

Chapter 9

COMPLAINT AND REFERRAL PROCESSING

I. Safety and Health Complaints and Referrals.

A. Definitions.

1. Complaint.

Notice of an alleged safety or health hazard (over which OSHA has jurisdiction), or a violation of the Act, submitted by a current employee or authorized representative of employees. There are two types: formal and non-formal.

a. Formal Complaint.

Complaint made by a current employee or an authorized representative of employees that meets all of the following requirements:

- Asserts that an imminent danger, a violation of the Act, or a violation of an OSHA standard exposes employees to a potential physical or health harm in the workplace;
- Is reduced to writing or submitted on an OSHA complaint form; and
- Is signed by at least one current employee or authorized employee representative. An electronic complaint submitted via the Federal OSHA Public Website shall be considered formal when the current employee or authorized employee representative provides their name and checks the “This constitutes my electronic signature” box.

b. Non-formal Complaint.

Any complaint alleging safety or health violations that does not meet all of the requirements of a formal complaint identified above and does not come from one of the sources identified under the definition of Referral, below.

2. Inspection.

An onsite examination of an employer's worksite conducted by an IOSHA compliance officer, initiated as the result of a complaint or referral, and meeting at least one of the criteria identified in the [Section C](#), *Criteria Warranting an Inspection*, below.

3. **Inquiry.**

A process conducted in response to a complaint or a referral that does not meet one of the identified inspection criteria as listed in Section C. It does not involve an onsite inspection of the workplace, but rather the employer is notified of the alleged hazard(s) or violation(s) by telephone, fax, email, or by letter if necessary. The employer is then requested to provide a response, and IOSHA will notify the complainant of that response via appropriate means.

4. **Electronic Complaint.**

A complaint submitted via OSHA's public website. Initially all complaints submitted via OSHA's public website are considered non-formal. See Paragraph E of this Chapter to determine when electronic complaints are to be considered formal.

5. **Permanently Disabling Injury or Illness.**

An injury or illness that has resulted in permanent disability or an illness that is chronic or irreversible. Permanently disabling injuries or illnesses include, but are not limited to amputation, blindness, a standard threshold shift in hearing, lead or mercury poisoning, paralysis or third-degree burns.

6. **Referral.**

An allegation of a potential workplace hazard or violation received from one of the sources listed below:

- a. **CSHO referral** – information based on the direct observation of a CSHO.
- b. **Safety and health agency referral** – from sources including, but not limited to: NIOSH, state programs, Federal OSHA, consultation, and state or local health departments, as well as safety and/or health professionals in other agencies.
- c. **11(c) or Iowa 88.9(3) complaint referral** – made by a whistleblower investigator when an employee alleges that he or

she was retaliated against for complaining about safety or health conditions in the workplace, refusing to do an allegedly imminently dangerous task, or engaging in other activities related to occupational safety or health.

- d. **Other government agency referral** – made by other Federal, State, or local government agencies or their employees, including local police and fire departments.
- e. **Media report** – either news items reported in the media or information reported directly to OSHA by a media source.
- f. **Employer Reported Referral** - of accidents other than fatalities and catastrophes.

7. **Authorized Representative of Employees.**

Any of the following:

- a. An authorized representative of the employee bargaining unit, such as a certified or recognized labor organization.
- b. An attorney acting for an employee.
- c. Any other person acting in a bona fide representative capacity, including, but not limited to, members of the clergy, social workers, spouses and other family members, and government officials or nonprofit groups and organizations acting upon specific complaints and injuries from individuals who are employees.

NOTE: The representative capacity of the person filing complaints on behalf of another should be ascertained unless it is already clear. In general, the affected employee should have requested, or at least approved, the filing of the complaint on his or her behalf.

B. **Classifying as a Complaint or a Referral.**

Whether the information received is classified as a complaint or a referral, an inspection of a workplace is normally warranted if **at least one** of the conditions in the section *Criteria Warranting an Inspection* is met.

C. **Criteria Warranting an Inspection.**

An inspection is normally warranted if **at least one** of the conditions below is met (but see also [Paragraph I.D.](#) of this chapter, *Scheduling an Inspection of an Employer in an Exempt Industry*):

1. A valid formal complaint is submitted. Specifically, the complaint must be reduced to writing or submitted on an OSHA complaint form, be signed by a current employee or authorized representative of employees, and state the reason for the inspection request with reasonable particularity. An electronic complaint submitted via the Federal OSHA Public Website shall be considered formal when the current employee or authorized employee representative provides their name and checks the “This constitutes my electronic signature” box. Additionally, there must be reasonable grounds to believe either that a violation of the Act or OSHA standard that exposes employees to physical harm exists, or that an imminent danger of death or serious injury exists, as provided in [Iowa Code 88.6\(5\)](#).
2. The information received, meeting the criteria of a formal complaint, alleges a recordkeeping deficiency that indicates the existence of a potentially serious safety or health violation.
3. The information alleges that a permanently disabling injury or illness has occurred as a result of the complained of hazard(s), and there is reason to believe that the hazard or related hazards still exist.
4. The information alleges that an imminent danger situation exists.
5. The information concerns an establishment and an alleged hazard covered by a local, regional, state, or national emphasis program.
6. The employer fails to provide an adequate response to an inquiry, or the individual who provided the original information provides further evidence that the employer's response is false or does not adequately address the hazard(s). The evidence must be descriptive of current, on-going or recurring hazardous conditions.
7. The establishment that is the subject of the information has a history of egregious, willful, failure-to-abate, or repeated citations within the State during the past three years. However, if the employer has previously submitted adequate documentation for these violations demonstrating that they were corrected and that programs have been implemented to prevent a recurrence of hazards, the Administrator will normally determine that an inspection is not necessary.

8. A whistleblower investigator or Regional Supervisory Investigator requests that an inspection be conducted in response to an employee's allegation that the employee was discriminated against for complaining about safety or health conditions in the workplace, refusing to perform an allegedly dangerous job or task, or engaging in other activities related to occupational safety or health.
9. If an inspection is scheduled or has begun at an establishment and a complaint or referral that would normally be handled via inquiry is received, that complaint or referral may, at the Administrator's discretion, be incorporated into the scheduled or ongoing inspection. If such a complaint is formal, the complainant must receive a written response addressing the complaint items.
10. If the information gives reasonable grounds to believe that an employee under 18 years of age is exposed to a serious violation of a safety or health standard or a serious hazard, an onsite inspection will be initiated if the information relates to construction, manufacturing, agriculture, or other industries as determined by the Administrator. Limitations placed on IOSHA's activities in agriculture by Appropriations Act provisions will be observed. See [CPL 02-00-051](#), *Enforcement Exemptions and Limitations under the Appropriations Act*, dated May 28, 1998. A referral to Child Labor should also be initiated.

NOTE: The information does not need to allege that a child labor law has been violated.

D. Scheduling an Inspection of an Employer in an Exempt Industry.

In order to schedule an inspection of an employer in an exempt industry classification as specified by Appropriations Act provisions:

NOTE: See [CPL 02-00-051](#), *Enforcement Exemptions and Limitations under the Appropriations Act*, dated May 28, 1998.

1. The information must come directly from a current employee; OR
2. It must be determined and documented in the case file that the information came from an authorized representative of the employee (see [Paragraph I.A.7.](#) of this chapter, *Authorized Representative of Employees*), with the employee's knowledge of the representative's intended action.

E. Electronic Complaints Received via the OSHA Public Website.

1. Electronic complaints submitted via the OSHA public website are screened by the Federal Monitoring office. If the complaint falls within IOSHA's jurisdiction it is automatically forwarded via email to IOSHA. If, after receiving the electronic complaint, IOSHA finds the complaint does not fall within its jurisdiction the complaint is forwarded appropriately.
2. Complete an OSHA complaint form in OIS for all complaint information received. In order to facilitate the tracking of electronic complaints, enter the Electronic Complaint Number (ECN) in the ECN field on the unprogrammed activity form in OIS.
3. Electronic complaints where a current employee or authorized employee representative has provided their name **and** checked the "This constitutes my electronic signature" box shall be considered as a formal complaint and processed accordingly.
4. All complaint-related material received electronically should be printed and date stamped with the date the material was submitted and received. When these dates are not the same, the Administrator will determine the appropriate date for the incoming material.

F. Information Received by Telephone.

1. While speaking with the caller, IOSHA personnel will attempt to obtain the following information:
 - a. Whether the caller is a current employee or an authorized employee representative and the date the employee became employed by the employer.
 - b. The exact nature of the alleged hazard(s) and the basis of the caller's knowledge. The individual receiving the information must determine, to the extent possible, whether the information received describes an apparent violation of IOSHA standards or the IOSH Act.
 - c. The employer's name, address, email address, telephone and fax numbers, as well as the name of a contact person at the worksite.

- d. The name, address, telephone number, and email address of any union and/or authorized employee representative at the worksite.
2. As appropriate, OSHA will provide the caller with the following information:
 - a. Describe the complaint process, and if appropriate, the concepts of “inquiry” (Phone/Fax) and “inspection,” as well as the relative advantages of each.
 - b. If the caller is a current employee or authorized representative of employees, explain the distinction between a formal complaint and a non-formal complaint, and the rights and protections that accompany filing a formal complaint. These rights and protections include:
 - The right to request an onsite inspection.
 - Notification in writing if an inspection is deemed unnecessary because there are no reasonable grounds to believe that a violation or danger exists.
 - The right to obtain review of a decision not to inspect by submitting a request for review in writing.
3. Information received by telephone from a current employee is considered a non-formal complaint until that individual provides a signed copy of the information. The employee can send, email or fax a signed copy of the information, request that an OSHA complaint form be sent, sign the information in person at the office, or submit the complaint with the electronic signature box checked via the Federal OSHA website. Normally a complainant has five working days to formalize a complaint.
4. If appropriate, inform the complainant of rights to confidentiality in accordance with Iowa Code 88.6(5) and ask whether the complainant wishes to exercise this right. When confidentiality is requested, the identity of the complainant is protected regardless of the formality of the complaint.
5. Explain Iowa Code 88.9(3) rights to employees and reprisal and discrimination protection provided by the code.

G. Procedures for Handling Complaints Filed in Multiple Area Offices or Regions.

1. When issues of multiple complaints being filed within Region 7 or multiple complaints being filed in multiple regions and Iowa Employers are referenced, jurisdictional issues will be discussed with the Regional Office.

H. **Procedures for an Inspection.**

1. Upon receipt of a complaint or referral, the Labor Commissioner (or his or her designee) will evaluate all available information to determine whether there are reasonable grounds to believe that a violation or hazard exists.
 - a. If necessary, reasonable attempts will be made to contact the individual who provided the information in order to obtain additional details or to clarify issues raised in the complaint or referral. See the [Complaint Questionnaire](#) beginning on page 9-15.
 - b. The Labor Commissioner or designee may determine not to inspect a facility if he/she has a substantial reason to believe that the condition complained of is being or has been abated.
2. Despite the existence of a complaint, if the Labor Commissioner or designee believes there is no reasonable grounds that a violation or hazard exists, no inspection or inquiry will be conducted.
 - a. Where a formal complaint has been submitted, the complainant will be notified in writing of OSHA's intent not to conduct an inspection, and the reasoning behind the determination according to [Iowa Code 88.6\(5\)](#). The justification for not inspecting will be noted in the case file.
 - b. In the event of a non-formal complaint or referral, if possible, the individual providing the information will be notified by appropriate means of OSHA's intent not to conduct an inquiry or inspection. The justification for not inspecting or conducting an inquiry will be noted in the case file.
3. If the information contained in the complaint or referral meets at least one of the inspection criteria listed in [Paragraph I.C.](#) of this chapter, *Criteria Warranting an Inspection*, and there are reasonable grounds to believe that a violation or hazard exists, the Office is authorized to conduct an inspection.

- a. If appropriate, the Office will inform the individual providing the information that an inspection will be scheduled and that he or she will be advised of the results.
 - b. After the inspection, the Office will send the individual a letter addressing each information item, with reference to the citation(s) or a sufficiently detailed explanation for why a citation was not issued.
4. If an inspection is warranted, it will be initiated as soon as resources permit. Inspections resulting from formal complaints of serious hazards will normally be initiated within five working days of formalizing.

I. Procedures for an Inquiry.

1. If the complaint or referral does not meet the criteria for initiating an onsite inspection, an inquiry will be conducted. IOSHA will promptly contact the employer to notify them of the complaint or referral and its allegation(s), and fax or email a confirming letter.
2. If a non-formal complaint is submitted by a current employee or authorized representative of employees that does not meet any of the inspection criteria, the complainant may be given five working days to make the complaint formal.
 - a. The complainant may come into the office and sign the complaint, mail, email or fax a signed complaint letter to IOSHA, or submit the complaint with the electronic signature box checked via Federal OSHA's website. Additionally, an OSHA complaint form can be mailed or faxed to the complainant, if appropriate.
 - b. If the complaint is not made formal after five working days, after making a reasonable attempt to inform the complainant of the decision, OSHA will proceed with the inquiry process.
3. The employer will be advised of what information is needed to answer the inquiry and encouraged to respond by fax or email. Employers are encouraged to do the following:
 - a. Immediately investigate and determine whether the complaint or referral information is valid and make any necessary corrections or modifications.

- b. Advise the Administrator either in writing or via email within five working days of the results of the investigation into the alleged complaint or referral information. At the discretion of the Administrator, the response time may be longer or shorter than five working days, depending on the circumstances. Additionally, although the employer is requested to respond within the above time frame, the employer may not be able to complete abatement action during that time, but is encouraged to do so.
 - c. Provide the Administrator with supporting documentation of the findings, including any applicable measurements or monitoring results, and photographs and/or videos that the employer believes would be helpful, as well as a description of any corrective action the employer has taken or is in the process of taking.
 - d. Post a copy of the letter from IOSHA where it is readily accessible for review by all employees.
 - e. If there is a recognized employee union or safety and health committee in the facility, provide it with a copy of IOSHA's letter and the employer's response.
4. As soon as possible after contacting the employer, a notification letter will be faxed or emailed to the employer. Where no fax or email is available the notification letter will be mailed. Sample letters to complainants and employers are provided in OIS. If email is an acceptable means of responding, this should be indicated in the notification letter and the proper email address should be provided.
5. If no employer response or an inadequate employer response is received after the allotted five working days, additional contact with the employer may be made before an inspection is scheduled. If the employer provides no response or an inadequate response, or if OSHA determines from other information that the condition has not been or is not being corrected, an inspection will be scheduled.
6. The complainant, if a current employee or authorized representative of employees, will be advised of the employer's response as well as the complainant's rights to dispute that response and, if the alleged hazard persists, of the right to request an inspection. An inspection may be scheduled in accordance with [Section C, Criteria Warranting an Inspection](#), above. When OSHA receives an adequate response from the employer and the

complainant does not dispute or object to the response, an onsite inspection normally will not be conducted.

7. If the complainant is a current employee or authorized representative of employees and wishes to dispute the employer's response, the disagreement must be submitted in writing and signed, thereby making the complaint formal.
 - a. If the employee disagreement takes the form of a written and signed formal complaint, see [Paragraph I.H.](#) of this chapter, *Procedures for an Inspection.*
 - b. If the employee disagreement does not take the form of a written and signed formal complaint, some discretion is allowed in situations where the information does not justify an onsite inspection. In such situations, the complainant will be notified of IOSHA's intent not to conduct an inspection and the reasoning behind the determination. This decision should be thoroughly documented in the case file.
8. If a signed formal complaint is received after the complaint inquiry process has begun, the Administrator will determine whether the alleged hazard is likely to exist based on the employer's response and by contacting the complainant. The complainant will be informed that the inquiry has begun and that the complainant retains the right to request an onsite inspection if he/she disputes the results and believes the hazard still exists.
9. The complaint must not be closed until IOSHA verifies that the hazard has been abated.
10. The justification for not conducting an inquiry will be noted in the case file.

J. **Complainant Protection.**

1. **Identity of the Complainant.**

Upon request of the complainant, his or her identity will be withheld from the employer in accordance with [Iowa Code 88.6\(5\)](#). No information will be given to the employer that would allow the employer to identify the complainant.

2. **Discrimination Protection.**

- a. [Iowa Code 88.9\(3\)](#) provides protection for employees who believe that they have been the subject of an adverse

employment action in retaliation for engaging in activities related to workplace safety or health. Any employee who believes that he or she has been discharged or otherwise retaliated against by any person as a result of engaging in such activities may file a complaint. The complaint must be filed within thirty days of the discharge or other retaliation.

- b. Complainants should always be advised of their 88.9(3) rights and protections upon initial contact with OSHA and whenever appropriate in subsequent communications.

K. Recording in OIS.

Information about complaint inspections or inquiries must be recorded in OIS following current instructions given in the OIS manual. Referrals reported by the employer will be recorded in OIS following the guidance provided in the [Memorandum](#) entitled, *Revised Interim Enforcement Procedures for Reporting Requirements under 29 C.F.R. 1904.39*, dated March 4, 2016, or unless superseded by future agency approved correspondence.

II. Whistleblower Complaints.

- A. IOSHA enforces the discrimination and discharge provisions of the Code of Iowa chapter 88, the Iowa OSH Act. A desk reference summarizing the statutes covered by the Federal OSH Act can be found in the Whistleblower Investigations Manual on OSHA's Web site. Iowa's Discrimination Investigation Manual IOSH Instruction DIS 0-0.9 can be found on Iowa OSHA's website www.iowaworkforce.org/labor. The Code of Iowa generally provides that employers may not discharge or otherwise retaliate against an employee because the employee has reported an alleged violation related to the statute to an employer or a government agency, or otherwise exercised any rights provided to employees by the Code.
- B. When a retaliation complaint is made under any of the sixteen federal whistleblower statutes enforced by OSHA other than the Iowa OSH Act, the complainant should be referred promptly to the Regional Supervisory Investigator or Team Leader through the Area Director because the requirements for filing complaints under those statutes vary from those of the OSH Act. They should also be advised that there are statutory deadlines for filing these complaints.
- C. In the context of an IOSHA enforcement action or a consultation activity, the complainant will be advised of the protection against retaliation afforded by [Iowa Code 88.9\(3\)](#). A 88.9(3) complaint may be in any form, including an oral complaint made to a CSHO. Thus, if a person alleges

that he has suffered an adverse action because of activity protected under 88.9(3), CSHOs will record that person's identifying information and the date and time of this initial contact on an OSHA complaint form and forward it to the Administrator or designee.

- D. In State Plan States, employees may file occupational safety and health retaliation complaints with Federal OSHA, the State, or both. Federal OSHA normally refers such complaints to the State Plan States for investigation. OSHA's Whistleblower Manual outlines the Agency's referral/deferral policies for such complaints.

Advisory Complaint Questionnaire

Obtain information from the caller by asking the following questions, where relevant.

For All Complaints:

1. What is the specific safety or health hazard?

2. Has the hazardous condition been brought to the employer's attention? If so, when?
How?

3. How are employees exposed to this hazard? Describe the unsafe or unhealthful working conditions; identify the location.

4. What work is done in the unsafe/unhealthful area? Identify, as well as possible, the type and condition of equipment in use, the materials (e.g., chemicals) being used, the process/operation involved, and the kinds of work being done near the hazardous area. Have there been any recent chemical spills, releases, or accidents?

5. With what frequency are employees doing the task that leads to the exposure? Continuously? Every day? Every week? Rarely? For how long at one time? How long has the condition existed (so far as can be determined)? Has it been brought to the employer's attention? Have any attempts been made to correct the condition, and, if so, who took these actions? What were the results?

6. How many shifts are there? What time do they start? On which shift does the hazardous condition exist?

7. What personal protective equipment (e.g., hearing protection, gloves or respirators) is required by the employer relevant to the alleged exposure? Is it used by employees? Include all PPE and describe it as specifically as possible. Include the manufacturer's name and any identifying numbers.

8. How many people work in the establishment? How many are exposed to the hazardous conditions? How near do they get to the hazard?

9. Is there an employee representative or a union in the establishment? Include the name, address, and telephone number of the union and/or the employee representative(s).

For Health Hazards

10. Has the employer administered any tests to determine employee exposure levels to the hazardous conditions or substance? Describe these tests. Can the employees get the results (as required by the standard)? What were the results?

11. What engineering controls are in place in the area(s) in which the exposed employees work? For instance, are there any fans or acoustical insulation in the area which may reduce exposure to the hazard?

12. What administrative or work practice controls has the employer put in place?

13. Do any employees have any symptoms that may have been caused by exposure to hazardous substances? Have any employees ever been treated by a physician for a work-related disease or condition? What was it?

14. Have there been any “near-miss” incidents?

15. Are respirators worn to protect against health hazards? If so, what kind? What exposures are they protecting against?

16. If the complaint is related to noise, what, if any, hearing protection is provided to and worn by the employees?

17. Do employees receive audiograms on a regular basis?

For Safety Hazards:

18. Under what adverse or hazardous conditions are employees required to work? This should include conditions contributing to stress and “other” probability factors.

19. Have any employees been injured as a result of this hazardous condition? Have there been any “near-miss” incidents?
