

ALTERNATIVE PLAN REGARDING ADOPTION OF THE 2022 WHISTLEBLOWER
INVESTIGATIONS MANUAL ([Whistleblower Investigations Manual \(osha.gov\)](https://www.osha.gov/whistleblower-investigations-manual))
June 29, 2023

Chapter 1 – Preliminary Matters:

While the Connecticut Department of Labor's (CTDOL) CONN-OSHA Whistleblower Program is structured differently and therefore many of the definitions applying to particular federal titles do not apply to the CTDOL program, the generic terms, e.g. Complainant, protected activity, lack of cooperation, etc., do apply and CTDOL looks to the federal definitions as guidance in administering its program. Connecticut CTDOL provides a robust program which includes an appeal mechanism for reconsideration in accordance with the Connecticut Uniform Administrative Procedures Act (UAPA). Those portions that apply to Connecticut's plan are adopted in whole and Connecticut will look to the other sections for guidance when applicable.

Chapter 2 – Legal Principles:

Generally, Chapter Two is similar to Connecticut's Plan, except that a complaint is assigned for mediation rather than investigation. All cases have merit in Connecticut but must first pass a subject matter and timeliness jurisdictional review. If the case is not settled through mediation, it is then assigned to a Hearing Officer, who will preside over a formal hearing in accordance with Connecticut's UAPA. Connecticut will look to the legal principles outlines in this Chapter for guidance when determining the existence of unlawful retaliation. Connecticut's regulations provide for equitable tolling. Each file contains the OSHA-87 form.

Chapter 3 – Intake and Initial Processing of Complaints:

Chapter Three has procedural similarities to Connecticut's Plan and certain of the general principals apply, except that, under Connecticut's Plan, once a case passes jurisdictional review (e.g. timeliness and subject matter jurisdiction), it is generally not dismissed unless settlement is reached, or after a determination on the evidence has been made through a final decision by the Commissioner of Labor. Therefore, the "reasonable cause" standard does not apply to the referral of the matter to a formal hearing – as all cases essentially have merit – but would apply to the final analysis as to whether a violation occurred. Screening, but for jurisdictional issues, does not occur as all cases proceed to mediation and, if mediation fails, to formal hearing. Cases are entered into the federal OSHA Information System (OIS). The same information is relevant for a complaint filed with CTDOL – as it is of tremendous assistance when moving forward with the case. When no response is received from the Complainant after several attempts, the matter is administratively closed without prejudice. Parties are advised that CTDOL does not represent either the Complainant or the Respondent, and that both the Complainant's

allegation(s) and the Respondent's proffered non-retaliatory reason(s) for the alleged adverse action must be tested. A case file is prepared in OIS and the complaint is submitted to an intake and evaluation process. The evidentiary burdens and analysis are the same. Complaints may be filed in the manner that best fits the individual – here is a link to CTDOL's Whistleblower page: [WHISTLEBLOWER PROTECTION PROGRAM \(state.ct.us\)](http://www.ctdol.state.ct.us/whistleblower.htm).

Chapter 4 – Conduct of Investigation:

While there are major distinctions as to the life cycle of a complaint in Connecticut versus the federal process, there is little difference theoretically between the Manual and Connecticut's Plan. Those portions that apply to Connecticut's plan are adopted in whole and Connecticut will look to the other sections for guidance when applicable. Differences exist as to the functional responsibilities, but both processes are designed to ensure all necessary information is obtained in order to reach the correct disposition of a matter. In addition, settlements are encouraged, reasonable postponements are permitted, and files containing position statements, and evidence obtained throughout the information gathering is maintained. CTDOL maintains separate files for settlement and formal hearing. Further, as noted earlier, an appeal process is available.

Chapter 5 – Case Disposition:

Slight differences exist between this Chapter and Connecticut's Plan, due largely to the differences as to functional responsibilities and the make-up of CTDOL. Nonetheless, the Connecticut Plan requires maintenance of a case file in OIS and record, findings are memorialized in proposed and final decisions, and the FIR date is the same as the determination date. As noted, *infra*, those portions that apply to Connecticut's plan are adopted in whole and Connecticut will look to the other sections for guidance when applicable.

Chapter 6 – Remedies:

There are similarities as to remedies available under federally-enforced whistleblower statutes and the Connecticut OSHA Act. Connecticut's laws and program are designed to ensure that prevailing claimants are "made whole" via settlement or formal hearing. Reinstatement, back pay and front pay, fringe benefits that would have been earned, statutory interest on the award, etc. are available via Connecticut's laws.¹ In addition, reasonable attorney's fees shall be awarded, if the Complainant prevails in the formal hearing. However, Connecticut's statute does not provide for punitive damages or compensatory damages for non-pecuniary losses such as emotional distress. In addition,

¹ As referenced in FN 35 of this chapter, unemployment benefits received during the period of the award must be reimbursed by the employer or the claimant as outlined in CGS § 31-257.

bilateral agreements do not exist for jurisdictional reasons. As noted below, non-monetary damages are available through settlement.

Chapter 7 - Settlements:

Connecticut's settlement process is referenced in CGS § 31-379 and the statute's interpretive regulations, sections 31-379-1 through 31-379-22, inclusive, of the Regulations of Connecticut State Agencies and is governed by Connecticut's contested case regulations, sections 31-1-1 through 31-1-10, inclusive, of the Regulations of Connecticut State Agencies. All settlements are "private" settlements in Connecticut, in that CTDOL is never a party to the settlement agreement and agreements are customarily crafted by the parties without assistance of CTDOL attorneys (most similar to section VI (A) of this Chapter). However, CTDOL reviews the settlement agreement when possible to ensure that the agreements do not contain any provisions that are repugnant to the OSHA Act. All make whole remedies referenced in CGS § 31-379 are available in the settlement process; in addition, non-monetary damages are on occasion part of the settlement process. Also, on occasion, settlements are "global" settlements, resolving complaints filed in multiple fora. CTDOL does not have authority under its governing statute, section 31-379 of the Connecticut General Statutes, to enforce its request to review the agreements or enforce the actual agreements in court.

Chapter 8 – Federal OSHA Coordination:

This chapter does not correspond to Connecticut Plan for jurisdictional reasons.

Chapter 9 --- Information Disclosure:

Connecticut's disclosure parameters (and fees) regarding case files established pursuant to Section 31-379 of the Connecticut General Statutes are governed by the Connecticut Freedom of Information Act, Section 1-200 et. seq. of the Connecticut General Statutes.