

**REGULATIONS CONTAINING PROCEDURES
FOR HANDLING OF RETALIATION COMPLAINTS**

**OFFICE OF MANAGEMENT AND BUDGET
(OMB) CONTROL NO. 1218-0236 (June 2016))**

OSHA is seeking OMB approval of this ICR revision in order to obtain clearance to implement proposed changes to the whistleblower complaint form, titled “Notice of Whistleblower Complaint,” (the OSHA 8-60.1; or “the form”) as part of this ICR. The revisions to this form will make the form more interactive, and will streamline the process for workers to complete the form. This will improve the quality of the customer service that the Agency can offer the public.

The Agency estimates almost 50% of whistleblower complaints are filed electronically. OSHA plans to offer the revised electronic version of the form to employees via the Whistleblower Protection Program website, <http://www.whistleblowers.gov>. Employees will still be able to complete and submit the form electronically at any time. Because the revised form has an interactive format, OSHA will no longer offer a single downloadable version of the form for employees to download from the website, complete, and submit by hand. However, employees will still be able to print a copy of the completed electronic form and submit it to OSHA in hard copy by fax, mail, or hand-delivery. The revised form will be available in both English and Spanish.

A “screen-shot” document displaying both the English and Spanish versions of the proposed form as revised is included with the attachments accompanying this Supporting Statement. Due to the interactive nature of the Web-based form, some of the pages are duplicate pages to show the functionality of the buttons and to display the text of the various new pop-up boxes described below.

The revised form will be accompanied by an introduction and instructions page which includes the same basic information that was included in the information and instructions pages of the previous form. Unlike the previous information and instructions pages, the revised introduction and instructions page will include a button which the worker must click in order to launch the online whistleblower complaint form, as well as a link to Whistleblower Protection Program’s website.

Once the employee launches the online whistleblower complaint form, the adverse action section of the form is made available. The adverse action section of the form explains that in order to have a valid complaint, a worker must allege that an employer took adverse action against the worker. The form then asks the employee to identify what retaliatory action has been taken against them. To aid the employee, the form includes checkboxes that list ten types of retaliation that are commonly alleged by whistleblowers, plus a residual “other” option for retaliatory actions that are not listed. The adverse action boxes are substantially similar to the previous form, with a few minor wording differences. This section also provides a button the employee may click on if he or she has not suffered an adverse action; this button was not a function in the

previous form. If the worker clicks this button, additional information appears in a pop-up box which explains that OSHA's whistleblower protection laws only cover employees that have suffered an adverse employment action. The pop-up box also refers employees to the Whistleblower Protection Program's website or OSHA's toll-free hotline for more information. This section of the form is a "required" section, and the worker cannot advance to the next section of the form until a type of adverse action has been selected. The information requested in this section is essential because an employee must have suffered a retaliatory action to be protected under any of the whistleblower statutes enforced by OSHA.

Once the employee has completed the adverse action section of the form, the employee may continue to the next section of the form, which requests information about the date the most-recent adverse action occurred. This section provides information about filing deadlines that apply to each statute. This section of the form requests that the employee enter the date of the most-recent adverse action. (The previous form requested a list of all relevant dates of adverse actions that the employee could remember, including approximate dates. The previous form also requested the date or approximate dates of when the employee first learned about the adverse actions.) This is a required section of the form, and the employee cannot access the next section of the form until a most-recent adverse action date has been entered. The information requested in this section is essential because an employee must file a complaint within a certain number of days after the alleged adverse action in order to be protected under the relevant whistleblower statute enforced by OSHA.

Once the employee has provided a date of the most-recent adverse action, the employee may continue to the next section of the form which asks why the employee believes that the employer took the alleged retaliatory action. All of the whistleblower statutes enforced by OSHA only protect employees who have been retaliated against for engaging in "protected activity." To aid the employee, the form includes checkboxes that list ten types of protected activity that are commonly alleged by whistleblowers, plus a residual "other" option for protected activities that are not listed. (The previous form provided eight types of protected activity checkboxes. The form also requested the dates of the protected activities.) This information is required; the employee must select at least one type of protected activity in order to access the next section of the form.

For employees who select the option alleging that the adverse action was in retaliation for the employee's race, color, religion, sex, age, national origin, disability, or genetic information, a new pop-up box provides information about the U.S. Equal Employment Opportunity Commission (EEOC), as well as the EEOC's website and toll-free hotline.

For employees who select the option alleging that the adverse action was in retaliation for complaining about wages, overtime pay, or child labor requirements, a new pop-up box provides information about the Wage and Hour Division (WHD) of the U.S. Department of Labor, as well as WHD's website and toll-free hotline.

For employees who select the option alleging that the adverse action was in retaliation for engaging in, or attempting to engage in, collective or union activity, a new pop-up box provides

information about the National Labor Relations Board (NLRB), as well as the NLRB's website and toll-free hotline.

Additionally, like the previous form, this section of the form asks optional questions about what reasons the employer gave for the adverse actions and if there is anything else the employee would like OSHA to know about what happened. This information is important for OSHA when determining whether to open an investigation.

Once the employee has selected a reason the adverse action occurred, the employee may continue to the next section of the form, which requests information about employee's employer who took the alleged adverse action. First, this section requests the company name. Next, the form asks whether the employer is a private or public sector employer (a new question and form function). These fields are required; the fields are labeled as required and the employee cannot continue to the next section of the form until this information is provided.

For employees who select the public sector employer option, the employee must then select whether the employer is either a "Federal" employer, or a "State, County, Municipal or Territorial" employer (a new requirement).

For employees who select the Federal employer option, a pop-up box explains to the employee that OSHA's whistleblower coverage for federal employees varies by statute. The pop-up box provides information about the Office of Special Counsel (OSC), including the OSC's website. The pop-up box also provides information about OSHA's Office of Federal Agency Programs (OFAP), including OFAP's website, as well as information about reporting safety and health hazards through a Designated Agency Safety and Health Officer (a new requirement).

For employees who select the State, County, Municipal, or Territorial employer option, a pop-up box explains that OSHA's whistleblower coverage of non-federal public sector employees varies by statute. The pop-up box provides information about Federal OSHA-approved occupational safety and health programs, including the website for OSHA's Directorate of Cooperative and State Plan Programs (a new requirement).

The information requested in this section about the employer is essential for OSHA to determine whether the Agency has jurisdiction over the complaint.

Once the employee has provided the company name and selected the type of employer, the employee may continue to the next section of the form, which requests information about the employee's worksite where the alleged retaliation occurred. This section of the form requires that the employee indicate the state or U.S. territory in which the retaliation occurred. This section also allows the employee to enter information about the employer's street address, city, and zip code. This information about the employer is essential for OSHA to determine whether the Agency has jurisdiction over the complaint and to which OSHA Regional office the complaint should be forwarded to for processing.

Once the employee has indicated the state in which the retaliation occurred, the employee may continue to the next section of the form, which requests additional information (like the previous

form) about the employer named in the complaint including the employer's name; the name, title, and phone number of a contact management person; the name and title of the employee's supervisor; the employer's mailing address, telephone, and facsimile numbers; the employer's email address; and the type of business conducted by the respondent. This information about the employer is important for contacting the respondent should OSHA ultimately determine that an investigation is appropriate.

The next section of the form requests the employee's information, like the previous form, including the employee's name, telephone, mailing address, email address, preferred method of contact, and best time to be contacted. The employee's name, mailing address, and telephone numbers are marked as "required" fields, although an employee need not provide a telephone number if the employee indicates that no telephone number is available. This information is essential because whistleblower complaints filed with OSHA cannot be filed anonymously.

The next section of the form is the Designated Representative section. Because the whistleblower statutes enforced by OSHA permit complaints to be filed on another person's behalf, the form asks whether the employee has a designated representative, and whether the person completing the form is a designated representative filing on behalf of an employee. If the response to either question is yes, like the previous form, the form requests information about the representative's name, title, organization or union affiliation (if any), address, phone number and email address. Like the previous form, the form then includes a check box next to a certification statement that the named employee has authorized the person to act as representative for purposes of the complaint.

The next section of the form is a new section that asks how the employee learned about OSHA's Whistleblower Protection Programs. To aid the employee, the form includes checkboxes that list ten common responses to this question, plus a residual "other" option for options that are not listed. This information is important for OSHA to determine how employees learn about OSHA's whistleblower protections and to improve its outreach efforts.

The final section of the form is a Submission section. This section of the form includes a note cautioning filers that it is unlawful to make any materially false, fictitious, or fraudulent statement to an agency of the United States, like the previous form. The form also explains that by clicking the submit button, which will submit the complaint to OSHA, the employee is certifying that the information provided in the complaint form is true and correct to the best of the employee's knowledge and belief (previously the certification was accomplished with a checkbox).