



OSHA & FMCSA Agree to Exchange Info, Referrals

Insights

8.05.14

Occupational Safety and Health Administration and Federal Motor Carrier Safety Administration Sign Memorandum of Understanding Improving Safeguards for Drivers of Commercial Motor Vehicles From Retaliation and Coercion

By Todd Logsdon & Megan U'Sellis

The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) and the U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) recently signed a Memorandum of Understanding to "facilitate coordination and cooperation" between the two agencies concerning the anti-retaliation provision of the Surface Transportation Assistance Act (STAA), 49 U.S.C. § 31105, and the anti-coercion provision, 49 U.S.C. § 31136(A)(5). The STAA shields drivers of a commercial motor vehicle (CMV), including independent contractors, from termination, discipline or other retaliation for reporting or engaging in protected activity regarding CMV safety, health or security conditions. The anti-coercion provision gives the Secretary of Transportation authority to prescribe regulations to ensure that a CMV driver is not forced to operate a CMV in violation of federal safety regulations. The Memorandum provides for the exchange of safety, coercion and retaliation allegations that are received by one agency, but are under the purview of the other agency, and sets forth the process for doing so.

OSHA and FMCSA each have important, but complementary, responsibilities when it comes to CMV safety and employee protection. OSHA investigates employee complaints of retaliation under the STAA and, after an investigation or hearing, may: (1) order the employer to take affirmative action to abate the violation; (2) reinstate the employee to his or her previous position; (3) award compensatory damages, including back pay with interest and/or punitive damages; and (4) award reasonable attorney fees. On the other hand, FMCSA is responsible for taking the necessary enforcement action against a commercial motor carrier found to have violated federal safety regulations, including, but not limited to, driver on-duty and driving time limits to avoid fatigue, commercial driver's licenses rules, medical qualifications, drug and alcohol testing, and hazardous materials safety standards. FMCSA may take appropriate action, such as: (1) issuing a Notice of Violation to the responsible party; (2) impose a civil penalty; (3) issue an order removing the responsible party from FMCSA-regulated activities; and/or (4) denying, suspending, modifying or revoking a FMCSA-granted privilege.

Pursuant to the Memorandum, FMCSA will notify individuals who complain of alleged retaliation due to STAA-protected activity that a personal remedy is available through OSHA. FMCSA will give the

individual proper contact information for OSHA and advise the individual that all complaints must be filed within 180 days of the alleged retaliatory acts. In turn, OSHA will provide FMCSA with a copy of all complaints filed with OSHA alleging retaliation under the STAA. The agencies also agree to provide annual reports on information obtained that year. FMCSA will provide OSHA with a report of all actions taken regarding STAA complaints, and OSHA will provide FMCSA with a report concerning OSHA's processing of STAA complaints.

Over the past nine years, OSHA has processed more than 2,800 complaints under the STAA. In a recent case, OSHA ordered an Iowa waste removal company to reinstate a driver and awarded \$123,000 in compensatory damages after the employer terminated the driver for voicing safety concerns over company routes that violated federal safety regulations. OSHA's Assistant Secretary of Labor, Dr. David Michaels, stated: "Through this agreement, we are sending a clear message that silencing workers who try to do the right thing is unacceptable for workers and also unsafe for the public." FMCSA Administrator Anne S. Ferro has stated companies that knowingly violate federal safety regulations that endanger its own employees and the public or retaliate against complaining employees will be prosecuted to the fullest extent of the law.

This agreement to exchange information is in addition to OSHA's earlier agreement with the NLRB to exchange information and provide employees with information on additional rights.

Related People



Todd B. Logsdon
Partner
502.561.3971
Email