OSHA Issues Revised Whistleblower Investigations Manual

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On January 28, 2016, OSHA released an updated Whistleblower Investigations Manual ("**Manual**"), which updated the April 21, 2015 manual.[1] The Manual outlines the procedures and other information related to handling whistleblower complaints under the many statutes delegated to OSHA.

The burden of proof for an investigation to result in a claim has been modified. Previously, the whistleblower claim had to meet a "preponderance of the evidence" burden; now the burden has been lowered to "reasonable cause," meaning that OSHA can move forward after an investigation if it finds "reasonable cause." In order to show reasonable cause, "OSHA must believe, after evaluating all of the evidence gathered in the investigation from the respondent, the complainant, and other witnesses or sources that a reasonable judge *could* rule in favor of the complainant. . . . The evidence does not need to establish conclusively that a violation *did* occur."[2] This lower standard may result in more whistleblower claims making it to a judge's bench after an investigation. Whether a case is brought before a district judge or an administrative law judge depends on which statute the whistleblower claim is brought under and other procedural matters.

The Manual also includes a new chapter, Chapter 23 "Information Disclosure," which explains how OSHA's whistleblower documents can be disclosed to the public once a case is closed and how non-public disclosure can be made while a case is open in order to resolve the complaint. Interestingly, the Manual includes a disclaimer expressly stating that the Manual does not create or imply any duties, rights or benefits, because the Manual is intended to be an internal guidance document only, although, in practice, the changes to the way investigations are managed internally could result in more whistleblower claims. The new Manual comes after OSHA launched a new program in late 2015 allowing alternative dispute resolution for more efficient resolution of claims, signaling another administrative process aimed at making it easier for whistleblower claimants to prevail.

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[1] OSHA Whistleblower Investigations Manual, January 28, 2016.

[2] *Id.* (emphasis in original).

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