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Whistleblower Protections under the National Transit Systems Security Act (NTSSA)

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Objectives

- **Provide Information on OSHA's Whistleblower Protection Program**
- **Discuss Coverage Issues**
- **Identify Pertinent NTSSA Statutory and Regulatory Provisions**
- **Discuss Merit Case**

Overview of OSHA's Whistleblower Protection Program

- 1970 – OSH Act – Section 11(c) – Worker Safety/Health
- 2019 – 23 Different Statutes
 - Transportation Services
 - Financial Services
 - Environmental and Nuclear Safety
 - Consumer Safety
 - Healthcare
 - Tax

Who is covered by the statutes OSHA administers?

- Federal whistleblower statutes generally protect private sector workers
 - United States Postal Service employees and some federal, state, local employees are covered under very limited conditions

How does OSHA protect whistleblowers?

- Investigate complaints
- Conduct outreach for employers and employees
- Work with Partner Agencies, such as FTA

National Office – Directorate of Whistleblower Protection Programs

- Request for Review Program
- Partner Agencies
- Whistleblower Investigations Manual
- Policy Memoranda
- Outreach Strategy
- Data

Regional Offices

- OSHA has 10 regional offices which conduct whistleblower investigations
 - State Plan States conduct their own investigations for retaliation relating to health and safety issues under the State's equivalent Section 11(c) analog
 - They only investigate Section 11(c) complaints
 - Complaints filed under federal statutes other than Section 11(c) are investigated by federal OSHA

How can employees file complaints?

Employees or their representatives (family members, union representatives, or attorneys) can file a complaint in the following ways:

- Online at http://www.whistleblowers.gov/complaint_page.html
- Verbally by visiting or calling a local OSHA office
- In writing by sending a complaint letter to OSHA

Complaints can be in any language and do not need to be in a particular format.

Purpose of 6 U.S.C. Section 1142

NTSSA prohibits a public transportation agency, a contractor or a subcontractor of such agency, or an officer or employee of such agency, from retaliating against an employee for having engaged in protected activity related to public transportation safety or security.

What Employees Are Covered under NTSSA?

- Employees of a public transportation agency or its contractors or subcontractors (such as employees of manufacturers of operational equipment for public transportation agencies) are covered under NTSSA.
- Employees of providers of other passenger transportation, such as school bus, charter, or sightseeing transportation, are not covered.

Activities Protected under NTSSA

- Providing information to, causing information to be provided to, or assisting in an investigation by a federal regulatory or law enforcement agency, a member or committee of Congress, or the employer about an alleged violation of federal laws, rules, or regulations related to public transportation safety or security, or about fraud, waste, or abuse of federal grants or other public funds intended for public transportation safety or security.

Activities Protected under NTSSA (cont.)

- Refusing to violate or assist in a violation of any federal law, rule, or regulation relating to public transportation safety or security.
- Filing a complaint, causing a proceeding to be brought, or testifying in a proceeding under one of these laws, rules or regulations.
- Cooperating with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board (NTSB).

Activities Protected under NTSSA (cont.)

- Providing information to the Secretary of Transportation, the Secretary of Homeland Security, the NTSB, 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 public transportation.

Activities Protected under NTSSA (cont.)

- Reporting a hazardous safety or security condition.
- Refusing to work when confronted with an imminent hazardous safety or security condition.
- Refusing to authorize the use of any safety- or security-related equipment, track, or structures if those structures present an imminent hazardous safety or security condition.

Timeframes

- 180 days to file complaint with OSHA
- 30 days from receipt of OSHA's Secretary's Findings to request a hearing before ALJ (appeal)
- 10 business days after ALJ's decision to file petition for review with ARB
- 120 days after the end of the hearing, Secretary of Labor shall issue a final order
- 60 days to file petition for review in U.S. Court of Appeals after Secretary's final order
- 210 days after filing with OSHA, Complainant may kick-out to U.S. District Court

Available Remedies

- Affirmative action to abate a violation
- Preliminary reinstatement
- Backpay with interest
- Compensatory damages, including attorney's fees
- Punitive damages not to exceed \$250,000

Election of Remedies

- Complainants may have to choose among:
 - Federal Railroad Safety Act, NTSSA, Section 11(c) of the OSH Act, or a state whistleblower statute
 - Complainants do not have to choose between pursuing a remedy under a collective bargaining agreement or a NTSSA claim
 - Complainants do not have to choose between a NTSSA claim and another type of discrimination claim, such as a Title VII claim

Merit Case Example

The complainant and his supervisor at the New York City Transit Authority's Linden Shop maintenance facility participated in a safety inspection by the New York Public Employees Safety and Health (PESH) Bureau on August 9, 2012. The PESH inspectors asked about the condition of a drill press, and the supervisor told them it was not working. The employee stated that the press was operating and turned it on.

Merit Case Example (cont.)

The supervisor then threatened the employee with a loss of overtime work. The inspectors informed the manager that his behavior appeared to be retaliatory and he needed to stop. He did not.

The employee filed a timely whistleblower complaint with OSHA and transferred to another job at the Linden shop.

Merit Case Example (cont.)

In July 2013, the employee contacted OSHA regarding possible harassment by his new supervisor and, in turn, OSHA contacted the transit authority for further information. The new supervisor then shared information unrelated to the complaint with the employee's fellow workers, leading them to shun him.



Questions?



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