



Compliance Bulletin

OSHA May Refer Untimely Whistleblower Claims to the NLRB

Provided by BCG Advisors, Inc.

Quick Facts

- Whistleblower claims must be filed with OSHA within 30 days of a retaliation incident.
- Unfair labor practice claims must be filed within six months of the occurrence.
- OSHA will provide the NLRB's contact information to whistleblowers who miss the filing deadline.
- The NLRB will track "OSHA referrals" under the program.

OSHA will advise employees who miss the whistleblower claim deadline to consider filing an unfair labor practice claim with the NLRB.

According to a memorandum sent on May 21, 2014, the Occupational Safety and Health Administration (OSHA) may direct employees who file an untimely whistleblower claim to file a claim with the National Labor Relations Board (NLRB).

Whistleblower Claims

Under general circumstances, employees who wish to file a whistleblower claim with OSHA must do so within 30 days of an alleged reprisal. Claims filed after the 30-day window expires are dismissed. For this reason, individuals who miss filing a claim within 30 days routinely decline pursuing any action against their employer. OSHA estimates that between 300 and 600 cases remain unfiled or are dismissed for an untimely filing each year.

Unfair Labor Practice Claims

OSHA and the NLRB believe that some cases that are dismissed or go unfiled may also raise issues that can be classified as unfair labor practices under the National Labor Relations Act (NLRA). For example, the NLRB believes that some unfiled whistleblower claims could relate to "instances of employer retaliation for group complaints regarding unsafe working conditions."

Unfair labor practice claims can affect unionized and non-unionized employers. These claims must be filed with the NLRB within six months of when the incident takes place.

Referral Program

OSHA and the NLRB have agreed to implement a referral program where OSHA will advise employees who miss the whistleblower claim deadline to consider filing an unfair labor practice claim with the NLRB.

This difference in filing deadlines between the two agencies provides employees who miss the deadline for filing a whistleblower claim an additional five months to file an unfair labor practice claim with the NLRB.

To expedite the referral process, OSHA has agreed to provide employees with the information they will need to contact the NLRB and begin the filing process. In return, the NLRB has provided OSHA personnel with "talking points" that they can use to briefly describe the NLRB and its function with whistleblowers. The NLRB plans to track the number of cases that are initiated through this new partnership with OSHA, and has established a separate toll-free number that can be used for this purpose.