



# Workplace Whistleblower

*Perspectives on whistleblower situations that employers frequently face*

## OSHA and the Federal Motor Carrier Safety Administration Agree to Coordinate Responses to Whistleblower Complaints by Private Commercial Motor Vehicle Drivers

*By Ada W. Dolph and Craig B. Simonsen*

Since 2010, OSHA has made a concerted effort to coordinate enforcement of whistleblower complaints with affiliated agencies. (See our past blog about OSHA's coordination with the FDA [here](#)). OSHA continues in this effort, recently [announcing](#) that it has entered into a [Memorandum of Understanding](#) (MOU) with the Federal Motor Carrier Safety Administration (FMCSA) to coordinate enforcement of the Surface Transportation Assistance Act (STAA)'s whistleblower anti-retaliation and anti-coercion provisions, found at [49 U.S.C. §§ 31105, 31136\(a\)\(5\)](#).

The STAA protects private-sector drivers of commercial motor vehicles (CMVs) and individuals who directly affect CMV safety or security from discharge, discipline, or discrimination for engaging in "protected activities," which include:

- Filing a complaint or beginning a proceeding related to a violation of a CMV safety or security regulation, standard, or order, or testifying in such a proceeding;
- Refusing to operate a vehicle because the operation violates a regulation, standard, or order of the United States related to CMV safety, health, or security, or the employee has a reasonable apprehension of serious injury to the employee or the public because of the vehicle's hazardous safety or security condition;
- Accurately reporting hours on duty;
- Cooperating with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board; or
- Furnishing information to the Secretary of Transportation, the Secretary of Homeland Security, the National Transportation Safety Board, or any federal, state, or local regulatory or law enforcement agency as to the facts relating to any accident or incident resulting in injury or death to an individual or damage to property occurring in connection with CMV transportation.

The STAA's anti-coercion provisions preclude a motor carrier, shipper, receiver, or transportation intermediary from coercing a driver to operate a CMV in violation of CMV safety regulations, CMV driver regulations, or hazardous materials transportation regulations.

New coordination efforts include that upon receiving a whistleblower complaint, the FMCSA will inform the complainant that "a personal remedy for retaliation is available through OSHA, rather than FMCSA, and that the individual should personally contact OSHA," within 180 days of the alleged retaliation. In turn, OSHA will notify FMCSA of any complaint alleging STAA

retaliation, including in instances where the complaint has been withdrawn because of a settlement. OSHA will also provide complainants who raise FMCSA-specific safety allegations (such as willful disobedience of “the hours of service rules”) with the FMCSA hotline number and email address. The agencies also agree to share information in their respective databases upon request and within just two (2) business days.

CMV employers should be on alert because increased coordination between OSHA and the FMCSA will likely result in an increase in whistleblower and coercion complaints.

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