

January 12, 2018

MEMORANDUM TO: Anne T. Boland, Director
Office of Enforcement

FROM: Renée M. Pedersen */RA/*
Sr. Differing Professional Views Program Manager
Office of Enforcement

SUBJECT: STUDY OF REPRISAL AND CHILLING EFFECT FOR RAISING
MISSION-RELATED CONCERNS AND DIFFERING VIEWS AT
THE NUCLEAR REGULATORY COMMISSION

This memorandum transmits the results of a study conducted by the Office of Enforcement (OE) in response to the tasking identified in the third action item in the June 9, 2016, Agency Action Plan. The focus of the study is on developing and enhancing activities that address concerns of reprisal and chilling effect for raising mission-related concerns and differing views (i.e., protected activity/protected disclosure). The study does not assess the agency's existing differing views processes or any other agency processes. The goal was to gain a better understanding of the issues and maximize potential strategies for improvements to support employee engagement and ultimately, the U.S. Nuclear Regulatory Commission (NRC) mission.

The comprehensive study reviews historical data for context, examines the existing environment (including agency processes and practices), and reflects a broad range of insights from a multi-office focus group as well as from a variety of sources and benchmarking activities. OE coordinated with multiple offices and the National Treasury Employees Union (NTEU) to ensure an accurate representation of the existing processes and practices, and to solicit input for potential areas of improvement. The study captures the essence of all considerations developed throughout the review, however, it does not reflect a consensus view across solicited offices. The observations and considerations in the study reflect OE's analysis of the data and insights from a broad range of sources to maximize potential strategies for improvement in a historically challenging area.

Although the agency has seen significant improvement in this area from when the Office of the Inspector General's (OIG) Safety Culture and Climate was first issued in 1998, (where data showed that around 40 percent of employees had concerns of reprisal for speaking up); since 2009, data shows that we have plateaued to around 20 percent of employees having concerns of reprisal for raising concerns and differing views. The collected data indicate that perceptions of reprisal may inhibit employees from raising mission-related concerns and differing views and impact employee engagement. Although data does not conclusively identify that reprisal is pervasive at the agency or that there is a chilled work environment, it does indicate that there is room for improvement.

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The study identifies nine considerations that reflect a proactive, holistic approach to address the observations of concern.

1. Demonstrate management commitment and accountability.
2. Survey all employees to ask whether they believe they have experienced reprisal for raising a mission-related concern or differing view.
3. Establish and maintain a comprehensive policy and procedures to prevent, identify, investigate, and address reprisal for raising mission-related concerns or differing views.
4. Establish an Advisory Review Panel to review proposed employment actions on an as-needed basis before the actions are taken to determine whether any of the factors of retaliation are known to be present and to advise on mitigation strategies to address the potential for the actions to cause a chilling effect and, if already alleged, respond to concerns of chilling effect and chilled work environment.
5. Examine existing training and consider enhancing, adding, or replacing.
6. Enhance communications on whistleblower rights and protections.
7. Continue to communicate the value of raising mission-related concerns and differing views and that the agency does not tolerate reprisal for speaking up or using the differing views processes.
8. Establish an agency-level advisory committee on environment for raising mission-related concerns and differing views.
9. Establish an annual Meritorious Service Award.

The considerations aim to provide senior management with a range of opportunities that *could* be pursued to create effective, lasting improvements to the workplace that align with the focus of the Agency Action Plan (i.e., foster a climate of trust; strengthen the positive environment for raising concerns; promote a culture of fairness, empowerment, and respect across the agency; and establish clear expectations and accountability for NRC leaders).

The insights from this study can help identify strategies, refocus our attention, and reenergize our efforts to fulfill NRC's important safety and security mission, while continuing to nurture an environment that reflects the characteristics of a strong safety culture in which people feel free to speak up without fear of reprisal, knowing they will be heard, understood, and responded to in a respectful manner.

As next steps, the considerations identified above will be evaluated in concert with offices with programmatic and legal responsibilities. A proposal will be made to the Executive Director for Operations on recommended options to be pursued in support of closure of the Agency Action Plan tasking and for sharing the report with other offices, the OIG and NTEU.

Enclosure:
As stated

cc: Victor M. McCree, EDO
Daniel H. Dorman, EDO
Michael R. Johnson, EDO

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ADAMS Package: ML17352A434
MEMO: ML17352A411
Enclosure: ML17352A430

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