Chapter 6

OFF-SITE LETTER INVESTIGATION

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Chapter 6

OFF-SITE LETTER INVESTIGATION

Policy Statement: It is the policy of the Division of Occupational Safety and Health (DOSH), also known as Cal/OSHA or the Division, to conduct investigations of California workplaces in accordance with DOSH's policies and procedures to ensure that employers are providing employees places of employment, which are free from occupational safety and health hazards.

Purpose: This policy is intended to outline procedures for DOSH team members to address complaints and referrals determined, in accordance with Policy and Procedures (P&P) Chapter 2: *Complaint Intake and Processing*, to be investigated by means of off-site letter investigations.

Authority: DOSH will administer this policy in compliance with all applicable Department's and DOSH's policies, directives, and laws, rules, and guidance:

- California Labor Code, Sections 6309, 6310, and 6312

Procedures:

I. General Procedures

The District Manager (DM), Senior Industrial Hygienist Supervisor (SIHS) and/or an authorized designee, which is herein referred to as DM/SIHS/Designee, must promptly assign a complaint and/or a referral designated for off-site letter investigation to compliance personnel.

The Compliance Personnel assigned a complaint and/or referral for an off-site letter investigation must follow all applicable procedures set forth in this compliance policy and applicable Department's and/or DOSH's directives. Compliance Personnel must carry out their assigned duties in a professional manner and exercise good judgement as an employee of the State of California and as DOSH's team member.

A. Case File Development

1. Upon assignment of an off-site letter investigation, Compliance Personnel must immediately establish a working case file that includes a Cal/OSHA

Form Y: *Case Diary Log for Off-site Letter Investigation*, which is herein referred to as *Case Diary Log*.

2. During the investigation, any documents, photographs, CDs, recordings, videos, etc. submitted by the employer must be tagged, referenced in the *Case Diary Log*, and placed in the case file.

   NOTE: Certain evidence must be properly protected once collected to ensure that it is not damaged, altered, or lost.

3. Compliance Personnel must record on the *Case Diary Log* a concise, chronological account of all actions taken from the beginning of the investigation to the closing of the case.

B. **Off-site Letter Investigation Records**

1. Off-site investigation records are records obtained or created as part of an investigation. All completed forms, and notes that are a part of the investigation record must be maintained in the case file. In addition to written documentation, investigation records also include, but are not limited to, photographs (including digital photographs), video recordings, and audio recordings.

2. All investigation records are the property of the State of California and a part of the case file. Investigation records are not property of the Compliance Personnel or any other DOSH personnel, and under no circumstances are they to be retained or to be used for any private purpose.

3. Records and documents that are **confidential** must be maintained in the **confidential section** of the investigation file.

   NOTE: All communication with the complainants must be protected and placed in the **confidential section** of the case file.

C. **Required Investigation Forms and/or Letters**

Compliance Personnel must complete all required compliance investigations forms and/or letters. These forms and/or letters must be legibly written and accurately and thoroughly completed.

D. **Case File Documentation Order and Organization**

The case file for an off-site letter investigation must consist of four (4) sections:

- Section 1: *Case Diary Log*
- Section 2: *DOSH Non-Confidential Documents*
- Section 3: *Employers' Non-Confidential Documents*
- Section 4: ***Confidential** Documents and Materials*

1. **Section 1: *Case Diary Log***

   Section 1 of the case file folder must contain the Cal/OSHA Form Y: *Case Diary Log for Off-site Letter Investigation*.

2. **Section 2: *DOSH Non-Confidential Documents***

   Section 2 of the case file folder shall contain non-confidential DOSH generated and/or collected records such as, but not limited to, the following:

   a. Employer's DOSH Inspection History
   b. Cal/OSHA Form 1AV: *Note Taking Sheet* (Used to record notes, conversations, etc.)
   c. Cal/OSHA Form 1AW: *Employer/Employee/Witness Statement*- (**Redact personal information**)
   d. Cal/OSHA Form 1AY: *Document Request*
   e. Information/documents obtained by DOSH personnel from the Manufacturer (e.g., equipment specifications, identification numbers, parts, operator manuals for machinery, vehicles, tools, materials and equipment, etc.)
   f. Applicable standards/regulations
   g. Case correspondence (including relevant non-confidential/non-attorney privilege emails)
   h. Compliance Operations/Technical Review (where required)
   i. Any other non-confidential supporting documents

3. Section 3: *Employers' Non-Confidential Documents*

   Section 3 of the case file folder shall contain the employers' non-confidential records collected and/or submitted such as, but not limited to, the following:

   a. Employer photographs/videos/CD's provided to DOSH by the employer
   b. Employer policies, procedures, equipment manuals, equipment specifications, contracts, etc.
   c. Employer investigative reports
   d. Employer's personnel job descriptions
   e. Employer's personnel training records
   f. Employer training or safety manuals

g. Pertinent management policies and procedures related to alleged violation
h. Provided by the employer: Equipment parts, specifications, identification numbers, manufacturer's operator manuals for machinery, vehicles, tools, materials and equipment, etc.
i. Equipment maintenance records or operating log
j. Equipment purchases and repair records
k. Any other non-confidential supporting documents

4. Section 4: ***Confidential*** *Documents and Materials*

Section 4 of the case file folder shall contain **confidential** records. Documents that are confidential include, but are not limited to, those with medical information, attorney client privilege, trade secrets, social security numbers, personal information (e.g., home address and phone numbers).

Section 4 shall have two coversheets: (1) one coversheet labelled "Documents Under this Tab are Confidential – DO NOT RELEASE," and (2) another labelled "Attorney-Client Privilege – DO NOT RELEASE."

NOTE: If Compliance Personnel have questions regarding whether something is confidential, consult with their DM/SIHS/Designee.

Below are examples of specific documents to include in Section 4 of the case file folder:

a. DOSH complaint and referral intake sheets and other records related to the complainant
b. Cal/OSHA Form 7: *Notice of Alleged Safety and Health Hazards*
c. Cal/OSHA Form 90: *Referral Report*
d. DOSH Letters/Emails to the complainant
e. Notes of telephonic calls with the complainant
f. Photographs/videos/CDs taken by DOSH personnel
g. Trade secret materials
h. Documents with employee's or other person's Social Security Numbers
i. All attorney/client privilege documents and emails
j. OSHA Forms 300 and 300A summary that includes medical confidential materials
k. All communication with next of kin to the complainant
l. Employee medical information
m. Cal/OSHA Form 1AW: *Employer/Employee/Witness Statement* – with personal information
n. Medical information and reports
o. Case correspondence (includes relevant confidential/attorney privilege emails and/or documents)
p. Other confidential supporting documents

NOTE: All attorney-client documents, correspondence, emails, etc. must be placed behind the tab labelled “Attorney-Client Privilege – DO NOT RELEASE” in the **confidential** section of the case file.

II. Off-site Investigation Procedures

A. Letter D: *Complaint Notification to Employer*

1. Compliance Personnel

a. Compliance Personnel assigned a complaint and/or referral scheduled for an off-site letter investigation must analyze each complaint item to determine if the identity of the complainant could be revealed.

b. In the event any complaint item reveals the complainants’ identity, the Compliance Personnel must work with DM/SIHS/Designee to re-write the complaint item to protect the identity of the complainant prior to making any contact with the employer. Compliance Personnel must prepare a draft of Letter D: *Complaint Notification to Employer* for DM/SIHS/Designee’s review and approval.

2. Management Review and Approval

The DM/SIHS/Designee must review, edit (if necessary) and approve the Letter D draft prepared by Compliance Personnel before any contact is made with the employer. The DM/SIHS/Designee must sign the approved Letter D prior to issuance. The Letter D must be issued as soon as possible, and no later than three (3) working days after DOSH's receipt of the complaint.

B. Initiating Contact with Employer

1. Either the DM/SIHS/Designee or the Compliance Personnel assigned must initiate by means of telephone, contact with the employer (i.e., the highest-ranking representative of the establishment with authority to take corrective actions) as soon as possible, or within three (3) working days of DOSH’s receipt of the complaint.

   EXAMPLE: DOSH received a complaint on Tuesday, June 3, 2025, DM/SIHS/Designee or assigned Compliance Personnel must contact the employer by Friday, June 6, 2025.

NOTE: The reason and circumstances for any investigation case requiring more than three (3) working days to contact the employer must be documented on the *Case Diary Log*.

2. **If DOSH is unable to make telephone contact** with the employer within five (5) working days from receipt of the complaint, the DM/SIHS/Designee must assign the complaint/referral for an on-site inspection, which must be initiated within five (5) working days from receipt of the complaint.

3. When successful telephonic contact is made with the employer (i.e., the highest-ranking representative of the establishment with authority to take corrective actions), the DM/SIHS/Designee or the Compliance Personnel assigned must do the following:

    a. Speak with the highest-ranking representative at the employer's establishment.

    b. Ask the highest-ranking representative at the employer's establishment for their name, fax number, email address, and, if applicable, the name, address and telephone number of the union(s) (authorized employee representatives) affiliated with the establishment. Record the information provided by the employer representative on Cal/OSHA Form 1AV: *Note Taking Sheet*.

    c. Describe the hazards alleged in the complaint and, if appropriate, the specific Title 8 standards allegedly violated.

    d. Inform the employer that they are required to investigate the complaint item(s) and abate any hazards which are discovered during the employer's investigation.

    e. Inform the employer that they will be receiving a Letter D: *Complaint Notification to Employer*, along with an Attachment A: *Certification of Posting*, by facsimile or email (or by certified mail if the employer does not have facsimile or email capability) from DOSH, describing the complaint item(s) and the specific standard(s) that are alleged to have been violated. Notify the employer of the following requirements:

        i. Employers must post a copy of the Letter D in a prominent location in their workplace where it is readily accessible for employee review for at least three (3) working days or until the hazard is corrected, whichever is longer.

ii. Employers must sign the *Certification of Posting* and return the signed certification to DOSH within two (2) working days of receipt. Employers must also post a copy of the *Certification of Posting* and provide a copy to the authorized employee representative, if applicable.

f. Inform the employer that within five (5) working days of the employer's receipt of DOSH's faxed or emailed letter, they are required to provide DOSH in writing (preferably by facsimile or email) a letter describing the results of the employer's investigation of the complaint items, and a description of any actions taken, in the process of being taken and/or planned by the employer to correct the hazard(s), including any applicable measurements or monitoring results, invoices for equipment purchases, any photographs or video, which the employer believes would specifically document correction of the alleged hazard(s).

NOTE: The DM/SIHS/Designee must use discretion, based on the nature of the alleged hazards, in assigning the deadline which should normally be five (5) working days and under no circumstance more than 30 working days.

g. Explain to the employer the *Title 8 Section 3203* requirement that every employer must have an effective written Injury and Illness Prevention Program (IIPP). Ask the employer if they need assistance with enhancing their written IIPP. If the employer responds a need for assistance, refer the employer to:

i. The nearest DOSH Consultation Services office for assistance, providing the employer with the number and address, and

ii. The employer's insurance carrier, who should also be able to assist them.

NOTE: Complaints that allege a health (exposure) hazard which requires sampling or monitoring may necessitate additional time for investigation and abatement. When the DM/SIHS/Designee makes a determination that the employer is willing to conduct sampling or monitoring (or have sampling or monitoring performed by another entity), then an appropriate time shall be fixed for the employer to conduct sampling and to report the result(s) to DOSH. See Chapter 20:

Variances, Memoranda of Understanding, and Joint and Voluntary Agreements.

h. Inform the employer that a copy of the employer's letter (i.e., Letter D) from DOSH and all subsequent correspondence concerning investigation of the complaint will be sent to the complainant.

i. Inform the employer that if DOSH determines that the employer's response is:

   i. **Unsatisfactory**, for any reason, DOSH may conduct an on-site inspection of the employer's workplace.

   ii. **Satisfactory**, the assertions made in 10% of satisfactory letters could be verified by means of an on-site inspection.

   NOTE: To verify claims within satisfactory letters, DOSH will perform a 10% random or targeted sampling for on-site inspections. This means 0.10 × N (where N is the total volume of satisfactory letters) will be physically validated.

C. **Notifications to Complainant**

With assistance from the administrative support team, DM/SIHS/Designee or the assigned Compliance Personnel must prepare and send to the complainant a Letter E: *Notification to Complainant with Letter D* (if the identity and address of the complainant is known) via regular mail together with a copy of the Letter D and *Certification of Posting* that were sent to the employer.

The DM/SIHS/Designee must ensure that the Letter E is sent within one (1) working day after the Letter D and *Certification of Posting* were sent to the employer.

III. Employer Responses

A. **Employer Requests Extension of Time**

1. If the employer contacts the DM/SIHS/Designee within five (5) working days of receiving the Letter D requesting an extension of time to respond, the DM/SIHS/Designee has the discretion to grant extensions of time after making determination of the employer’s good faith.

2. The DM/SIHS/Designee can grant extensions up to 30 days. For 30 to 60 days, Regional Manager's approval is needed, and anything over 60 days needs the approval of the Deputy Chief of Enforcement.

3. If an extension is granted, the reason must be recorded in the *Case Diary Log* and on the Cal/OSHA Form 7: *Notice of Alleged Safety and Health Hazards*. The DM/SIHS/Designee or the assigned Compliance Personnel must provide employer with a Letter J–*Notification to Employer: Extension Granted* and complainant with a Letter K–*Notification to Complainant: Extension Granted*, and with a new due date for the employer to respond to DOSH.

B. Evaluation of Employer's Written Responses

The DM/SIHS/Designee must ensure that all of the employer's written responses to off-site letter investigation are placed in the case file and that the case is timely provided to the assigned Compliance Personnel to evaluate the employer's written responses.

The DM/SIHS/Designee or the assigned Compliance Personnel must evaluate and determine if the employer's written responses are satisfactory or unsatisfactory as follows:

> *A satisfactory response is one which indicates that the employer performed an investigation of the complaint items and either determined that a hazard was present and undertook appropriate corrective actions or determined that no hazard was present.*

Compliance Personnel must contact the employer representative for any additional information or documentation deemed necessary to complete their evaluation to determine if the employer's responses are satisfactory or unsatisfactory. The Compliance Personnel must place any additional evidence (e.g., oral statements, documents, or photographs, etc.) provided in the *Employer* section of the case file.

1. Satisfactory Employer Response

If DOSH receives a satisfactory response from the employer, the assigned Compliance Personnel must do the following:

a. Document receipt of the employer's satisfactory response on the *Case Diary Log*.

b. Prepare the Letter L–*Notification to Employer: Satisfactory Response* for management review and approval.

c. If the identity and address of the complainant is known, prepare the Letter G–*Notification to Complainant: Satisfactory Employer Response* with a copy of the employer's response for management review and approval.

d. Prepare and provide to the DM/SIHS/Designee an organized off-site investigation case file containing all required forms, notes and letters for review and approval to issue letters and close the case.

2. **Unsatisfactory Employer Response**

When the Compliance Personnel receives an unsatisfactory response from the employer, or when the complainant informs DOSH that no corrective action has been taken or that the corrective action taken is inadequate, the Compliance Personnel must consult with the DM/SIHS/Designee to determine next steps, which could be one of the following:

a. Attempt to work with the employer by telephone to secure a satisfactory response, or

NOTE: If the employer informs the Compliance Personnel that they have developed a plan to correct the hazards but has not yet had time to implement the plan, the Compliance Personnel shall communicate with the employer (by telephone, facsimile, or e-mail) to determine what interim protective steps will be taken until the corrective action can be completed, and later whether the hazard has been adequately corrected. Based on the information provided regarding implementation of the corrective action plan, the Compliance Personnel must consult with the DM/SIHS/Designee to determine whether an on-site inspection of the workplace is necessary.

b. Assign complaints for on-site inspection.

The on-site inspection must be initiated within five (5) working days from the receipt of the unsatisfactory response.

3. **No Employer Response**

When the DM/SIHS/Designee does not receive any response from the employer to the Letter D within five (5) working days, the DM/SIHS/Designee must do one of the following:

a. Assign the complaint for an on-site inspection which must be initiated within five (5) working days from the date employer's response was due, or

b. Assign Compliance Personnel to:

i. Contact the employer representative by telephone and inquire if the employer received the facsimile or email letter sent was received.

ii. If contact is successful, ask the employer if they received the Letter D and make a determination, based on the employer's good faith, whether an extension of time (up to an additional five [5] working days) would be appropriate to grant. If more time is granted to the employer, the Compliance Personnel must prepare and send a Letter J to the employer and Letter K to the complainant with a new due date for the employer to respond to DOSH. This information must be recorded in the *Case Diary Log*.

iii. If telephone contact is unsuccessful, a Letter N: *Employer Failure to Respond to Initial Complaint Notification* must be prepared and sent via email and/or certified U.S. mail to the employer.