
Whistleblower Protection Program (WPP)

DISCUSSION DRAFT

Goals:

- Increase efficiency and productivity of the Whistleblower Protection Program (WPP).
- Enable OSHA to enhance focus on core mission.
- No staff reductions.
- No increase in costs, expenses.

List of Alternatives (partial)

- Transfer a portion of the WPP from OSHA to OLMS.
 - Create a stand-alone WPP within the Department of Labor.
 - Establish a separate WPP directorate within OSHA, with a separate budget, which centrally controls the whistleblower program.
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What is WPP?

- WPP enforces the whistleblower provisions of eighteen federal statutes.
- WPP will soon enforce the Dodd-Frank Act (DFA).

Whistleblower Laws Possibly Appropriate for Transfer

- Whistleblower laws that protect employees who report violations of aviation, commercial motor carrier, consumer product, environmental, international shipping container, financial reform, health care reform, nuclear energy, pipeline, public transportation, railroad, and securities laws.
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Whistleblower Laws Possibly Appropriate for Transfer (blue font)

<i>Surface Transportation Assistance Act (STAA)</i>	<i>Toxic Substances Control Act (TSCA)</i>	<i>Corporate and Criminal Fraud Accountability Act, Title VIII of the Sarbanes Oxley Act (SOX)</i>
<i>Asbestos Hazard Emergency Response Act (AHERA)</i>	<i>Solid Waste Disposal Act (SWDA)</i>	<i>Pipeline Safety Improvement Act (PSIA)</i>
<i>International Safe Container Act (ISCA)</i>	<i>Clean Air Act (CAA)</i>	<i>Federal Railroad Safety Act (FRSA)</i>
<i>Safe Drinking Water Act (SDWA)</i>	<i>Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)</i>	<i>National Transit Systems Security Act (NTSSA)</i>
<i>Federal Water Pollution Control Act (FWPCA)</i>	<i>Energy Reorganization Act (ERA)</i>	<i>Consumer Product Safety Improvement Act (CPSIA)</i>
<i>Section 1057 of the Dodd Frank Wall Street Reform and Consumer Protection Act (DFA)</i>	<i>Wendell H. Ford Aviation Investment and Reform Act for the 21st Century</i>	<i>Section 1558 of the Affordable Care Act (ACA)</i>
<i>Section 11(c) of the Occupational Safety and Health Act</i>		

Whistleblower Law Not Appropriate for Transfer

- Section 11(c) of the OSH Act.
 - Section 11(c) ensures workers' rights to file safety and health complaints, to complain of safety concerns to their supervisor, to participate in an OSHA inspection, to report work-related injuries, etc.
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Whistleblower Law Not Appropriate for Transfer (blue font)

Surface Transportation Assistance Act (STAA)	Toxic Substances Control Act (TSCA)	Corporate and Criminal Fraud Accountability Act, Title VIII of the Sarbanes Oxley Act (SOX)
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Reasons 11(c) should remain with OSHA

- Absent a specific statutory delegation of authority, it is usually good policy for the primary enforcement agency (OSHA) to enforce its whistleblower provisions (section 11(c)).
- The triggering event giving rise to a whistleblower complaint may be the agency's presence in that particular workplace (e.g. an inspection or enforcement action).
- In many cases, the primary enforcement agency will already have a case file on that employer.

Potential Benefits of Transferring Whistleblower Responsibilities to OLMS

OLMS and WPP share a common mission:

- As part of the overall DOL mission, OLMS promotes “voice in the workplace” for union members by safeguarding union assets and ensuring free and fair union officer elections.
- WPP promotes “voice in the workplace” for all workers by ensuring that laws meant to protect them (and others) are not ignored.
- Workers without union representation lack a grievance-arbitration process and an effective WPP provides them with an important voice.

Potential Benefits of Transferring Whistleblower Responsibilities to OLMS

OLMS and WPP share a common structure:

- Both WPP and OLMS have investigators in the GS-1801 (General Inspection and Investigation) series.
 - A good investigator – one who is proficient in conducting systematic and well-organized inquiries and examinations – can with proper training and support investigate breaches of any law.
- Whistleblower investigations could be incorporated into OLMS' investigative framework as a central, not collateral, concern.

Potential Benefits of Transferring Whistleblower Responsibilities to OLMS

OLMS has a culture of centralized control:

- OLMS issues regional operating plans and monitors results through mandatory quarterly plan execution reports.
 - OLMS conducts onsite management reviews to ensure that all field components conform to National Office directives.
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Potential Benefits of Transferring Whistleblower Responsibilities to OLMS

OLMS has a culture of accountability:

- OLMS' IT system permits the tracking of every case from start to finish, enabling evaluation of the efficiency and productivity of each investigator and each office.
 - The IT system could be configured to provide to detailed and auditable WPP productivity, cost accounting and performance figures.
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Potential Benefits of Establishing a Stand-Alone Whistleblower Agency

- Direct oversight by Office of the Secretary/Deputy Secretary.
 - Whistleblower enforcement is a specialized area and investigation of whistleblowing is a specialized skill.
 - Arguably, greater control over agency spending decisions.
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Potential Drawbacks of Establishing a Stand-Alone Whistleblower Agency

- WPP relies on administrative and other support from OSHA.
 - As a stand-alone agency, WPP would need to duplicate:
 - Leadership Structure
 - Information Technology
 - Budget Formulation and Execution
 - Strategic Planning, Program Performance and Measures
 - Human Resource Management, Labor Management Relations, Space Management, Procurement, Property Management, Records Management, Safety, etc.
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Potential Benefits of Establishing a Separate Directorate in OSHA

- Streamlined organization chart would reduce case handling differences resulting from regional autonomy, promoting greater consistency.
 - More predictable budget and less costly than alternatives of transferring functions to OLMS or establishing a stand-alone agency.
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