

CHAPTER IX COMPLAINTS AND REFERRALS

1. **General:** This chapter only applies to complaints and referrals received and processed at the Bureau Office. It does not apply to complaints and referrals received during an inspection.
2. **Definitions:** The following definitions apply to this chapter:
 - a. **Complaint:** A signed notice of an alleged hazard (over which OHSB has jurisdiction) or violation of the Act made by a present employee or a representative of an employee(s).
 - b. **Referral:** Notice of an alleged hazard or violation of the Act given by a source not listed above (Section 2.a.), including, but not limited to, a past employee, a CSHO, media reports, and other government entities.
 - c. **Permanently disabling injuries or illnesses:** Injuries or illnesses that may result in permanent disabilities or illnesses that are chronic or irreversible. (Examples include amputation, blindness, standard threshold shift, lead or mercury poisoning, and third degree burns.)
 - d. **Complaint/Referral Inspection:** A complaint/referral inspection is an onsite inspection that is initiated primarily as a result of a complaint or referral that meets at least one of the criteria listed below:
 - i. The complaint is signed by a current employee or employee representative and states the reason for the inspection request with reasonable particularity and reasonable grounds to believe that a violation of a safety or health standard or danger exists.
 - ii. The complaint/referral alleges that physical harm, such as disabling injuries or illnesses has occurred as a result of the stated hazard(s) and there is reason to believe that the hazard still exists.
 - iii. The complaint/referral is based on an allegation of an imminent danger situation.
 - iv. The complaint/referral identifies an establishment or an alleged hazard covered by a local or national emphasis program.
 - v. The employer fails to provide an adequate response to a complaint/referral investigation or the complainant provides evidence

that the employer's response is false or does not adequately address the hazard(s).

- vi. The non-discrimination investigator requests that an inspection be conducted in response to an employee's allegation that he/she was discriminated against for complaining about safety or health conditions in the workplace or for refusing to do an allegedly imminently dangerous job/task.
- vii. If an inspection is scheduled, or has begun, at an establishment and a complaint/referral that would normally be investigated by telephone/fax is received, that complaint/referral may be scheduled for inspection as a companion complaint.
- e. Complaint/Referral Investigation: A complaint/referral investigation is conducted for other complaints and referrals that do not meet one of the above complaint/referral inspection criteria.

An "investigation" differs from an "inspection" in that in an investigation, OHSB advises the employer of the alleged hazards by telephone, letter, fax or other means. The employer is required to provide a response.

3. **Receiving Complaints and Referrals:** An incoming notice of hazards or alleged violation, received by telephone, fax, letter, e-mail, or in person, shall first be referred to a compliance officer.

- a. Complainant Information: The person receiving the complaint/referral should obtain the following information from the individual:
 - i. Determine if the individual is a current employee or an employee representative;
 - ii. Explain the complaint/referral process, and if appropriate the concepts of investigation and inspection;
 - iii. Determine the exact nature of the alleged hazard and the basis of the complainant's knowledge;
 - iv. Determine if the items of concern are apparent violations of the OSHB standards or the Act;
 - v. Inform the individual of their right to confidentiality under Section 50-9-10(B) of the Act;

- vi. Inform the current employee or employee representative that if they are requesting an on-site inspection, that they have **5 working days** to come into the office to sign the complaint or to mail a signed complaint letter to OHSB.
- b. Discrimination Complaints: The individual shall be advised of the protection against discrimination afforded by Section 50-9-25 of the Act and shall be informed of the procedures for filing a discrimination complaint.
 - i. Employees who allege that they were subject to retaliatory acts for exercising their rights under the Act will be referred to the Discrimination Investigator.
 - ii. Such complaints will be handled in accordance with the procedures outlined in Chapter X of the NM FOM.
 - iii. The screening process by the Discrimination Investigator is not anticipated to take more than 3 working days and usually less.
 - iv. Any 50-9-25 complaints alleging an imminent danger shall be handled in accordance with the instructions in Section 6.
- 4. **Evaluating Complaints/Referrals:** A careful exercise of investigation techniques and professional judgment is necessary for complete evaluation of complaints/referrals to determine if a violation or hazard exists.
 - a. Classification: Upon receipt of a notice reporting a hazard or an alleged violation, the Compliance Manager shall decide if the notice meets the definition of a complaint or referral.
 - i. The Compliance Manager will determine if a file will be opened and if the complaint/referral will be entered into the NCR system using the appropriate forms. All correspondence pertaining to the complaint/referral will then be maintained in the file.
 - ii. Upon completion of an inspection or investigation, the contents of the complaint/referral file shall be included in the case file.
 - iii. The file shall be closed when the Compliance Manager determines that the conditions, which generated the complaint/referral, have been abated.
 - b. Response to Person Reporting: Whenever the Compliance Manager decides that a signed complaint that meets the requirements of Section 2. d will not be

inspected, a letter shall be sent to the individual communicating the decision and the reasons for it.

5. **Information Needed for Complaint/Referral Evaluation:** Some complaints/referrals will be relatively unsophisticated and lacking in details, thus the individual may have to be contacted either for additional facts or to verify facts supplied. If the individual is contacted, he/she *shall not* be told when an inspection will take place. The evaluator must exercise professional judgment on the basis of the information available to decide whether or not there are reasonable grounds to believe that a violation exists and if so how it should be classified.
- a. Taking Complaints/Referrals: When the designated OHSB professional receives a complaint/referral by letter, e-mail, fax, in person, or over the telephone the complaint/referral form shall be completed.
 - b. Signing of Complaint Forms: If the complainant wishes to sign the complaint, he/she may either mail a signed letter or come into the office to sign the OSHA-7. The complainant has only **5 working days** to sign the form or send a letter to the office. *OHSB will not send the OSHA-7 to the complainant for signature.*
 - c. Additional Information: Additional information is usually needed to improve the quality of the complaint/referral and to aid in determining its priority. Therefore, in completing the complaint/referral worksheet, an attempt shall be made to obtain detailed answers to the following questions:
 - i. For all Complaints/Referrals:
 - 1. Describe the unsafe or unhealthy conditions and their locations. What is the nature of the exposure?
 - 2. What type of work is being performed in the unsafe/unhealthy area? Identify, as well as possible, the type and condition of equipment in use, the materials being used, the process/operation involved and the kinds of work being done near the hazardous area.
 - 3. How often is the task done which leads to the exposure? How long at one time? How long has the condition existed? Has the condition been brought to the employer's attention? Has the employer attempted to correct the situation?
 - 4. How many shifts are there? What time do they start? On what shift does the hazardous condition exist?

5. What types of PPE does the employer require? Do the employees use PPE? List and describe all PPE used.
6. How many people work in the establishment? How many are exposed to the hazardous conditions? What is their proximity to the hazard?
7. Is there an employee representative in the establishment? Include the name, address, and phone number of the union and/or employee representatives.
8. Identify the standard(s) apparently violated by the conditions described by the complainant.

ii. Additional information for Health Hazards:

1. Has the employer conducted any monitoring tests to determine employee exposure to the hazardous conditions or substances? What were the results?
2. What engineering controls are in place? For instance, are there fans in place or acoustical insulation in place?
3. What administrative or work practice controls has the employer put into effect?
4. Do any employees have any symptoms that may have been caused by exposure to hazardous substances? Have any employees seen a doctor for treatment? Have there been any “near miss” incidents?

iii. Additional information for Safety Hazards:

1. Under what adverse or hazardous conditions are employees required to work? Include conditions contributing to stress or “other” probable factors.
2. Have any employees been injured as a result of the hazardous condition? Have there been any “near miss” incidents?

6. **Responding to Complaints/Referrals Alleging Imminent Danger Conditions:** Any complaint or referral, which, in the professional opinion of the Compliance Manager, constitutes an imminent danger, shall be handled in accordance with Chapter VII.

7. **Responding to Complaints and Referrals by Inspection:** Complaints or referrals meeting the requirements of Section 2. d. may be scheduled for an onsite inspection. A complaint or referral not meeting the requirements of Section 2. d. may be assigned at the Compliance Manager's discretion.
- a. Scope of the Inspection: The scope of the inspection shall be determined in accordance with the guidelines given in this section.
 - i. High Hazard Industry, Strategic Plan or Local Emphasis Inspections: A complaint/referral inspection in any of these establishments should be comprehensive in scope.
 - ii. Low Hazard Industry Inspections: A complaint /referral inspection in a low-hazard industry should be limited in scope to the conditions identified in the complaint/referral. When the compliance officer believes that the scope of the inspection should be expanded because of information indicating the likelihood of serious hazards in other portions of the facility, because of allegations of imminent danger or serious hazards are received during the inspection, or the compliance officer sees other violations, the scope may be expanded to cover other areas as warranted.
 - iii. Advising the Participants of Extended Scope: Whenever an extended inspection is to be conducted, the Compliance Officer should advise the employer and the employee representatives of the extended scope at the opening conference or at the earliest opportunity.
 - b. Notification: After the inspection, a letter shall be sent to the individual addressing each item with references to the citations or a description of why the findings did not result in a violation.
 - c. Reason for No Inspection: Where a written signed complaint has been submitted, but in the professional judgment of the Compliance Manager there are no reasonable grounds to believe that a violation or danger exists, or he/she has evidence that the condition is being abated, or that OHSB does not have jurisdictional authority, no inspection shall be made.
8. **Responding to Complaints and Referrals by Investigation:** Complaints/referrals that do not meet the requirements of Section 2.d may be scheduled for an investigation either by telephone, fax, letter or other means.
- a. The employer should be notified of the following:
 - i. That allegations must be investigated by the employer to determine if they are valid;

- ii. That a response is due in our office within **5 working** days;
 - iii. The employer must provide information that the allegations were not valid or have been abated. The information and documentation in the response may include items such as invoices, sampling results, photos, etc as proof of abatement;
 - iv. That the employer's response must include abatement information and a time frame if the condition cannot be abated within the 5 working day response period.
- b. The compliance officer shall ask the employer for the following:
- i. The name of the employer's contact person;
 - ii. The company's address (mailing and physical) and telephone number;
 - iii. The name, address and telephone number of the union, if applicable;
 - iv. The company's fax number and/or e-mail address.
- c. Notification: Current employees or employee representatives shall be advised, by means of a letter, of the employer's response, his/her right to dispute the response, and the right to request an inspection if the alleged hazards are not corrected.
- d. A signed complaint received after the investigation process has begun will be assessed to determine if the alleged hazard still exists based on the employer's response and by contacting the complainant. The complainant shall be informed that the investigation process has begun and that he/she still retains the right to request an onsite inspection if he/she disputes the results and believes that a hazard still exists.
- e. If an improper response or no response is received within the given response period, then the Compliance Manager may make additional contact with the employer before additional action is taken.