

Whistleblower Protection for Commercial Motor Vehicle Workers

Truck drivers and other workers affecting commercial motor vehicle safety or security are protected from retaliation for reporting, or engaging in activities related to, certain commercial motor vehicle safety, health or security conditions.

On August 3, 2007, the *Surface Transportation Assistance Act* (STAA), 49 U.S.C. § 31105, was amended by *The Implementing Recommendations of the 9/11 Commission Act* (Public Law 110-53) to include new rights, remedies and procedures.

Covered Employees

In general, STAA covers private-sector drivers (including independent contractors while personally operating a commercial motor vehicle) and other workers (including mechanics and freight handlers) involved in activities directly affecting commercial motor vehicle safety or security. A commercial motor vehicle covered by STAA is defined as any self-propelled or towed vehicle used on the highway in commerce principally to transport cargo or passengers. To qualify for coverage, such a vehicle must also:

- Have a vehicle weight rating or gross vehicle weight of at least 10,001 pounds (whichever is greater);
- Be designed to transport more than 10 passengers, including the driver; or,
- Transport materials deemed hazardous by the Secretary of Transportation in a quantity requiring placarding (posting) under applicable regulations.

Protected Activity

If you are covered under STAA, your employer may not discharge you or in any manner retaliate against you for:

- filing a complaint or initiating or participating in a proceeding related to the violation of a commercial motor vehicle safety or security rule; or
- cooperating with certain federal safety or security investigations; or

- providing information in an investigation by a federal, state, or local regulatory or law enforcement agency relating to any accident or incident resulting in injury or death or property damage that occurred in connection with commercial motor vehicle transportation.

In addition, under STAA, your employer may not discharge you or in any manner retaliate against you for refusing to operate a vehicle because to do so would violate a federal commercial motor vehicle rule related to safety, health, or security, or because you had a reasonable apprehension of serious injury to yourself or to the public related to a vehicle's safety or security condition. STAA also prohibits your employer from discharging or otherwise retaliating against you for accurately reporting hours of service (HOS). (For more detail about federal HOS requirements, please visit the Federal Motor Carrier Safety Administration's website www.fmcsa.dot.gov). You may also be covered if you were perceived as having engaged in the activities described above. In addition, you may also be protected under STAA if you have been harassed or coerced about following safety regulations.

What Is Retaliation?

Retaliation is an adverse action against an employee because of activity protected by STAA. Retaliation can include several types of actions, such as:

- Firing or laying off
- Blacklisting
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire
- Intimidation
- Reassignment affecting promotion prospects

- Reducing pay or hours
- Making threats

Deadline for Filing Complaints

Complaints must be filed within 180 days after the alleged retaliatory action occurred or after the date on which the employee became aware of the action.

How to File a STAA Complaint

An employee can file a STAA complaint with OSHA by visiting or calling his or her local OSHA office, sending a written complaint to the closest OSHA office, or filing a complaint online. No particular form is required and complaints may be submitted in any language. Written complaints may be filed by fax, electronic communication, hand delivery during business hours, U.S. mail (confirmation services recommended), or other third-party commercial carrier.

The date of the postmark, fax, electronic communication, telephone call, hand delivery, delivery to a third-party commercial carrier, or in-person filing at an OSHA office is considered the date filed.

To file a complaint electronically, please visit www.osha.gov/whistleblower/WBComplaint.html.

To contact an OSHA area office, please call 1-800-321-OSHA (6742) to be connected to the closest area office. Or visit our website at www.osha.gov/html/RAmap.html and click on your state to find your local OSHA office address and contact information.

When OSHA receives a complaint, the agency will first review it to determine whether certain basic requirements are met, such as whether the complaint was filed on time. If so, the complaint will then be investigated according to the procedures required by 29 CFR Part 1978.

Results of the Investigation

If the evidence supports an employee's complaint of retaliation, OSHA will issue an order requiring the employer to, as appropriate, put the employee

back to work, pay lost wages, restore benefits, and other possible relief. The exact requirements will depend on the facts of the case. If the evidence does not support the employee's complaint, OSHA will dismiss the complaint.

After OSHA issues a decision, the employer and/or the employee may request a full hearing before an administrative law judge of the Department of Labor. The administrative law judge's decision may be appealed to the Department's Administrative Review Board. The employee may also file a complaint in federal court if the Department does not issue a final decision within 210 days. See 49 U.S.C. § 31105.

To Get Further Information

For a copy of STAA, 49 U.S.C. § 31105, the regulations (29 CFR 1978), and other information, go to www.whistleblowers.gov.

OSHA's Whistleblower Protection Programs enforces the whistleblower provisions of more than twenty federal whistleblower laws. To learn more about the whistleblower statutes which OSHA enforces, view our "Whistleblower Statutes Desk Aid" at www.whistleblowers.gov/whistleblower_acts-desk_reference.pdf.

For information on the Office of Administrative Law Judges procedures and case law research materials, go to www.oalj.dol.gov and click on the link for "Whistleblower."

For information on commercial motor vehicle safety laws and regulations, visit the Federal Motor Carrier Safety Administration's (FMCSA) website at www.fmcsa.dot.gov. To file a substantive safety or security complaint with FMCSA, please visit nccdb.fmcsa.dot.gov/nccdb/home.aspx.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education, and assistance.

For more information, visit www.osha.gov.

This is one in a series of informational fact sheets highlighting OSHA programs, policies or standards. It does not impose any new compliance requirements. For a comprehensive list of compliance requirements of OSHA standards or regulations, refer to Title 29 of the Code of Federal Regulations. This information will be made available to sensory-impaired individuals upon request. The voice phone is (202) 693-1999; teletypewriter (TTY) number: (877) 889-5627.



U.S. Department of Labor



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