



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 2024



Oregon OSHA

Formal Response to FY 2024 Comprehensive FAME Report

Finding 2024-01: In 100% (76 of 76) retaliation cases, there was no evidence that complainants were advised of their right to dually file with OSHA.

Finding 2024-02: In 68% (52/76) of retaliation files reviewed, there was inconsistent documentation on allowing complainant to rebut the respondent's information.

State Plan Response to both findings (2024-01 and 2024-02): It is important to note, as a follow up FAME year, no evaluation of 11(c) investigations was conducted in FY24. The finding relates to concerns raised for FY23, and no evaluation has occurred since that point. After the FY23 review, Oregon OSHA's Corrective Action Plan for ensuring that the Oregon Bureau of Labor and Industries (BOLI) was conducting the 11(c) investigations according to the policy outlined in Oregon OSHA's 11(c) Whistleblower Investigations Manual (Program Directive A-288) included providing training to BOLI investigators, updates to the templates used, and regularly reviewing the casefiles. This training and review process was instituted and included 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.

BOLI has added dual filing notification to three 11(c) documents: initial complaint intake questionnaire, complainant notification letter after the complaint is perfected (docketed), and the closing notification letter sent to the complainants at the end of any 11(c) investigation. In addition, BOLI has modified its closing memo template used for 11(c) investigations to include a specific provision for complainant rebuttal information.

It is worth noting, in Oregon 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 11(c) whistleblower cases through an Inter-Agency Agreement (IAA). Through this IAA process and partnership with BOLI, Oregon OSHA is now reviewing the electronic files that are housed in the BOLI database system. At this point, Oregon OSHA has more complete information about the file in real time and will be able to provide guidance to the federal OSHA reviewers during onsite review activity.

Oregon OSHA has been conducting monthly audits to verify that each 11(c) BOLI casefile includes evidence of dual file notification, as well as, that each 11(c) BOLI casefile includes a description of the complainant rebuttal or why a rebuttal opportunity was otherwise unnecessary (e.g. case withdrawn to state/federal court prior to case determination). Although the cases have been regularly reviewed since the FY23 review, cases that were initiated prior to these changes implemented may have residual deficiencies; however, since the implementation of the dual filing notification on three 11(c) documents, Oregon OSHA has found 100% compliance in its monthly audits.

In recent legislative budget approvals, BOLI will be adding more staff to the Civil Rights division which will include dedicated intake staff for 11(c) allegations which will help the complaint assigned to investigators be more timely with a higher level of accuracy.

Observation 2024-01: The confidentiality of employees interviewed during inspections was not ensured during the appeal process.

State Response Observation 2024-01: 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 bill to provide greater protection from employee disclosure in the Oregon Public Records laws, in both the 2023 and 2025 Oregon Legislative sessions, which ultimately did not pass in the legislature.

Observation 2024-02: Oregon OSHA did not adopt federal program changes timely.

State Response Observation 2024-02: It is important to note, as a follow up FAME year no evaluation of timely federal program changes was conducted in FY24. The finding relates to concerns raised for FY23, and no evaluation has occurred since that point. After the FY23 review, Oregon OSHA instituted a new project management process and tracking mechanism for federal mandated changes to ensure timely adoption. Currently, there are no outstanding federal actions.

Observation 2024-03: 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.

State Response Observation 2024-03: It is important to note, as a follow up FAME year no evaluation of 11(c) investigations was conducted in FY24. The finding relates to concerns raised for FY23, and no evaluation has occurred since that point. 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 has reviewed the files in real time and are confident that the letters are mailed according to the date of the letter, which is supported by the entry into electronic case management system.

Observation 2024-04: The activity log was not presented for review in 92% (70/76) of retaliation files.

State Response Observation 2024-04: It is important to note, as a follow up FAME year no evaluation of 11(c) investigations was conducted in FY24. The finding relates to concerns raised for FY23, and no evaluation has occurred since that point. Oregon OSHA disagrees with the observation 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 in for FY23, 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. Now that Oregon OSHA has access to BOLI’s system, it can be assured that the logs are included in the casefile for the federal OSHA review team.

Observation 2024-05: 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.

State Response Observation 2024-05: It is important to note, as a follow up FAME year no evaluation of consultation files was conducted in FY24. The finding relates to concerns raised for FY23, and no evaluation has occurred since that point. OSHA recognizes the importance of complete file documentation, and continues to train and supervise staff to meet these objectives. Oregon OSHA management has reviewed the files and here has been significant improvement in this area.

Observation 2024-06: 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.

State Response Observation 2024-06: It is important to note, as a follow up FAME year no evaluation of consultation files was conducted in FY24. The finding relates to concerns raised for FY23, and no evaluation has occurred since that point. OSHA recognizes the importance of complete file documentation, and continues to train and supervise staff to meet these objectives. Oregon OSHA management has reviewed the files and here has been significant improvement in this area.

Observation 2024-07: 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.

State Response Observation 2024-07: It is important to note, as a follow up FAME year no evaluation of consultation files was conducted in FY24. The finding relates to concerns raised for FY23, and no evaluation has occurred since that point. Oregon OSHA recognizes the importance of complete file documentation, and continues to train and supervise staff to meet these objectives. Oregon OSHA management has reviewed the files and here has been significant improvement in this area.