



Oregon Department of Consumer and
Business Services
Occupational Safety and Health Division
(Oregon OSHA)

Response to
Federal Annual Monitoring Evaluation Report
For
Federal Fiscal Year 2023



Oregon OSHA

Formal Response to FY 2023 Comprehensive FAME Report

Finding 2023-01: In 100% (76 of 76) retaliation cases, there was no evidence that complainants were advised of their right to dually file with OSHA.

Federal OSHA Recommendation Finding 2023-01: BOLI must use language in their notification letters informing complainants of their right to dually file with OSHA. Oregon OSHA should monitor BOLI to ensure this information is documented and in the retaliation casefile.

Finding 2023-02: In 68% (52/76) of retaliation files reviewed, there was inconsistent documentation on allowing complainant to rebut the respondent's information.

Federal OSHA Recommendation Finding 2023-02: Oregon OSHA should ensure BOLI is following OR OSHA PD A-288 by allowing complainants to rebut the information provided respondents during investigations and that the rebuttal is documented in the case files.

State Plan Response to both findings (2023-01 and 2023-02): Oregon OSHA's Corrective Action Plan for ensuring that the Oregon Bureau of Labor and Industry (BOLI) is conducting the 11(c) investigations according to the policy outlined in Oregon OSHA's 11(c) Whistleblower Investigations Manual (Program Directive A-288) will include providing training to BOLI investigators and reviewing the casefiles quarterly. This training and review process will include the requirements to document that the complainant was allowed to rebut the respondent's information, as well as, that language must be used in their notification letters informing complainants of their right to dually file with federal OSHA. These notification letters are now a standard template and includes the language for dual filing.

An additional component in Oregon worth noting is that the retaliation cases for safety and health (whistleblower rights) are by statute conducted by BOLI. Since this is a federal requirement of Oregon OSHA under the enforcement grant, Oregon OSHA provides funding and oversight of the 11c whistleblower cases through an Inter-Agency Agreement (IAA). Through this IAA process and partnership with BOLI, Oregon OSHA has sought authorization to review the electronic files housed in the BOLI database system. This will not only give Oregon OSHA more complete information about the file in real time, but also the ability to help guide the federal OSHA reviewers through the BOLI records management system. Oregon OSHA is also updating the IAA to include the expectations for completing this work according to policy. Additionally, BOLI will be providing dedicated intake staff for 11c allegations which will help the complaint assigned to investigators be more timely with a higher level of accuracy.

Observation 2023-01: The confidentiality of employees interviewed during inspections was not ensured during the appeal process.

Federal OSHA Recommendation Observation 2023-01: OSHA will continue to work with and provide guidance to Oregon OSHA to ensure the confidentiality of employees who participate in enforcement activities.

State Response Observation 2023-01: The Oregon Safe Employment Act is written with similar language as the federal OSHA Occupational Safety and Health Act in regards to private interviews of those interviewed during the inspection process. However, federal OSHA is now noting that the federal system also offers additional confidentiality through applying informants privilege to their investigatory process. In addition, the federal Freedom of Information Act does not require disclosure of information obtained during the investigatory process in the same manner as the public records laws and rules of discovery that apply in Oregon. All of these differences operate outside of federal OSHA and Oregon OSHA specific statutes. As such, it has been a several year process to untangle the federal process in comparison to the Oregon process to determine if changes can be made in Oregon that would fully address all of the differences. Oregon OSHA put forth a Legislative Concept (LC) in the 2023 Oregon Legislative session that was not able to move forward. Oregon OSHA has a current LC for the 2025 session that has moved forward to the drafting process. The outcome of these efforts are unknown but Oregon OSHA is committed to the process to broaden the confidentiality of the interviewed workers to the extent possible in Oregon.

Observation 2023-02: Oregon OSHA did not adopt federal program changes timely.

Federal OSHA Recommendation Observation 2023-02: OSHA will continue to track Oregon OSHA's progress on adoption of federal program changes and will discuss the status during the quarterly meetings.

State Response Observation 2023-02: Oregon OSHA has instituted a new project management process and tracking mechanism for federal mandated changes to ensure timely adoption.

Observation 2023-03: In 100% (76/76) of retaliation case files reviewed, although draft letters were present in the file, there was no specific information on delivery of official letters presented for review.

Federal OSHA Recommendation Observation 2023-03: OSHA will monitor quarterly that Oregon OSHA and BOLI are properly documenting retaliation investigations and will conduct a limited file review for FY 2024.

State Response Observation 2023-03: Oregon OSHA disagrees with the evaluation that "there was no specific information on delivery of official letters." The Region shared concerns that a copy of an envelope with a postmark was not contained in the file. The letters are dated, and entry is made in the data system to indicate when the letter was sent. The mailing process for state government includes mail processing offsite, and it is not feasible to have a copy of the

postmarked envelope. However, Oregon OSHA will work with BOLI to identify alternative means for documenting issuance of official letters beyond its existing system. Additionally, due to upcoming changes in process, Oregon OSHA will have the ability to conduct real time evaluation of the cases as they close which will enable the ability to ensure the logs are included in the casefile.

Observation 2023-04: The activity log was not presented for review in 92% (70/76) of retaliation files.

Federal OSHA Recommendation Observation 2023-04: OSHA will monitor quarterly that Oregon OSHA and BOLI are properly documenting retaliation investigations and will conduct a limited file review for FY 2024.

State Response Observation 2023-04: Oregon OSHA disagrees with the evaluation that “that the activity log was not presented for review”, as every complaint docketed into the electronic case management system cannot exist without this activity log. During the multi-day onsite review process, where Oregon OSHA was present to assist the review of BOLI’s casefiles, no mention of the log was requested therefore the log was not printed and provided. However, the Corrective Action Plan identified above under Finding 2023-01 and 2023-02 will work to rectify this observation. Due to upcoming changes in process, Oregon OSHA will have the ability to conduct real time evaluation of the cases as they close which will enable the ability to ensure the logs are included in the casefile.

Observation 2023-05: OSHA 300 logs were not in the files in five of nine (55%) state and local government consultation files reviewed, for employers with 10 or more employees at the worksite.

Federal OSHA Recommendation Observation 2023-05: OSHA will discuss with Oregon OSHA during quarterly meetings and with the Consultation Program Manager. OSHA will conduct a limited file review during the next comprehensive FAME.

State Response Observation 2023-05: Oregon OSHA recognizes the importance of complete file documentation, and will continue to train and supervise staff to meet these objectives. Oregon OSHA management will review the files and data to ensure that the 300 logs are available in the file.

Observation 2023-06: The DART rate comparison in the report to the employer was missing in five of nine (44%) state and local government consultation files reviewed with 10 or more employees at the worksite.

Federal OSHA Recommendation Observation 2023-06: OSHA will discuss with Oregon OSHA during quarterly meetings and with the Consultation Program Manager. OSHA will conduct a limited file review during the next comprehensive FAME.

State Response Observation 2023-06: Oregon OSHA recognizes the importance of complete file documentation, and will continue to train and supervise staff to meet these objectives. Oregon OSHA management will review the files and data to ensure the these comparisons are captured in the file.

Observation 2023-07: In FY 2023, inadequate abatement documentation for serious hazards was found in 7 of 14 (50%) state and local government consultation files reviewed for employers which had serious hazards at their worksite.

Federal OSHA Recommendation Observation 2023-07: OSHA will discuss with Oregon OSHA during quarterly meetings and with the Consultation Program Manager. OSHA will conduct a limited file review during the next comprehensive FAME.

State Response Observation 2023-07: Oregon OSHA recognizes the importance of complete file documentation, and will continue to train and supervise staff to meet these objectives. Oregon OSHA management will review the files and data to ensure that the appropriate serious abatement is contained in the file.