



Highlights of [GAO-09-106](#), a report to congressional requesters

Why GAO Did This Study

Workers who “blow the whistle” on prohibited practices play a role in enforcing federal laws, but these workers risk reprisals from their employers. The Whistleblower Protection Program at the Department of Labor’s (Labor) Occupational Safety and Health Administration (OSHA) is responsible for investigating whistleblowers’ complaints. OSHA’s decisions generally may be appealed to the Office of Administrative Law Judges (OALJ) and, ultimately, the Administrative Review Board (ARB). GAO examined (1) what is known about processing times for complaints and what affects these times, (2) what outcomes resulted, and (3) what challenges OSHA faces in administering the program. To answer these questions, GAO analyzed electronic data files from OSHA, OALJ, and ARB; visited five OSHA regional offices; reviewed case files; conducted a Web-based survey of investigators; and interviewed key officials.

What GAO Recommends

GAO recommends that Labor take a number of steps to improve the accuracy of its data and enhance program oversight. OSHA questioned the need for the recommendation to ensure that audits of the program are completed. GAO clarified the recommendation to focus on developing interim milestones to ensure timely completion. ARB agreed with the need for accurate appeals data, and commented that it appreciates GAO’s recommendation for improving the data. However, it did not provide specific information on the steps it would take in response.

To view the full product, including the scope and methodology, click on [GAO-09-106](#). For more information, contact George A. Scott, (202) 512-7215 or scottg@gao.gov.

WHISTLEBLOWER PROTECTION PROGRAM

Better Data and Improved Oversight Would Help Ensure Program Quality and Consistency

What GAO Found

Labor lacks reliable information on processing times and, as a result, cannot accurately report how long it takes to investigate and close a case or decide on certain appeals. OSHA does not have an effective mechanism to ensure that the data are accurately recorded in its database, and GAO’s file reviews revealed that the key dates are often inaccurately recorded in the database or cannot be verified due to a lack of supporting documentation. For example, in one region visited, none of the case closed dates matched the documentation in case files. At the appeals level, the reliability of information on the processing times is mixed. Timeliness data at the OALJ level are reliable, and the OALJ completed appealed cases in an average of about 9 months in fiscal year 2007. In contrast, ARB data are unreliable, and the agency lacks sufficient oversight of data quality. GAO’s file review found that ARB processing times ranged from 30 days to over 5 years. At all levels of the whistleblower program, GAO found that increasing caseloads, case complexity, and accommodating requests from the parties’ legal counsel affect case processing times.

Whistleblowers received a favorable outcome in a minority of cases that were closed in fiscal year 2007, both at initial decision and on appeal, but the actual proportion may be somewhat lower than Labor’s data show. OSHA’s data show that whistleblowers received a favorable outcome in 21 percent of complaints—nearly all settled through a separate agreement involving the whistleblower and the employer, rather than through a decision rendered by OSHA. However, GAO found several problems in the way settlements were being recorded in OSHA’s database, and a review of settlement agreements suggests that the proportion of cases found to have merit may actually be about 19 percent. As with investigations, when whistleblower complaints were appealed, decisions favored the whistleblower in a minority of the cases—one-third or less of outcomes favored the whistleblower.

With respect to administering the whistleblower program, OSHA faces two key challenges—it lacks a mechanism to adequately ensure the quality and consistency of investigations, and many investigators said they lack certain resources they need to do their jobs, including equipment, training, and legal assistance. OSHA does not routinely conduct independent audits of the program to ensure consistent application of its policies and procedures. OSHA’s new field audit program has begun to address this need but is lacking in several key areas. For example, the current audit processes do not adequately provide for independence, an important aspect of an effective audit program. Moreover, OSHA is challenged to ensure that investigators in all regions have the resources they need to address their large and complex caseloads. OSHA has not established minimum equipment standards for its investigators, and nearly half of the whistleblower investigators reported that the equipment they have does not meet the needs of their jobs. Furthermore, investigators often cite the need for more training and legal assistance on the complex federal statutes that OSHA administers.