

# OSHA

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## Speeding up OSHA's response to COVID-19 whistleblower complaints: DOL OIG makes recommendations



**F**acing a staffing shortage and an increased number of complaints related to the COVID-19 pandemic, OSHA must improve the efficiency of its Whistleblower Protection Program, an audit report from the Department of Labor Office of Inspector General concludes.

The program enforces 23 statutes that prohibit employers from retaliating

against workers who report employer violations of various workplace safety, consumer product, environmental, financial reform and securities laws.

“When OSHA fails to respond in a timely manner, it could leave workers to suffer emotionally and financially, and may also lead to the erosion of key evidence and witnesses,” DOL OIG states in the Aug. 14 report.

An audit conducted by OIG found whistleblower complaints increased 30% during the first four months of the pandemic compared with the same period last year. Meanwhile, the WPP’s number of full-time equivalent investigators dropped to 120 from 126 in 2019. As a result, some investigators have as many as 45 open cases – more than double the “optimal” maximum amount of 20, according to the report. OIG recommends OSHA fill these vacancies.

The office also recommends the agency continue to assess a triage pilot intended to speed up the complaint screening process and consider extending the program to all regions. The program, set up before the pandemic in Region 2 (New York, New Jersey, Puerto Rico and the Virgin Islands), is designed to reassign older whistleblower complaints from regions with sizeable backlogs to regions with smaller backlogs.

“Whistleblower program officials have not utilized a similar approach during the pandemic to more evenly

– article continues on p. 4

## OSHA revises rules on its access to employee medical records, adds section on electronic records

OSHA has finalized amendments to its rules on accessing employee medical records.

The agency often reviews employee medical records to carry out its statutory obligations, as well as when gathering information during agency rulemaking to develop or revise occupational safety and health standards, an agency press release states. According to a final rule published in the July 30 *Federal Register*, the rule revisions “transfer certain responsibilities from the assistant secretary to the



OSHA medical records officer. Specifically, the MRO will now be responsible for the overall administration and implementation of the procedures contained in 1913.10.”

OSHA adds in the press release: “The MRO is responsible for determining the transfer and public disclosure of

personally identifiable employee medical information in OSHA’s possession.”

Another significant change is the addition of paragraph (n) to 1913.10, covering the agency’s procedures for “access and safeguarding” electronic medical records. The principal OSHA investigator is charged with ensuring personally identifiable employee medical information is secure and properly used.

The revisions include a clarification that medical access orders aren’t considered administrative subpoenas.

### OSHA ALLIANCES

*The OSHA Alliance Program fosters collaborative relationships with groups committed to worker safety and health. Alliance partners help OSHA reach targeted audiences and give them better access to workplace safety and health tools and information. For more on OSHA alliances, go to [osha.gov/dcsp/alliances/index.html](https://osha.gov/dcsp/alliances/index.html).*

## North American Meat Institute

**Date of alliance:** July 29, 2020

OSHA and the North American Meat Institute hereby form an alliance to provide NAMI’s members, workplace safety and health professionals, the meatpacking and processing workforce, and the public with information, guidance and access to training resources that will help them protect workers by reducing and preventing exposure to COVID-19, and understand the rights of workers and the responsibilities of employers under the Occupational Safety and Health Act of 1970.

Through the alliance, NAMI and OSHA will use available injury, illness, and hazard exposure data, when appropriate, to help identify areas of emphasis for Alliance awareness, outreach, and communication activities. The alliance will also explore and implement selected options, including but not limited to member surveys, to evaluate the alliance and measure the impact on improving workplace safety and health.

In developing this alliance, OSHA and NAMI recognize that OSHA’s State Plan and On-Site Consultation Program partners are an integral part of the OSHA national effort, and that information about the products and activities of the Alliance may be shared with these partners for the advancement of common goals. The participants intend to work together to achieve the following objectives:

- Share information among OSHA personnel and industry safety and health professionals (e.g., via regular teleconferences and online communication tools) regarding potential exposure to COVID-19 and the challenges for exposure control in meatpacking and processing facilities.
- Develop information on the recognition of COVID-19 transmission risks and best practices on preventing such transmission, and disseminate these resources (e.g., via print and electronic media, electronic assistance tools, and OSHA and the NAMI websites)



to employers and workers in the industry.

- Conduct outreach through joint forums, roundtable discussions, stakeholder meetings, webinars or other formats on OSHA guidance and NAMI’s good practices or effective approaches for preventing COVID-19 transmission in meatpacking and processing facilities.
- Encourage NAMI members and other industry stakeholders to build relationships with OSHA’s regional and area offices and State Plans, and to use OSHA’s On-Site Consultation Program to improve health and safety and prevent COVID-19 transmission in meatpacking and processing facilities.

Excerpted from [osha.gov/alliances/national/nami/nami/agreement-20200729](https://osha.gov/alliances/national/nami/nami/agreement-20200729).

### In Other News...

#### OSHA revises beryllium standard for general industry

OSHA has finalized revisions to its beryllium standard for general industry. Announced July 13, the final rule includes changes to five definitions and the addition of one definition – beryllium sensitization.

The revised definitions address beryllium work areas, chronic beryllium disease, a chronic beryllium disease diagnostic center, confirmed positive and dermal contact with beryllium.

Additional revisions include methods of compliance, personal protective clothing and equipment, hygiene areas and practices, housekeeping, medical surveillance, hazard communication, and recordkeeping. A new Appendix A is “designed to supplement the final standard’s definition of beryllium work area,” the notice states.

At press time, the compliance date for these changes was Sept. 14.

#### OSHA billboards, PSA say DOL ‘wants to help’ workers

OSHA has unveiled a public service announcement and billboard campaign the agency says is intended to remind workers of its commitment to protect their safety and health during the COVID-19 pandemic.

“Are you concerned about your health at work? You have the right to a safe, healthy workplace. The U.S. Department of Labor wants to help. Call the Occupational Safety and Health Administration at 1 (800) 321-OSHA [6742] or visit [osha.gov/workers](https://osha.gov/workers),” the PSA – available in English and Spanish – states.

According to a July 7 agency press release, bilingual billboard messages encouraging workers to contact OSHA with any concerns will appear digitally and in print in states under federal OSHA jurisdiction.

## OSHA STANDARD INTERPRETATIONS

*OSHA requirements are set by statute, standards and regulations. Interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. Enforcement guidance may be affected by changes to OSHA rules.*

### OSHA approval of chromium sampling

**Standards:** 1910.1026 and 1960.17

**Date of response:** April 19, 2019

**Discussion:** The Department of Defense has been using generally accepted air sampling methods to conduct airborne monitoring for metallic chromium and chromium compounds to determine compliance with OSHA’s permissible exposure limits, as expressed in micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) of air. Recently, the American Conference of Governmental Industrial Hygienists updated its occupational threshold limit values that DoD components use as exposure guidelines. The new TLVs will require new equipment and a new sampling method, one that will provide results in inhalable fractions rather than total aerosol.

**Question No. 1:** *If DoD can demonstrate conformance with OSHA’s sampling method accuracy requirements as specified in 29 CFR 1910.1026(d)(5), is an inhalable sampling technique an acceptable method for characterizing worker exposure to hexavalent chromium?*

**Response:** Yes, provided the method of monitoring and analysis can measure chromium (VI) as accurately as OSHA’s standard requires. Paragraph (d)(5) of 29 CFR 1910.1026, Chromium (VI), is a performance-based requirement and does not require an employer to use any specific sampling method. The paragraph only requires that the employer use a method of monitoring and analysis that can measure chromium (VI) to within an accuracy of plus or minus 25% (+/-25%) and can produce accurate measurements to within a statistical confidence level of 95% for airborne concentrations at or above the action level (2.5  $\mu\text{g}/\text{m}^3$ ). Therefore, provided DoD’s chosen sampler and analytical method meet the performance requirements of 29 CFR 1910.1026(d)(5), OSHA would deem DoD to be in compliance with that standard.

**Question No. 2:** *Can DoD compare the results from an acceptable inhalable fraction method with the OSHA PEL to evaluate whether DoD is in compliance with the OSHA standard for hexavalent chromium?*

**Response:** Yes. An employer can use sampling results obtained via an acceptable inhalable fraction method to determine compliance with the OSHA PEL for hexavalent chromium at 29 CFR 1910.1026. See also D. Dietrich, 2011 (inhalable dust measurements for particulates not otherwise regulated under 29 CFR 1910.1000).

To address your closing statement referring to an “alternate standard request,” please be aware that while 29 CFR 1960.17, Alternate standards, allows an agency to apply an alternate standard where deemed necessary, it also requires the agency to request the secretary of labor’s approval for the alternate standard prior to implementing that standard. That request must include the information described in 1960.17(b)(1)-(b)(5). Given that your letter requests interpretation of existing OSHA standards for hexavalent chromium, and does not include the information that would allow evaluation of an alternate standard, this response does not approve any “alternate standard” under 29 CFR 1960.17.

**Patrick J. Kapust, Acting Director**  
Directorate of Enforcement Programs

Excerpted from [osha.gov/laws-regs/standardinterpretations/2019-04-19](https://osha.gov/laws-regs/standardinterpretations/2019-04-19).

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distribute whistleblower complaints,” the report states. OIG recommends the agency develop a caseload management plan to be able to do so.

In general, whistleblower cases are assigned based on the whistleblower's location or where the majority of witnesses appeared to be located. However, OIG points out, many investigations are conducted via telephone interviews and with electronic delivery of supporting documentation, making distributing caseloads easier.

From Feb. 1 to May 31, OSHA received 4,101 whistleblower complaints – 1,618 of which were related to COVID-19. Out of these COVID-19-related complaints, 858 were screened and administratively closed, while 276 were referred to State Plans. A little more than 400 were docketed for investigation and 80 remained pending as of the date of the OIG report.

Region 5 (Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin) received the highest number of COVID-19-related complaints (325) out of OSHA's 10 regions, followed by Region 4 (Alabama, Florida, Georgia, Kentucky, Mississippi,

North Carolina, South Carolina and Tennessee) with 251.

Region 10 (Alaska, Idaho, Oregon and Washington) received the fewest COVID-19-related whistleblower complaints with 61, while Region 7 (Iowa, Kansas, Missouri and Nebraska) had 63.

Acting OSHA administrator Loren Sweatt agreed with the recommendations in a response memo dated Aug. 10 and addressed to Assistant Inspector General for Audit Elliot Lewis. She wrote that the agency has processed more than half of the COVID-19-related complaints received to date, with an average screening time of 10 days – faster than the agency's fiscal year 2020 Operating Plan's performance measure of 13 days.

Sweatt added that the “Whistleblower Investigations Manual” is close to its first published update since September 2011.

“In the meantime, the agency continues to issue new guidance to investigative staff, strengthen our collaborative relationships with our partner agencies, and develop new customer service and outreach tools,” she wrote.

Download the DOL OIG report at [oig.dol.gov/public/reports/oa/2020/19-20-010-10-105.pdf](https://oig.dol.gov/public/reports/oa/2020/19-20-010-10-105.pdf).