

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM: Gary E. Foster
D/OMS
1D4040 HQ

EXTENSION

NO. DD/A Registry
87-1791x

DATE **21 AUG 1987**

TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

RECEIVED

FORWARDED

1. DDA / EXA
7D24 HQ

8/26

[Signature]

2.

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4.

5.

DDA / Registry

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DDA REGISTRY

FILE: 12-3

11.

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15.

DD/A Registry
87-1791x

21 AUG 1987

MEMORANDUM FOR: Deputy Director for Administration

FROM: Gary E. Foster
CIA Designated Safety and Health Official

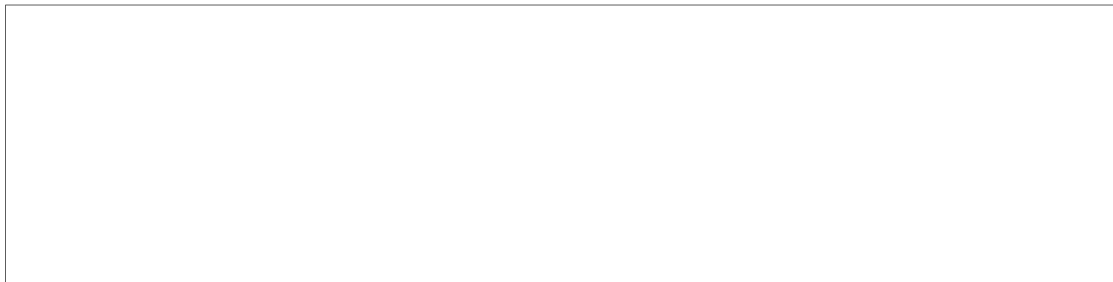
SUBJECT: Federal Employee Protection Against
Reprisals, Occupational Safety and
Health Program

REFERENCE: Letter to Deputy Director of Administration,
CIA from Assistant Secretary, Occupational
Safety and Health, Department of Labor

1. Reference letter emphasizes concern of the Occupational Safety and Health Administration with the issue of reprisal and how to provide adequate protection to employees when they exercise their rights provided in Executive Order 12196 and 29 CFR 1960. Eight elements considered essential for the protection of employees from reprisals are listed in the letter.

2. Executive Order 12196 states that each agency head shall " establish procedures to assure that no employee is subject to restraint, interference, coercion, discrimination or reprisal for filing a report of an unsafe or unhealthy working condition or other participation in agency occupational safety and health program activities." Compliance with this mandate is, of course, one of our concerns in implementing the CIA's Occupational Safety and Health Program and is provided for in the following:

STAT



3. The above publications include the eight elements and also encourage employees to participate in the CIA OSHP and to report unsafe or unhealthy working conditions. These reports are handled promptly by Safety Division personnel. No reports have been received from employees regarding restraint, interference, coercion, discrimination or reprisal for filing such a complaint.

STAT



Gary F. Foster

cc: Chairman,
CIA Occupational Safety and Health Committee

REFERENCE

22 June 1987

MEMORANDUM FOR: Chief, Safety Division, OMS

FROM:

Chairman, Agency Occupational Safety and Health Committee (OSHC)

SUBJECT: Federal Employee Protection Against Reprisals

1. In accordance with our discussion on 16 June 1987, a copy of the attached letter with attachments from John A. Pendergrass to William F. Donnelly on the subject was given to you. In our discussion you indicated the Agency Safety and Health Program has incorporated information and guidance to employees on how to obtain protection against reprisals when they exercise their rights under Executive Order 12196 and 29 CFR Part 1960, Basic Elements for Federal Employee Occupational Safety and Health (S&H) Programs. Consistent with our meeting, I am forwarding this memorandum to you requesting that you review the Agency S&H regulations, notices, etc. to ascertain whether or not they contain the eight elements Mr. Pendergrass believes are essential for the protection of employees from reprisals.

2. Once you have completed the above review, it is requested a memorandum be prepared for Mr. Gary Foster, the Agency's Designated Safety and Health Official, to Mr. Donnelly outlining whether or not the Agency S&H guidance includes the eight elements enumerated by Mr. Pendergrass, and if not, what needs to be done to incorporate all eight elements in the Agency S&H Program.

Attachments



cc:



EXA/DDA

ROUTING AND TRANSMITTAL SLIP

Date

11 June 87

TO: (Name, office symbol, room number, building, Agency/Post)	Initials	Date
1. Chairman, Agency Occupational Safety and Health Committee, 1D4061 Hqs		
2.		
3.		
4.		
5.		

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	<input checked="" type="checkbox"/> For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS

FYI.

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)		Room No.—Bldg.
	EXA/DDA	Phone No.

5011-102

U.S.G.P.O. 1983-421-529/320

OPTIONAL FORM 41 (Rev. 7-76)
 Prescribed by GSA
 FPMR (41 CFR) 101-11.206

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DD/A Registry
87-1243X

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210



Mr. William F. Donnelly
Deputy Director for
Administration
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Donnelly:

Since the issuance of Executive Order 12196, the Occupational Safety and Health Administration (OSHA) and the Federal agencies have been concerned with the issue of reprisal and how to provide adequate protection for Federal employees when they exercise their rights provided under the Executive Order and 29 CFR Part 1960, Basic Program Elements for Federal Employee Occupational Safety and Health Programs.

The responsibility for establishing procedures and for assuring that reprisals do not occur is placed clearly on the agency head by both the Executive Order and the Department of Labor's implementing regulations, 29 CFR Part 1960. The adequacy of agencies' procedures has been the subject of frequent discussion by the Federal Advisory Council on Occupational Safety and Health.

To bring a degree of uniformity to agencies' reprisal programs and OSHA's evaluation of those programs, we are presenting the following eight elements which we believe are essential for the protection of employees from reprisals:

- Issuance by the agency head of a strong policy statement to management and employees identifying employee involvement in the safety and health program as an important goal of management and stating that the taking of reprisal action against an employee for identifying unsafe or unhealthful working conditions or for other involvement in the program is not to be condoned;
- Dissemination of information on employees' right to be free from reprisal for exercising rights under Executive Order 12196;

-2-


- Dissemination of information regarding the details of where and with whom to file a reprisal complaint;
- Investigation of reprisal complaints by an official with the necessary ability and authority to conduct an effective inquiry within appropriate time frames and to recommend redress if warranted;
- The right of appeal to the agency head or an appropriate deputy if the employee is dissatisfied with the initial denial of the reprisal complaint;
- Provision of timely information to any certified safety and health committees and collective bargaining representatives concerning the findings of the investigation and the determination;
- A means of informing the appropriate agency safety and health office of allegations of reprisal and their disposition if these officials are not involved in the investigation or adjudication; and
- Inclusion of criteria in the agency's self evaluation program which will provide information regarding the effectiveness of the reprisal program.

It is our hope that you will review your current reprisal program to ensure that it contains all eight elements and modify that procedure to include any element not addressed.

OSHA for its part will utilize these eight elements, as well as actual case experience, to judge the adequacy of reprisal procedures when conducting an evaluation of an agency safety and health program. OSHA will also continue to work through your safety office to resolve any reprisal allegations and any deficiencies alleged in agency investigative reports brought to our attention.

Should there be any question about these procedures, please contact Mr. Leo Carey, Director, Directorate of Field Operations, OSHA, on 523-7725.

Sincerely,


John A. Pendergrass
Assistant Secretary

Enclosure

PRESENTATION - - REPRISALS

BACKGROUND

- Legal Authority

The Act:

Section 11 (c) which defines the Secretary's role in private sector reprisal cases does not apply in the Federal sector.

Section 19 which addresses "Federal Agency Safety Programs and Responsibilities" is silent on the issue of reprisal.

Executive Order 12196:

Section 1-201 (f) requires the head of each Federal Agency to "Establish procedures to assure that no employee is subject to restraint, interference, coercion, discrimination or reprisal for filing a report of an unsafe or unhealthy working condition, or other participation in agency occupational safety and health program activities."

29 CFR Part 1960.46

Section 1960.46 (a) expands somewhat on the requirement of the Executive Order. The responsibility is clearly on the head of the agency to protect employees from reprisal but specific guidelines as to how this is to be done are not provided.

Section 1960.46 (b) required the Secretary of Labor to evaluate agency procedures and provide findings and recommendations to the President regarding the handling of allegations of reprisal.

- History

Section 46 (b) report to the President:

OFAP surveyed the Federal agencies to determine what they were doing to prevent reprisal actions from occurring.

Most agencies relied on existing grievance procedures. Some confusion was found to exist about the use of these procedures to prevent reprisals and a lack of knowledge on the part of employees was also apparent.

Decision was to assist agencies in clarifying and publicizing the use of procedures to prevent reprisal and not to establish a separate procedure for prevention of OSH reprisals.

Interface with OPM:

OPM assured OSHA and the FACOSH that sufficient procedures existed in the Federal sector which an agency could utilize as their reprisal procedure or part thereof.

OFAP attempted to develop with OPM an instructive paper for inclusion in the Federal Personnel Manual which would outline the various existing procedures which could be utilized by an agency in formulation of its reprisal prevention program.

A final document was never completed - the draft version relied almost solely on the negotiated grievance procedure.

Reprisal experience:

Allegations of reprisal have been referred to OFAP by Regional & Area Offices, Congressmen or sent in directly by a complainant.

Regional staff has expressed its concern for the adequacy of existing procedures - based on its experience in the field.

Few agencies appear to have fully developed and implemented reprisal procedures - based on evaluations of agency OSH programs.

The grievance procedures appear to contain several inherent weaknesses - the individual complainant cannot always retain control over the case since the union must bring it forward; the cost of the grievance procedure might serve to discourage presentation of all but the strongest cases; on large facilities with different unions, the grievance procedure might differ from one case to the next; employees not in the bargaining unit may be covered by a separate agency grievance procedure; and management could be without a reprisal procedure at all.

OSHA Plan of Action:

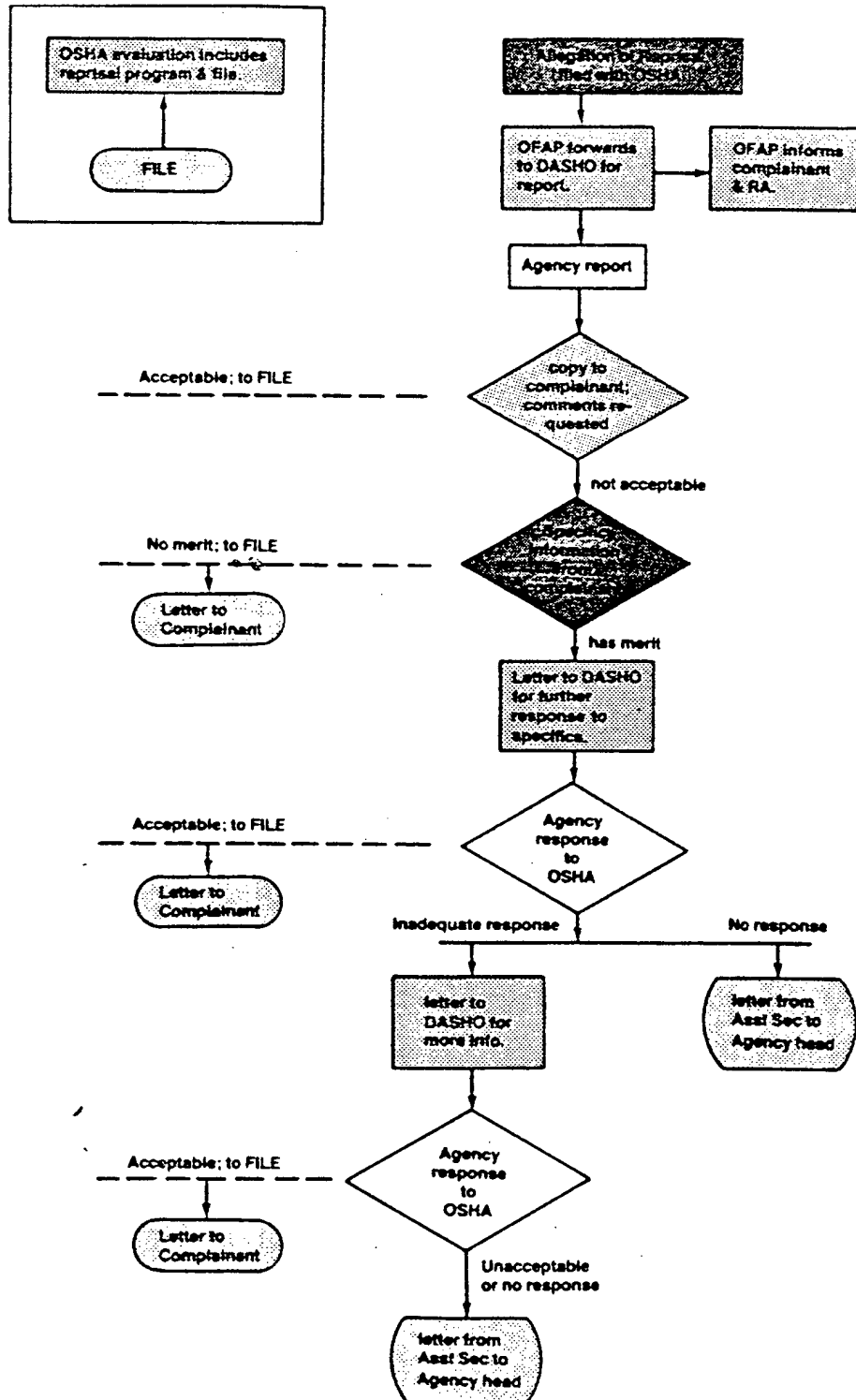
In an attempt to offer an element of standardization to the situation both for agency programs and OSHA's evaluation of those programs, we are presenting the the following eight elements addressing both the positive and remedial aspects of a program we believe essential for the protection of employees from reprisal:

- Issuance by the Agency head of a positive policy statement to management and employees identifying employee involvement in the safety and health program as an important goal of management and stating that the taking of reprisal action against an employee for identifying unsafe or unhealthful working conditions or for other involvement in the program as a practice not to be condoned;
- Dissemination of information on employees' right to be free from reprisal for exercising rights under Executive Order 12196;
- Dissemination of information regarding the details of where and with whom to file a reprisal complaint;
- Investigation of reprisal complaints by an official with the necessary ability and authority to conduct an effective inquiry within appropriate timeframes and to recommend redress if warranted;
- The right of appeal to the agency head or an appropriate deputy in event the reprisal complaint is denied;
- Provision of timely information to any certified safety and health committees and collective bargaining representatives concerning the findings of the investigation and the determination;
- A means of informing the appropriate agency safety and health office of allegations of reprisal and their disposition if these officials are not involved in the investigation or adjudication; and
- Inclusion of criteria in the agency's self evaluation program which will provide information regarding the effectiveness of the reprisal program.

OSHA will utilize these eight elements to judge the adequacy of reprisal procedures when conducting an evaluation of an agency safety and health program. OSHA will also use actual case experience in those evaluations.

OSHA will continue to work through an agency's safety staff to resolve any reprisal allegations and any discrepancies alleged to exist in the agency's investigative report brought to the attention of OSHA. The attached flow chart depicts how we anticipate this process working.

Reprisal Allegation Submitted to OSHA



Basic Elements of a Reprisal Program

