



Transportation Law: Airline Industry Whistleblower Claims

The Wendell H. Ford Aviation Investment and Reform Act of the 21st Century (AIR21) marked a pivotal moment in the evolution of airline operations and regulatory oversight. Enacted in 2000, AIR21 introduced whistleblower protections for aviation employees, ensuring that safety concerns could be raised by employees without fear of retaliation. This statute reinforced the industry's commitment to transparency and compliance with federal safety standards. However, in part because of the ease in bringing an AIR21 claim, it has also become a fast-growing area of litigation and liability for airlines.

AIR21 claims are investigated by OSHA's Whistleblower Protection Program, which evaluates whether the employee engaged in protected activity, experienced an adverse employment action, and whether that protected activity contributed to the adverse action. Many AIR21 claims are also accompanied by OSHA Section 11(c) complaints, which cover broader workplace safety issues beyond aviation-specific concerns.

Employers may defend against such claims by demonstrating legitimate, non-retaliatory reasons for their actions and that they would have taken the same adverse action regardless of any protected activity.

HOW WE HELP

Seyfarth's Air & Rail Team has a proven track record of defending air carriers and their service providers in complex whistleblower matters. Our attorneys bring deep industry knowledge and decades of experience, including attorneys who have served in in-house counsel roles at major airlines, to help clients navigate the regulatory landscape and mitigate risk.

We offer strategic defense in whistleblower investigations and litigation, including:

- Defense of AIR21 and OSHA 11(c) claims, from initial OSHA investigations through trial and appeal before the Department of Labor's Administrative Review Board (ARB) and any subsequent Circuit Court review.
- Removal of state whistleblower claims from state to federal court, and successful motions to compel arbitration under the Railway Labor Act due to RLA preemption/preclusion.
- Internal investigations and compliance counseling, leveraging cross-disciplinary expertise in employment law, OSHA, healthcare, securities, and government contracts.
- Rapid response systems for investigating and responding to whistleblower complaints, minimizing disruption and reputational risk.
- Ethics and compliance program development, including anti-retaliation policies, training, and risk assessments.

KEY CONTACTS



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REPRESENTATIVE EXPERIENCE

- Obtained dismissal in extensive motion practice of six AIR21 and Dodd-Frank/Sarbanes-Oxley complaints filed by a serial filer plaintiff against his former employer, a major air carrier.
- Following motion practice and a hearing, prevailed in an AIR21 matter for a major air carrier involving an airline mechanic asserting he was terminated in retaliation for reporting alleged maintenance issues. The ALJ found that the carrier would have taken the same action notwithstanding the mechanic's protected activity.
- Prevailed in an AIR21 matter for a major air carrier brought by a pilot contesting a referral for a fitness for duty evaluation under the collective bargaining agreement after a training failure. The hotly contested matter involved two interlocutory appeals to the ARB, one of which was supported through an amici filing by the pilots' union. The hearing lasted three weeks, and involved dozens of witnesses, including executives and experts.

The ALJ found that the pilot failed to establish a prima facie case of retaliation, and even if she did, that the carrier would have taken the same action regardless of the pilot's protected activity. Seyfarth is also defending against the Complainant's appeal for review by the Seventh Circuit.

- Prevailed on a motion to dismiss in an AIR21 matter involving a simulator training pilot who failed to progress in training to become a line pilot and who alleged retaliation for declaring himself unfit to fly to avoid failing his line check.
- Prevailed on a motion for summary decision in an AIR21 matter involving a pilot asserting retaliation for alleged protected activity when he was removed from the carrier's HIMS drug and alcohol program.
- Obtained dismissal from federal court and the Seventh Circuit multiple whistleblower matters alleged against an air carrier under Dodd-Frank and Sarbanes-Oxley.