



OSHA Announces Alternative Dispute Resolution Pilot Program

Insights

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As part of its enhanced whistleblower focus, the Occupational Safety and Health Administration (OSHA) is launching an alternative dispute resolution (ADR) pilot program for complaints filed with OSHA's Whistleblower Protection Program. OSHA's ADR program is intended to assist complainants and employers in resolving their disputes in a cooperative and voluntary manner. OSHA's Directive 12-01 released in October 2012 defines the alternative dispute resolution as an approach that will "involve the use of negotiation, mediation, conciliation, and arbitration."

The program will be implemented in two regions (headquartered in Chicago and San Francisco) and offer two voluntary methods of ADR: early resolution and mediation. Early Resolution, as defined in the OSHA Directive, will be an attempt to resolve the dispute before an OSHA investigation is launched. Under the pilot program, if a party elects to pursue early resolution, an OSHA ADR coordinator may help the parties reach a settlement agreement before the respondent provides a response to the complaint.

Mediation involves a third party (Federal Mediation and Conciliation Services or a selected attorney) that can help parties reach an agreement in the dispute by clarifying differences or negotiating terms. When a whistleblower complaint is filed with OSHA in one of the pilot regions, the parties will be notified of their ADR options and may work through an OSHA regional ADR coordinator to use these methods.

In a recent OSHA news release regarding the program, Assistant Secretary of Labor for OSHA, Dr. David Michaels commented that: "OSHA is committed to fair, effective, and timely enforcement of the whistleblower laws delegated to us by Congress. Alternative dispute resolution can provide immediate relief and finality to both parties."

OSHA will be testing the pilot program for a total of 120 days in two regions. Upon completion of the first 120 days, the pilot will be evaluated for a number of outcome measures tracked by the ADR Outcome Form and whistleblower Integrated Management Information System. According to Directive 12-01, OSHA will use the results to decide whether to continue the pilot, expand the pilot to other Regions, implement the program to all Regions, or terminate the pilot. Both pilot Regions have been assigned to collect information including: the number of cases where ADR docket letters were filed; the number of early resolution and mediation methods were used; the number of parties that withdrew from the ADR program once requested; and the number of cases settled.

OSHA administers the whistleblower provisions of 22 statutes and receives approximately 2500 whistleblower complaints annually.