

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 14-77

August 8, 2014

To: All Regional Directors, Officers-in-Charge,
and Resident Officers

From: Anne Purcell, Associate General Counsel

Subject: Procedure in Cases Involving Potential OSHA and Wage and Hour Issues

Memorandum OM 14-60, "OSHA Referred Charges," announced that the Agency had entered into a program with the Occupational Safety and Health Administration (OSHA) under which OSHA will notify all complainants who file an untimely OSHA retaliation charge of their right to file an unfair labor practice charge over the same conduct with the NLRB. Conversely, there may be occasions during the processing of an NLRB charge where it also would be appropriate to apprise the Charging Party or a witness of his or her right to contact OSHA and/or the Wage and Hour Division (WHD) of the Department of Labor (DOL) to discuss the filing of a complaint with those agencies. This memorandum supplements OM 14-60 to outline the circumstances of such a referral and the procedures that Board personnel should utilize.

At any stage of the case intake or investigative process, a witness may divulge facts that suggest that an employer may have committed a possible violation of the safety and health provisions of the Occupational Safety and Health Act (OSH Act) or the fair wage, recordkeeping, and child labor provisions of the Fair Labor Standards Act (FLSA). Such violations could occur when an employer requires an employee to work under unsafe or unhealthy working conditions, or fails to properly pay employees for all the hours they work. An employer could also violate the retaliation provision of either statute if it retaliates against an employee for complaining about a perceived violation.

If the Region believes that an employer may have violated a substantive or anti-retaliation provision of the OSH Act or the FLSA, the Board agent should notify the charging party that he or she (or their representative) has the right to file a complaint with OSHA or WHD, respectively. WHD's contact information can be found on the web at <http://www.dol.gov/whd/america2.htm>. Contact information for OSHA's Regional Offices may be found online at <https://www.osha.gov/html/RAmap.html>. OSHA retaliation complaints may also be filed electronically at <https://www.osha.gov/whistleblower/WBComplaint.html>.

Furthermore, should the Region learn during processing of an unfair labor practice charge that OSHA or WHD is handling a parallel investigation into a violation of their statutes, the Region should coordinate case processing with DOL, as appropriate. The Region should contact the local DOL Regional Solicitor to engage in these discussions; the Region should *not* contact OSHA or WHD themselves. DOL maintains contact information for Regional Solicitors and Acting Regional Solicitors on its website at <http://www.dol.gov/sol/contacts/main.htm#OLC>.

It must be stressed that Regional personnel are *not* expected to be experts in the construction of the OSH Act or the FLSA, or the rights that either agency protects. Board agents should invoke the procedures under this memorandum only where they believe that a *possible* violation of the OSH Act or the FLSA presents itself. To aid this analysis, quick reference guides for both statutes can be found on the [OSHA website](#) (entitled “OSHA At A Glance”) and on the [WHD website](#) (entitled “Basic Information”). Further, Regional management may consider partnering with OSHA or WHD to develop training vehicles for Board agents on the OSH Act and the FLSA, if desired.

If you have any questions about this memorandum, you may contact your AGC or Deputy.

/s/
AP

cc: NLRBU

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