

OSHA evaluates Kentucky's state-run program

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The federal Occupational Safety and Health Administration (OSHA) recently released its evaluation of the Kentucky Occupational Safety and Health Program (KOSHA) covering October 1, 2008 through September 30, 2009. The report represents OSHA's evaluation of Kentucky's performance during the first year of its current "Two-Year Strategic Plan," as well as its overall performance.

OSHA concluded that KOSHA "made significant progress towards achieving their established goals" and "is on target to accomplish all but one of its performance goals." During the review, however, twenty recommendations were made to KOSHA in order to address . . .

- (a) the accurate entry and consistent maintenance of data in the Integrated Management Information System ("IMIS");
- (b) the effective use of reports to enhance enforcement program management;
- (c) the enhanced screening of complaints;
- (d) procedures to improve communications with complainants and next-of-kin;
- (e) the implementation of an effective tracking system for abatement, implementation of a debt collection procedure;
- (f) procedures to improve case file documentation for whistleblower investigations; and
- (g) the development of an effective internal self-evaluation system, among other issues, according to the report.

"Stakeholder" interviews were conducted with several representatives from industry groups, labor organizations, and professional organizations. According to OSHA, "[o]verall, these stakeholders were confident in KY OSH's ability to perform its occupational safety and health mandated activities.

The following specific recommendations were

made to KOSHA:

Recommendation 1: KOSHA management should evaluate all complaints, including formal complaints, to determine when an investigation, rather than an inspection, would be more appropriate to allow a more effective use of their resources.

Recommendation 2: KOSHA should accurately enter and update all complaints and complaint-related actions in the Integrated IMIS in accordance with the IMIS manual. IMIS reports should be used on a weekly basis to track the status and complaint due dates.

Recommendation 3: All electronic complaints (e-complaints) and complaints handled by phone, fax, and letter should be coded with the applicable national, local, and strategic codes.

Recommendations 4: All complainants should be timely notified and provided a copy of the employer's response following a complaint investigation. The notification should provide the complainant with the opportunity to dispute the employer's response. In addition, employer responses that are disputed should be considered, appropriately responded to, and documented in the file.

Recommendation 5: All complainants should be timely notified of the inspection results addressing the state's findings of each complaint item. The notification should provide the complainant with the opportunity to appeal the inspection results.

Recommendation 6: KOSHA should send written correspondence to the next of kin providing them with information regarding the investigation, and the letter should be signed by the Director of OSH Compliance or the Commissioner.

Recommendation 7: At the conclusion of the fatality investigation, the letter sent to the next of kin should be signed by the Director of OSH

Federal OSHA concludes that Kentucky OSH has "made significant progress" towards achieving its goals, but the feds issued twenty recommendations.

**Proposed
new OSHA
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and time
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...
allows
filing of
complaint
by phone.**

Compliance or Commissioner and explain the state's findings or the results of the investigation with a copy of the citations if any are issued. The next of kin should be informed of informal conferences, as well as any changes in the citations as a result of a settlement.

Recommendation 8: Settlement agreements need to include employer commitments and justification for penalty reductions and/or modifications documented in the case file.

Recommendation 9: KOSHA should evaluate and determine the cause of the high in-compliance rate for programmed inspections.

Recommendation 10: All inspections should be coded with the applicable national, local, and strategic codes.

Recommendation 11: Evaluate and determine the cause of the high citation lapse time for safety and health.

Recommendation 12: A tracking system for abatements should be implemented to ensure abatements are tracked and followed up on in a timely manner.

Recommendation 13: Ensure data is entered and updated in the IMIS and timely corrections are made from opening to closing of inspection files, and IMIS reports weekly should be used to track and manage enforcement activity.

Recommendation 14: Develop and implement a debt collection procedure to ensure debts are collected. In addition, IMIS generated reports should be utilized to track cases with penalties due.

Recommendation 15: Whistleblower investigators should document all contacts related to the investigation in a telephone log.

Recommendation 16: Conduct personal interviews (as much as possible) with Whistleblower complainants, witnesses and management, and memorialize all interviews in signed statements. If signed statements are not possible, at a minimum make a memo to the file regarding the interview.

Recommendation 17: Clearly record Whistleblower investigation findings in the final investigative report to include, at a minimum: tell the story about what happened that led to the adverse action; to include protected activity; include complainant's allegations; respondent's assertions and what was found to be fac-

tual; analyze the timing of the adverse action to the protected activity; analyze whether respondent was angry at complainant for participating in protected activity; and analyze whether complainant was treated different than other employees similarly situated.

Recommendation 18: When a Whistleblower case is settled between the parties and a KOSHA settlement agreement is not used, the investigator should obtain a copy of the agreement for the file. In addition, the state should develop guidelines to review and approve all settlement agreements to ensure that the complainant's rights are protected.

Recommendation 19: The Consultation Program should identify the factors affecting the issuance of the reports in order to reduce the time from the closing conference to the date the employer receives the report.

Recommendation 20: KOSHA should develop and implement a formal program for conducting periodic internal evaluations. The procedure should assure that internal evaluations possess integrity and independence. Reports resulting from internal evaluations will be made available to OSHA.

The full report can be found at: http://www.osha.gov/dcsp/osp/efame/ky_efame_with_appendices.pdf

OSHA's interim rule on whistleblower procedures will soon be made final

The federal OSHA's new final interim rule that makes it easier for workers to voice safety, health and security concerns regarding whistleblower procedures were announced in late August. The comment period closed Nov. 1.

The new rule creates the procedures for handling worker retaliation complaints, and it allows filing by phone as well as in writing and filing in languages other than English. The regulations, which cover workers filing complaints in the railroad, public transit, commercial motor carrier and consumer product industries, also create greater consistency among various OSHA complaint procedures.

The rule establishes procedures and time frames for handling complaints under the whistleblower sections of the Implementing Recommendations of the 9/11 Commission Act of 2007 and the Consumer Product Safety Improvement Act of 2008. ▲