DOSH DIRECTIVE
Division of Occupational Safety and Health
Department of Labor and Industries
Keeping Washington safe and working

1.90 Handling WISHA Complaints By L&I Employees

Date: September 25, 2012

I. Purpose

This directive provides guidance on responding to safety and health complaints filed about L&I's own operations.

II. Scope and Application

This Directive applies to DOSH enforcement activities statewide. It updates and replaces all previous guidance on this subject, whether formal or informal.

III. References

- Chapter 49.17 RCW, Washington Industrial Safety and Health Act
- DOSH Compliance Manual

IV. Background

The Department of Labor and Industries (L&I), like other employers operating in the state of Washington, is subject to Title 49.17 RCW, known as the Washington Industrial Safety and Health Act (WISHA). RCW 49.17.110 gives employees and their representatives the right to file complaints alleging that their employer has violated one or more WISHA standards.

These provisions present a unique challenge to L&I when responding to safety and/or health complaints about L&I's own operations. To meet this challenge and to ensure both L&I employees, and the agency as an employer, receive their full rights under WISHA, this DOSH Directive provides a specific complaint handling process to address the unique situation presented by such complaints.

V. Policy

DOSH staff must adhere to the following policy whenever a WISHA complaint about L&I as an employer is received:

A. For purposes of handling complaints about L&I as an employer, the Statewide Compliance Manager will serve as the primary enforcement contact and will perform the functions normally performed by the Regional Supervisor.

The Statewide Compliance Manager's role (and the role played by other DOSH Services staff who may be involved in the appeal process) is distinct and separate from the role played by the Office of Human Resources (OHR), which represents L&I's interests as the employer.

B. All WISHA safety or health complaints made by an L&I employee must immediately be faxed to the DOSH Statewide Compliance Manager, at FAX (360) 902-4453. They must not be shared with staff outside of DOSH (including managers with responsibility for both DOSH and non-DOSH activities) who are not directly involved in receiving the complaint.

Complaints originally received in regional offices must be reduced to writing and faxed to Tumwater with the original written complaint forwarded to:

DOSH Statewide Compliance Manager
Department of Labor and Industries
P.O. Box 44640
Olympia, WA 98504

C. Upon receipt by the Statewide Compliance Manager, the complaint will be reviewed for content and classification and appropriate complaint tracking will be assured.

D. Following classification, the complaint will be handled by letter, phone or fax, or with an onsite inspection. The Statewide Compliance Manager shall be responsible for use of the letter and/or phone or fax method. If an onsite inspection is necessary, the Statewide Compliance Manager will coordinate assignment of a safety inspector or industrial hygienist as needed, depending on the scope of the complaint and the necessary inspection action.

E. Due to the unique nature of the situation, Compliance Management and other DOSH staff involved in handling the complaint must take special care to protect complainant confidentiality in accordance with the DOSH Compliance Manual. The Statewide Compliance Manager shall be responsible for ensuring that working files and other records are kept in a secure location to avoid disclosure.

F. The L&I Risk Manager has been designated by the agency as the employer representative for all DOSH activities. All correspondence with the "employer" must be directed to the L&I Risk Management Office.

Note: *This provision relates only to contact with L&I as the "employer." It does not restrict contact by assigned DOSH staff with complainants or employee representatives.*

G. Any needed inspection must be assigned to an inspector or industrial hygienist not located in the region addressed by the complaint. If the complaint involves statewide activity, the inspection staff must be selected as necessary to minimize any appearance of conflict of interest.

H. Compliance Management staff shall be responsible for the day-to-day monitoring of the complaint handling process and shall be responsible for case file review including "supervisory review" and final sign-off.

I. No closing conference may be held with L&I until a preliminary review of the inspection file has been completed by the Statewide Compliance Manager. It is intended that all issues, including abatement dates, be discussed with the employer representative(s) prior to a citation so that resolution, and any resulting employee protection, can be obtained as quickly as possible.

J. If a DOSH complaint inspection is conducted at L&I, the CSHO assigned must, with the exception of those issues specifically addressed by this memo, follow investigation/inspection protocol as described in the DOSH Compliance Manual. It is important to preserve the statutory rights for the complainant as well as for L&I as the employer.

K. If an appeal is filed, it must be referred to the DOSH Reassumptions & Audit Program Manager for review and handling. In no case may the appeal be assigned to a Regional Hearings Office. The Reassumptions & Audit Program Manager must directly conduct the reassumption and render a decision.

L. At all stages of a DOSH complaint investigation/inspection, the staff involved must ensure that an opportunity for participation is offered to the appropriate union representatives.

M. As necessary, follow-up and assurance of abatement for any citations issued will be the responsibility of Compliance Management.

Approved: _____

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