrative Closures and Docket-and-Dismissals; Withdrawal, A. Administrative Closures, MIOSHA will use an alternate procedure to administratively close complaints. The alternate procedure will still sufficiently protect the rights afforded to employees under the Michigan Occupational Safety and Health Act. The alternate procedure is as follows:

Whistleblower complaints that do not meet the threshold requirements on their face (i.e., do not contain a prima facie allegation or fail for some other threshold reason such as untimeliness or lack of coverage under an OSHA whistleblower statute) will be administratively closed. When this occurs, a rights representative from MIOSHA will call the complainant to inform them of the administrative closure and the reason for the closure. However, the rights representative will give the complainant an opportunity to have a complaint reopened if the complainant can supply ample additional information to support their claim. Because complainants may not understand the specific information required for MIOSHA to docket their complaint, the rights representative will ask a series of questions intended to elicit the precise facts necessary for MIOSHA to make such a determination.

If the complainant does not answer the phone, a message will be left with the name and contact information of the rights representative and the purpose of the phone call. If MIOSHA cannot reach the complainant by phone or voicemail message, the agency will send a letter to the complainant conveying the same information and questions. The letter will indicate that the complainant has seven working days to respond.

- C. For Chapter 3, Section IV. Untimely Complaint or Incomplete Allegations: Administrative Closures and Docket-and-Dismissals; Withdrawal, A. Administrative Closures, MIOSHA will not require the complainant's permission to administratively close the complaint. When the complainant submits a complaint with scant information or evidence of discrimination, the agency will place the responsibility on the complainant to provide sufficient information rather than giving the complainant veto power over a reasonable decision made by the agency to administratively close a complaint based on inadequate evidence.
- D. For Chapter 3, Section IV. Untimely Complaint or Incomplete Allegations: Administrative Closures and Docket-and-Dismissals; Withdrawal, A. Administrative Closures, MIOSHA will not require delivery verification of the administrative closure letter. As a general policy, MIOSHA seeks verification of a

letter's delivery only when the recipient has a statutorily imposed deadline to respond. For administratively closed whistleblower files, there is no statutory deadline for the complainant to respond. Furthermore, for general business purposes in the United States, barring any legal necessity for confirmation of delivery or receipt, email and US mail are assumed to have been delivered unless the email sender receives an error message, or the US mail is returned.

- E. For Chapter 3, Section V. Referral of Section 11(c) Complainants to the National Labor Relations Board (NLRB), MIOSHA will inform the complainant of their additional right to file a charge with the NLRB, as well as provide contact information for the appropriate NLRB Regional Office. NLRB contact information will be contained on closure letters, including administrative closing letters. MIOSHA will leave contacting of the NLRB to the discretion of the complainant.
- F. For Chapter 3, Section IX. Notification Letters, B. Respondent, MIOSHA will continue its existing practice of requiring information to be submitted to MIOSHA only, due to concerns regarding sensitive, private employment information being released without proper protections.
- G. For Chapter 4, Section III. Case File, E. Investigative Research, MIOSHA will continue its current practice of evaluating the need for research on whether there are prior or current retaliation and/or safety and health cases related to either complainant or respondent on a case-by-case basis to maintain the objectivity of the investigative process.
- H. For Chapter 4, Section IV. Referrals and Notifications, MIOSHA will provide information and contact information for other regulatory agencies to the complainant or witness if the complainant or witness articulates facts that might suggest the possible jurisdiction of another regulatory agency. MIOSHA will leave contacting of the other regulatory agency to the discretion of the complainant or witness.
- I. For Chapter 4, Section VII. On-site Investigation, Telephonic and Recorded Interviews, interviews of currently employed managers are to be conducted in private. Respondent's designated representative will not have the right to be present for interviews with currently employed managers.
- J. For Chapter 5, Section VI. Cases under District Court Statutes (Section 11(c), Asbestos Hazard Emergency Response Act (AHERA), and International Safe Container Act (ISCA)), MIOSHA cannot adopt this section of the WIM as it is not consistent with the administrative adjudication process authorized under MIOSHA's statute.
- K. For Chapter 5, Section VI. Cases under District Court Statutes (Section 11(c), AHERA, and ISCA) 2. Requests for Review, MIOSHA cannot adopt this section of the WIM as it is not consistent with the administrative adjudication process authorized under MIOSHA's statute.

- L. For Chapter 6, Section VI. Punitive Damages, MIOSHA cannot adopt this section of the WIM as it is not consistent with the state of the law in Michigan per *Waltonwood at Main v Arroyo*, Oakland County Circuit Court No. 10-1111363-AA.
- M. For Chapter 7, Section III. Alternative Dispute Resolution, MIOSHA cannot adopt this section of the WIM as it is not consistent with the administrative adjudication process authorized under MIOSHA's statute.