

DEPUTY SECRETARY OF LABOR
WASHINGTON, D.C. 20210

SEP 24 2020

MEMORANDUM FOR:

JEANNE KLINEFELTER WILSON
Acting Assistant Secretary
Employee Benefits Security Administration

LOREN SWEATT
Principal Deputy Assistant Secretary
Occupational Safety and Health Administration

DAVID G. ZATEZALO
Assistant Secretary
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Administrator
Wage and Hour Division

CRAIG E. LEEN
Director
Office of Federal Contract Compliance Programs

ANDREW AUERBACH
Acting Director
Office of Labor-Management Standards

FROM:

PATRICK PIZZELLA 

SUBJECT:

Guidance on Enforcement Agency News Releases

As discussed at our recent enforcement agency roundtable with the Secretary, Department of Labor (DOL or Department) enforcement agencies routinely use news releases to inform the public regarding confirmed violations of law and recoveries for American workers achieved through agency investigations. These releases serve important purposes. They bring public awareness to problem areas, inform affected individuals about issues with their employers, and can help deter future violations.

News releases are effective ways of communicating with the American public, but also have the potential to create an online record that is prominent in search results regarding a particular company or labor union. This can be a good thing, but can prove misleading if, for example, the Department issues a release at the time a proceeding is first initiated, and is ultimately found to be unjustified in its enforcement action.

As a matter of Department policy, in general, enforcement agencies should not issue news releases before achieving a successful outcome. Absent extraordinary circumstances, pursuant to which an agency head may seek an exception to the policy

outlined below, an agency's own finding alone generally should not be the basis for the release. In most cases the appropriate timing for a release will be the point in time:

- After a court or other tribunal has rendered judgment or issued a decision;
- After a conviction or plea agreement has been obtained;
- After an agency has entered into a settlement or conciliation agreement with the named party regarding remedies or the payment of a penalty; or
- After the time for contesting a finding (such as a citation) has elapsed and the party has not contested or requested to negotiate.

Appropriately-timed news releases support our efforts as enforcement agencies by allowing parties the opportunity to come into compliance or defend themselves on the merits. Once the Department has achieved a successful outcome in an enforcement action, releases issued should be viewed, when appropriate, as part of the education and remediation process.

An extraordinary circumstance that might warrant a news release at the time a proceeding is initiated would be a case alleging a serious violation that is potentially widespread and which the Department has not addressed in a prominent way previously, so that instructing the public through a news release could significantly further worker protection.

In all instances, whether to issue a news release and the timing of the news release remain in the discretion of the Department. Agency heads should consult with the Office of Public Affairs (OPA) and the Office of the Solicitor (SOL) when considering an exception to the general policy, including in cases where there is a repeat or willful violation involving an imminent risk to safety or health. Agency heads also are encouraged to consult with OPA and SOL in advance—when a need can be anticipated—where circumstances require a timely exception. OPA and SOL are encouraged to be flexible and responsive.

Finally, where appropriate, enforcement agencies are encouraged to coordinate with and participate in news releases issued by the Department of Justice resulting from Department actions at all stages of enforcement.

In most instances, DOL's enforcement agencies are already issuing releases at the appropriate points in time, consistent with the above-mentioned principles. Following this guidance and focusing on final outcomes will increase the value of the news releases the Department issues and support our efforts to ensure fairness and accuracy in our communications with the American workforce.

Of course, this guidance is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against Department of Labor, or its agencies, its officers, employees, or agents, or any other person.

Thank you for your cooperation.

CC: Eugene Scalia, Secretary of Labor
Kate O'Scannlain, Solicitor of Labor
Bob Bozzuto, Assistant Secretary for Public Affairs