

OSHA's New Online Complaint Form May Increase Whistleblower Investigations

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Complaint Form

On Dec. 5, 2013, the Department of Labor's Occupational Health and Safety Administration (OSHA) released a new online complaint form that will allow employees to electronically file whistleblower complaints. The introduction of this online complaint form is likely to increase the number of disruptive agency investigations.

With the 2010 amendments to the Sarbanes-Oxley Act, OSHA was tasked with authority for investigating whistleblower complaints of "discrimination." Section 806 of the Sarbanes-Oxley Act, 18 U.S.C. 1514A, prohibits publicly-traded companies from discriminating against an employee due to the employee providing information or assisting in an investigation of financial fraud. In addition to investigating whistleblower complaints under the

Sarbanes-Oxley Act, OSHA also has the authority to investigate complaints of retaliation under more than 20 other laws, including, but not limited to: the Occupational Safety and Health Act,

29 U.S.C. 660; The Affordable Care Act, 29 U.S.C. 218 C; the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203; the FDA Food Safety and Modernization Act, Public Law 111-353; the Safe Drinking Water Act, 42 U.S.C. 300 j-9(i); the Federal Water Pollution Control Act, 33 U.S.C. 1367; the Toxic Substances Control Act, 15 U.S.C. 2622; the Solid Waste Disposal Act, 42 U.S.C. 6971; and the Clean Air Act, 42 U.S.C. 7622. Numerous industries will be affected by this change.

Prior to the introduction of the online complaint form, OSHA accepted complaints only in writing or telephonically through the agency's complaint hotline. The online complaint form now allows employees to file a complaint of retaliation at any time, 24 hours a day.

OSHA's online complaint form will make it easier for employees to report suspected violations of various laws. It is likely that this change will lead to more complaints, more investigations, and increased regulatory scrutiny. Employers should consult legal counsel to assess their policies and internal compliance programs to anticipate an increased number of whistleblower complaints.

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