

OFFICE OF THE GENERAL COUNSEL  
Division of Operations-Management

MEMORANDUM OM 14-60

May 21, 2014

TO:





Section 11(c) provides that "no person shall discharge or in any manner discriminate against

employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act." Employees may file complaints with OSHA alleging retaliation prohibited by 11(c).

Although there may be some individual safety and health activities which may be protected solely under the OSH Act, many employee safety activities involve concerted activity protected under the NLRA and therefore may be protected under both Acts. Given this possible overlap, OSHA and the NLRB signed an MOU in 1975, outlining the procedures for handling worker safety retaliation complaints file with both or either agency. The MOU generally provides that



*11(c) UNTIMELY Administrative Closure Letter*

[Date]

[Complainant Name]

[Street Address]

[City, State ZIP]

Re: [Company Name] / [Complainant] / Case No. [1-2345-02-001]

Dear [Complainant]:

This is to confirm your telephone conversation of [date] with [Investigator Name] of my staff. It is my understanding that [Investigator Name] explained to you that we are unable to pursue investigation of your claim because [your complaint was not filed within the 30-day time period required by Section 11(c)(2) of the Occupational Safety and Health Act], and you concur with the decision to close the matter. However, OSHA recommends that you contact the National Labor Relations Board (NLRB) as soon as possible to inquire about filing a charge alleging unfair labor practices. The NLRB is responsible for enforcing employee rights under the National Labor Relations Act (NLRA). Employees are protected under the NLRA to act together to try to improve working conditions, including safety and health conditions, even if the employees aren't in a union. T

**Referring Untimely 11(c) Complainants to the NLRB**

**Talking Points for Phone or In-Person Conversations**

*Once you have completed discussing the employee's rights and options under Section 11(c), please recommend that the employee contact the NLRB. The following points should be included in your discussion.*

X

- OSHA recommends that you contact the NLRB as soon as possible, to inquire