



Workplace Whistleblower

Perspectives on whistleblower situations that employers frequently face

GAO Report on OSHA, DOT Whistleblower Issues

By James L. Curtis and Craig B. Simonsen

In a recent U.S. General Accountability Office (GAO) whistleblower protection program report, the GAO recommends that the Secretaries of Labor and Transportation evaluate their current and in-process memoranda of agreements (MOAs) to ensure that the MOAs incorporate key practices for collaboration. "*Opportunities Exist for OSHA and DOT to Strengthen Collaborative Mechanisms*," GAO-14-286 (March 19, 2014).

In 2012 the GAO had concluded that collaboration "is critical when meaningful results that the federal government seeks to achieve require the coordinated efforts of more than one federal agency." OSHA is responsible to investigate whistleblower claims filed by transportation employees who believe their employers have retaliated against them for reporting unlawful practices. The *Moving Ahead for Progress in the 21st Century Act* (MAP-21) required OSHA to establish protections for auto industry employees, and required GAO to review OSHA's efforts and transportation-related whistleblower claims.

As a result, GAO examined the steps OSHA has taken to include auto industry employees in its whistleblower program, and the extent to which OSHA collaborated with DOT components to address potential safety violations. GAO also reviewed the number of transportation-related whistleblower claims in the last six years, and stakeholder-identified factors that may have affected those numbers. The Report compared agency documents against key practices for collaboration, and conducted interviews of federal agency officials and stakeholders representing transportation modes under the covered statutes to identify factors that may have affected the number of whistleblower claims reported by OSHA.

According to the Report, OSHA documents its collaboration with the DOT's component agencies on whistleblower protections by developing MOAs. Currently "MOAs cover aviation and rail employees; the agencies are considering developing MOAs to cover other transportation sectors such as commercial motor-carrier employees." The Report noted that the agencies have an opportunity to "strengthen current and future MOAs by clearly delineating roles and responsibilities, and determining how the agencies' efforts will be monitored and evaluated." As an example, GAO noted that the current MOAs do not clearly define agency roles and responsibilities as to developing training on whistleblower issues, and regional coordination.

As employers in the commercial motor-carrier industry appear to be the current focus of the agencies under the federal government's whistleblower protection program, it may be wise for employers in that industry to review this [report](#), and to get involved as stakeholders in the development process.

Jim Curtis is a partner and co-chair of Seyfarth's Whistleblower Team. *Craig B. Simonsen* is a paralegal in Seyfarth's Chicago office. If you would like further information or to submit question regarding this post please contact the Whistleblower Team at ask-whistleblower@seyfarth.com.

www.seyfarth.com

Attorney Advertising. This Workplace Whistleblower is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

Seyfarth Shaw LLP Workplace Whistleblower | March 24, 2014

©2014 Seyfarth Shaw LLP. All rights reserved. "Seyfarth Shaw" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.