



State of Alaska
Department of Labor and Workforce Development
Division of Labor Standards and Safety

AKOSH Program Directive #19-05

Date: November 1, 2018
To: All AKOSH Staff
From: Deborah Kelly, Director ^{DK}
Subject: Mandatory Training Program for AKOSH Whistleblower Investigators

This Program Directive, PD 19-05, is formal notice that the Alaska Department of Labor and Workforce Development, Division of Labor Standards and Safety recognizes and will implement OSHA's TED 01-00-020, "Mandatory Training Program for OSHA Whistleblower Investigators".

This program directive becomes effective immediately. Please ensure that all members of your staff receive this program directive, and understand how to implement it.

Attachment: Mandatory Training Program for AKOSH Whistleblower Investigators

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I. Executive Summary

This directive provides guidance concerning AKOSH's policies and procedures for training whistleblower investigators. It is essential that whistleblower investigators have the requisite knowledge, skills, capability and professional backgrounds to accomplish AKOSH's mission of promoting workplaces free from retaliation for employees exercising rights under Alaska's Occupational Safety and Health laws. In this directive, AKOSH provides detailed guidance for training required during a whistleblower investigator's career, including recommended training that assists the whistleblower investigator in preparing for professional certification exams. This directive identifies training paths that provide assistance in managing whistleblower investigator training programs.

The goal of this directive is to assist whistleblower investigators, their supervisors and managers with direction, guidance and training options that directly contribute to the whistleblower investigator's ability to represent AKOSH with a high degree of professional expertise. In addition, the whistleblower investigator training program identifies a correlation between whistleblower investigator competency and achieving respected credentials in the fields of investigation and mediation such as Professional Certified Investigator (PCI)[®], Certified Mediator, and Certified Fraud Examiner.

II. Purpose.

This directive provides AKOSH personnel with policy and guidelines for implementing competency-based training programs for AKOSH whistleblower investigators.

III. Scope.

This directive applies AKOSH-wide.

IV. References.

- A. [OSHA Instruction CSP 01-00-002 \(STEP 2-0.22B\)](#), State Plan Policies and Procedures Manual, March 21, 2001.
- B. [OSHA Instruction CSP 01-00-003 \(STP 2.22A, CH-3\)](#), Changes to the State Plan Policies and Procedures Manual, February 27, 1990.
- C. [OSHA Instruction EAA 01-00-004](#), Management Accountability Program, September 15, 2010.
- D. [OSHA Instruction PER 05-00-001 \(PER 10-1.1\)](#), OSHA Training Policy, December 14, 1979.
- E. [29 CFR 1902](#), State Plans for the Development and Enforcement of State Standards.

V. **Cancellations.**

None.

VI. **Goals and Objectives of Whistleblower Investigator Training.**

The goal of this directive is to provide whistleblower investigators and their management with training options that will directly contribute to the whistleblower investigator's professional expertise.

A. **Competency-Based Curriculum.**

1. The OSHA Training Institute offers formal training for whistleblower investigators with a competency-based approach to curriculum, using the Whistleblower Investigator Functional Competency Model as a guide.
2. It is important to note that competence cannot be achieved through formal training alone. Proficiency requires a mix of experiences over time, personal initiative to develop to the highest level of professionalism possible, and structured on-the-job training, as well as formal training.

B. **The Training Program.** OTI has developed a flexible program that incorporates technology-enabled learning, self-study packages, on-the-job experiences and formal training to accommodate varying levels of experience and competence. The training program includes basic requirements as well as advanced competencies to ensure continued career development.

1. **Course #1420 Whistleblower Investigation Fundamentals:** Each whistleblower investigator will be required to complete the #1420 Whistleblower Investigation Fundamentals course offered by OTI during their first year of employment.
2. **Technical Courses:** Each whistleblower investigator will be required to complete four additional technical courses during the first three years of employment.

C. **AKOSH Chief Training Requirements.** This directive gives notice that other courses designated as mandatory by the AKOSH Chief may be added to the whistleblower investigator training program at any time.

VII. **Mandatory Whistleblower Investigator Training.**

Figure 1, below, illustrates the recommended training path.

A. **Course #1420 Whistleblower Investigation Fundamentals Course:** This course must be completed within the first year of a whistleblower

investigator's career. It is a pre-requisite for all additional courses. During the first year, additional courses can be taken at the AKOSH Chief's discretion.

B. Technical Courses: The AKOSH Chief will approve the chronological order in which technical courses will be taken by whistleblower investigators based on AKOSH needs and in accord with this instruction.

- Course #1610: Interviewing Techniques for Whistleblower Investigators
- Course #1630: Written Communication and Report Writing for Whistleblower Investigators
- Course #2710: Legal Concepts for Whistleblower Investigators
- Course #2720: Whistleblower Complaint Resolution and Settlement Negotiations



Figure 1: Recommended Training Path

VIII. Organizational Responsibilities.

- A. Labor Standards and Safety Director's Office. The Labor Standards and Safety director's office will ensure to the extent possible that funding is budgeted and available for AKOSH personnel to complete all mandatory training. Note that other courses designated as mandatory by the AKOSH's Chief will be included in the whistleblower investigator's training program, thus requiring additional funding support.
- B. AKOSH Chief. The AKOSH Chief will support the training program as appropriate, by providing policy guidance, subject matter expertise through staff or field personnel, and current information on the status of agency programs, statutes, regulations and directives.
- C. Assistant Chief of Enforcement. The Assistant Chief of Enforcement shall be responsible for ensuring the professional development of the whistleblower investigators they supervise. Specifically, the Assistant Chief shall:
1. Ensure the professional development of whistleblower investigators in accord with this directive and Appendix A.
 2. Identify and document through an Individual Development Plan (IDP) the training needs of whistleblower investigators.
 3. Provide guidance consistent with the IDP process to meet the objectives outlined in this instruction.
 4. Review training progress with each whistleblower investigator during the mid-year and annual performance reviews.
 5. Assign, as needed, experienced personnel to assist in the on-the-job training of newly-hired whistleblower investigators.
 6. Assess and document whistleblower investigator's abilities, send waiver requests as per section X.C. and requests for time extensions as per section XI.B. to the Director for approval.
- D. Whistleblower Investigator: The whistleblower investigator has the responsibility to perform to the best of his/her ability in all training programs. Specifically, the whistleblower investigator shall:
1. Discuss performance and training progress with his/her supervisor.
 2. Participate in the planning of training activities.
 3. Fully attend, participate in, and complete all assigned training courses, seminars and other events.

IX. OSHA Training Institute Courses for Whistleblower Investigators.

- A. Required Training. Whistleblower investigators will attend all the required courses outlined in this directive offered by the OSHA Training Institute. The information provided in this section is intended to assist the AKOSH Chief in determining equivalency when issuing waivers.
- B. Blended Courses. Blended courses include at least one web-based training requirement plus an instructor-led training requirement. The web-based training must be completed **prior** to attending the instructor-led session. There is no waiver process or equivalent to completing the online prerequisite of an OTI course. This strict requirement is due to the close link between the training offered online and the subsequent classroom (i.e., instructor-led) training.
- C. Course Sequence. The #1420 Whistleblower Investigation Fundamentals course must be completed in year one of the whistleblower investigator training program. It is recommended that the courses listed below should be completed in a sequence optimal to attaining professional development goals and at the discretion of the Chief.
1. Course #1420: Whistleblower Investigation Fundamentals Course. This blended course covers the fundamentals of conducting whistleblower investigations, with an emphasis on Section 11(c) of the *Occupational Safety and Health Act* (OSH Act). Whistleblower investigators will learn to conduct intakes and screenings, plan and prepare for investigations, conduct opening conferences, collect evidence, analyze information, conduct closing conferences, and prepare basic memoranda, letters, and reports.
 2. Course #1610: Interviewing Techniques for Whistleblower Investigators. The goal of this course is to provide a practical guide for interviewing. The specific topics include interview preparation, nonverbal communication, types of interviewees, multi-cultural interviewing, empathy, and active listening. This course requires role playing and students will be assessed on the application of techniques learned. The role playing will focus on one-on-one controlled interviewing situations.
 3. Course #1630: Written Communication and Report Writing for Whistleblower Investigators. This course is designed to cover business writing, evidentiary documentation, and written analysis. Students will learn to effectively communicate complex concepts and ideas in writing and in a manner that is appropriate for the intended audience. Students will be coached to produce documents that require minimal editing and are technically sound, accurate, thorough, logical, concise, and completed in a timely manner.

4. Course #2710: Legal Concepts for Whistleblower Investigators. The course introduces the student to frequently encountered federal statutes. The instruction includes the essential elements of conducting investigations, including interviewing, analyzing information related to investigations, legal and regulatory sufficiency, and organizing and documenting information. Students will apply legal concepts to multiple case studies such as but not limited to, contributing vs. motivating factors, cat's paw theory, equitable tolling, work refusals, leeway doctrine, retaliation by association and testimonial evidence. It is important for the AKOSH Chief to ensure that the whistleblower investigator understands the differences between state and federal whistleblower statutes through supplemental training.
5. Course #2720: Whistleblower Complaint Resolution and Settlement Negotiations. This course covers complaint resolution policies, programs, and techniques related to whistleblower statute enforcement. An emphasis will be placed on strategies to successfully resolve complaints throughout the investigative process, complainant's right to withdraw, and kick-out provisions. Students will learn to negotiate and prepare settlement agreements to include preserving public policy, including calculation of appropriate damages, and review and evaluate third- party agreements in accord with established guidelines.
6. Federal Statute Webinars. The webinars on the statutes enforced by the OSHA Whistleblower Protection Programs emphasize unique attributes of the statutes with respect to whistleblower investigations. The federal statute webinars are non-mandatory and are generally not applicable to Alaska whistleblower investigations.

X. Waiver from Required Training Program.

- A. Waiver Conditions. The training program outlined in this instruction is required to be completed during the first three years of a whistleblower investigator's career. The AKOSH Chief has discretion to waive any of the required courses listed, with the exception of the Legal Concepts for whistleblower investigators course. Waivers shall be used rarely and shall be granted only in exceptional circumstances.
- B. Assessment and Documentation. The AKOSH Chief must assess and document that the whistleblower investigator has demonstrated mastery of the tasks listed in the course objectives for the course being waived. After an assessment has been made, waiver requests shall be submitted in writing by the AKOSH Chief to the Director. The waiver request will document why the whistleblower investigator does not need to attend the specified course. The documentation will include how the investigator has acquired the levels of knowledge, skills and abilities taught in the course for which the waiver is being requested. The documentation shall also indicate that the investigator

has institutional understanding of AKOSH-specific policies and procedures. For example, criteria may include experience as a whistleblower investigator with another OSHA state plan agency.

- C. Waiver Requests. Only the Director can grant a waiver. The Director shall respond to waiver requests in writing.
- D. Training Record Annotated. The AKOSH Training Specialist shall annotate the whistleblower investigator's training record to reflect courses waived by the Director.

XI. Time Extensions.

The time requirements for completing required courses specified in this instruction must be met. Only the Director can grant a time extension based on extenuating circumstances.

- A. Time Extension Conditions. If there are circumstances that prevent the whistleblower investigator from completing the required courses, the Director can extend the time for completion. Time extensions may not exceed 12 months.
- B. Time Extension Requests. Time extensions shall be submitted in writing by the AKOSH Chief to the Director. Time extension requests shall include the reason(s) additional time is needed, the amount of time requested and the course(s) that will be completed during the requested time extension.
- C. Time Extension Approvals. The Director shall respond to the time extension request in writing.
- D. Training Record Annotated. The AKOSH Training Specialist shall annotate the whistleblower investigator's training record to reflect the extension of time.

XII. Monitoring the Training Program.

Monitoring the whistleblower investigator's progress is critical to ensure the success of the training program. Monitoring determines the benefits and effectiveness of the training received and evaluates the ability of the whistleblower investigator to achieve training goals and objectives.

- A. Assistant Chief of Enforcement. The Assistant Chief of Enforcement shall:
 - 1. Ensure that each whistleblower investigator has completed the necessary prerequisites before attending mandatory OSHA training courses.
 - 2. Review the whistleblower investigator's performance of recommended self-instruction (SI) and on-the-job training

(OJT) assignments, such as those listed in Appendix A.

3. Conduct a review with the whistleblower investigator following each recommended SI and OJT activity. This review identifies areas requiring further training.
4. Determine when the whistleblower investigator has sufficient experience to participate fully in complaint investigation; the OJT review may be discontinued when this has been successfully accomplished.

XIII. Continuation of Whistleblower Investigator Development.

A. Continuing Education. Non-mandatory. After year three the whistleblower investigator should continue to develop the knowledge and skills necessary to conduct investigations. There are many training opportunities outside traditional OSHA Training Institute courses, including but not limited to:

1. Local community college and university courses related to grammar, writing, and financial, business, and environmental sectors.
2. Online courses offered through Learning Link and private sector training groups.
3. Technical training sessions at conferences related to whistleblower protection.
4. Public sector training institutes that offer courses related to whistleblower investigation.
5. Independent study on topics related to whistleblower investigation.

The whistleblower investigators should be provided time to attend training sessions and/or conduct independent study on materials related to investigations.

B. Role of Individual Development Plans. Mandatory. An Individual Development Plan (IDP) is a dynamic plan that helps the whistleblower investigator achieves organizational and career goals by documenting progress. IDPs are required and must be updated annually. An IDP can help a whistleblower investigator:

1. Acquire knowledge and skills required to achieve the functional competencies of a whistleblower investigator.
2. Build expertise as an AKOSH whistleblower investigator.
3. Continue professional development throughout his/her career.

- C. IDPs for the First Three-Year Period. The IDP should reflect:
1. Mandatory training required during the first three-year period as outlined in this instruction.
 2. Other developmental training as determined by the AKOSH Chief. For example:
 - a. Supplemental training that includes formal and/or informal mentoring by senior personnel and/or whistleblower investigators with specialized experience.
 - b. Participation in investigations involving legal complexity in a variety of business sectors.
- D. IDPs Developed after the Three-Year Period.
1. The IDP should follow the guidance outlined in [OSHA Instruction PER 05-00-001 \(PER 10-1.1\)](#) OSHA Training Policy.
 2. An IDP helps the whistleblower investigator improve performance and prepare for more responsible work in accord with his/her abilities, interests and the needs of AKOSH.
- E. Professional Certification. Non-Mandatory. The course required for the whistleblower investigator's first year provides a foundation for professionalism and proficiency. The required technical courses provide a higher level of knowledge and skill. Professional certification can further enhance the whistleblower investigator's knowledge in the technical areas of whistleblower investigations.

The Professional Certified Investigator (PCI)® credential provides demonstrable proof of an individual's knowledge and experience in case management, evidence collection, and preparation of reports and testimony to substantiate findings. Those who earn the PCI are ASIS International board-certified investigators (www.asisonline.org).

The National Association of Certified Mediators provides certification for individuals who want to focus on fundamental and practical techniques of dispute resolution, arbitration and mediation (www.mediatorcertification.org).

The Association of Certified Fraud Examiners offers the Certified Fraud Examiners (CFE) Program. The CFE denotes expertise in fraud prevention, detection and deterrence (www.acfe.com).

XIV. Evaluation.

The AKOSH Chief evaluates the effectiveness of the training program for AKOSH

personnel. This includes an annual review of the relationship between AKOSH's whistleblower training standards and the level of whistleblower investigator competency at various points in the whistleblower investigator's career. Depending on the effectiveness of the training program, the AKOSH Chief may work with the Director to change the program. Changes may include adding professional development and mentorship requirements, or developing Alaska-specific whistleblower investigations training.

Appendix A. Recommended Whistleblower Investigator Training Activities

Background and Description of Appendix A. This Appendix is recommended as a guideline for the Assistant Chief of Enforcement.

The OSHA Training Institute (OTI) offers formalized training for whistleblower investigators through its competency-based approach to curriculum. As a professional, the whistleblower investigator will acquire additional knowledge, skills, abilities and behaviors through other sources such as Self-Instruction (SI) and On-the-Job Training (OJT) which enhance the formal training a new whistleblower investigator receives at OTI. This Appendix offers recommendations for both SI and OJT.

Time allotted to accomplish SI and OJT assignments should be compatible with the newly-hired whistleblower investigator's current knowledge, skill and experience. The Supervisor should verify the whistleblower investigator's successful completion of SI and OJT assignments. Training assignments may also be supplemented by other comparable tasks deemed appropriate and/or equivalent by the Assistant Chief.

Type of Activity	Activity Description	Date Complete
OJT	Identify office administrative procedures	
OJT	Overview of the Alaska Department of Labor and Workforce Development (DOL&WD) <ul style="list-style-type: none"> • Description and responsibilities of different agencies • The Attorney General (AG's) role 	
OJT	Where does the whistleblower investigator fit into AKOSH <ul style="list-style-type: none"> • Hierarchy of the Agency from Commissioner to AKOSH Enforcement • AKOSH Chief responsibilities • Assistant Chief of Enforcement responsibilities • Whistleblower investigator responsibilities • Alaska statutes enforced by AKOSH • How Alaska's state plan relates to federal OSHA, and how they differ 	
SI	Take the executive ethics course offered on TrainAlaska	
OJT	Review this directive	

Type of Activit	Activity Description	Date Complete
	<ul style="list-style-type: none"> • Whistleblower investigator Competency Model • Course descriptions • Individual Development Plans • Training plan for the first three years • Appendix A 	
OJT	Investigate Resources and Tools <ul style="list-style-type: none"> • The DWPP website, www.whistleblowers.com – statutes, regulations, forms, instructions and memos • Other useful websites commonly used by whistleblower investigators 	
OJT	Receive and become familiar with equipment including: <ul style="list-style-type: none"> • Laptop & Virtual Private Network (VPN) technology • Digital recorders • Printers and scanners 	
SI	Review and become familiar with the Whistleblower Investigation Manual PD 18-07.	
OJT	Describe and apply the elements of a prima facie case and understand the law on the timeliness of complaints	
OJT	Review the office’s Safety and Health Management System (SHMS)	
SI	Review closed cases involving various statutes and various outcomes (dismiss, withdraw, merit, non-merit, settled, settled other)	
SI	Read 29 CFR Part 1977 after reading and reviewing Section 11(c) and other relevant sections of the OSH Act (see below)	
SI	Read and review the OSH Act: <ul style="list-style-type: none"> • Which employers and employees are covered • Responsibilities of employers and employees • Section 11(c) • Section 8(a) 	
SI	Read and review Alaska’s occupational safety and health statutes (AS 18.60.010 – 105) <ul style="list-style-type: none"> • Alaska’s whistleblower statute AS 18.60.089 • Alaska’s occupational safety and health regulations 8 AAC 61 	
SI	Review AKOSH Program Directives	
OJT	Shadow Senior whistleblower investigator to experience: <ul style="list-style-type: none"> • Complaint intake and screening • Opening with the complainant • Docketing/preparation and sending letters • Preparation for investigation 	

Type of Activity	Activity Description	Date Complete
	<ul style="list-style-type: none"> • Opening with Respondent • Interviews • Request for data/documents • Reviewing Respondent's position statement • Complainant's rebuttal • Compose Report of Investigation (ROI) • Closing with Respondent and Complainant • Compose Commissioner's Findings • Creating, organizing, and maintaining a case file • Settlement and negotiation • State Plan review and Complaints About State Plan Administration (CASPA's) and Federal Annual Monitoring Evaluations (FAMEs), as applicable 	
OJT	Conduct intake and screening of complaints	
SI	Review relevant case law and legal doctrine. Consult with the Assistant Chief of Enforcement for guidance.	
OJT	Receive IMIS password and learn how to input and retrieve certain complaint data; download IMIS reports	
SI	Review responsibilities and coverage of other anti-retaliation investigative agencies, e.g., Equal Employment Opportunity Commission (EEOC), National Labor Relations Board (NLRB). Alaska State Commission for Human Rights (ASCHR).	
SI	Describe the fundamentals of OSHA's whistleblower protection programs to the general public, employee/employer associations, unions, other government agencies and stakeholders	
SI	Become familiar with OSHA Region 10 whistleblower programs.	