

A Time for Solutions

RIC 2001

Allegation Process/Safety Conscious Work Environment
Session W5

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A Time For Solutions

- ◆ Statutory Mandates Should Dictate NRC And DOL Response To Retaliation Claims.
- ◆ Resolve NRC Response At Four Critical Points:
 - ❖ Initial Receipt Of Allegation.
 - ❖ Review For Chilling Effect And/or Program Implications.
 - ❖ Threshold To Investigate Individual Claim.
 - ❖ Treatment Under Enforcement Policy.

Statutory Mandates Should Dictate NRC And DOL Response To Retaliation Claims

- ◆ DOL Should Investigate Individual Claims.
 - ❖ Statute Expressly Authorizes.
 - ❖ Extensive Related Experience In Employee Protection Laws.
 - ❖ Authority To Provide Individual Remedy.
 - ❖ A Prompt And Open Process.
- ◆ NRC Should Focus On Safety And Assure Utility Has Addressed:
 - ❖ Safety Concerns Giving Rise To The Retaliation Claim.
 - ❖ Potential Chilling Effect On Workers.
 - ❖ Program Implications.

Initial Receipt Of Allegation

- ◆ NRC Should:
 - ❖ Meet With Allegor To Obtain Complete Understanding Of The Allegation, Including Protected Activity, Potential Chilling Effect, And Possible Program Issues.
 - ❖ Provide Allegor With DOL Implementing Regulations For 211, And Clarify That DOL Is The Appropriate Agency To Pursue Individual Claim And Remedy.
 - ❖ NRC Should Request Licensee Provide Information On Alleged Retaliation, Protected Activity, Chilling Effect, And Program Issues.
- ◆ NRC Should Not Routinely Investigate As Initial Response.

Review For Chilling Effect And/Or Program Implications

- ◆ NRC Should Review Licensee Response And, If Necessary, Hold Management Meeting To Clarify Positions.
- ◆ After Management Meeting, NRC Should Resolve Sufficiency Of Licensee Actions To Address Protected Activity, Chilling Effect And Related Program Issues.
- ◆ NRC Should Neither Investigate Nor Enforce Against Individual Act Of Retaliation.
- ◆ What And How To Evaluate?

Threshold To Investigate Individual Claim

- ◆ NRC Should Refer And Defer To DOL.
- ◆ If Individual Chooses Not To Pursue Claim With DOL Then, Absent Special Circumstances, NRC Should Maintain Safety Focus And Administratively Close Out Retaliation Claim As Not Pursued By Individual.
- ◆ Special Circumstances Warranting NRC Investigation Might Include:
 - ❖ A History Of Substantiated Claims At Site Or Within Work-Group.
- ◆ NRC Should Discontinue Investigation Where Litigation, ADR Or Matter Settled.

Treatment Under Enforcement Policy

- ◆ NRC Should Rely Upon The DOL Record At The ALJ Stage.
- ◆ If A Predecisional Enforcement Conference Is Premised Upon OI, The Licensee Should Have Full Access To The OI Record And NRC's Documented Basis Should Be Comparable To An ALJ Recommended Decision And Order.
- ◆ NRC Should Revise Severity Levels In The Current Enforcement Policy Based Upon Safety Significance.
- ◆ NRC Should Discontinue Enforcement Where Litigation, ADR, Or Matter Settled.

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