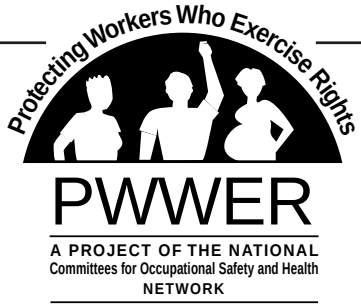
Whistleblower Protections Under the Surface Transportation Assistance Act (STAA)



FACTSHEET OF THE "PROTECTING WORKERS WHO EXERCISE RIGHTS" PROJECT OF THE NATIONAL COSH NETWORK

The Surface Transportation Assistance Act of 1982 (STAA) was passed to ensure that states and private industry develop and maintain safe transportation systems. Section 405 of this act protects drivers, mechanics, freight handlers and certain other employees in the transportation industry from retaliation from their employer when reporting safety violations.

Under Section 405, an employer is prohibited from firing, demoting or in any other way discriminating against an employee who:

- Refuses to operate a vehicle which fails to meet federal, state or local safety regulations
- Reports a violation of vehicle safety requirements
- Alleges that he or she has been exposed to significant hazards, or
- Testifies or otherwise participates in safety related proceedings.

When Does the STAA Apply?

Court cases have determined that certain facts must exist to be protected by STAA. You must be in the private sector and a driver of, mechanic responsible for the maintenance and inspection of, freight handler or an individual (not employer) who directly affects commercial motor vehicle safety, of a commercial motor vehicle:

- with a gross weight rating of at least 10,001 pounds; or
- that is designed or used to transport passengers for compensation (excluding vehicles providing taxi cab services and having a capacity of not more than 6 passengers and not operated on a regular route or between specified places) or;
- that is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or
- that is used in transporting material found by the Secretary of Transportation to be hazardous under Section 5103 of this title and transported in a quantity requiring placarding under regulations prescribed by the Secretary of Transportation under Section 5103.

You must also report the vehicle's condition to your employer, the Department of Transportation (DOT) or state of local police. If you violate safety regulations by going ahead and driving the vehicle, you will not be protected by this law.

If your employer does not correct the problem, or corrects it and then disciplines you, you are protected by the STAA.

Telling your union representative, a mechanic, or co-workers about the safety problem is not enough. You must clearly report the problem to your employer, the DOT or police.

Why use STAA?

Drivers are also covered under OSHA Section 11(c) or the equivalent in states where there is a state OSHA plan. One advantage to using STAA is the longer time in which to file a complaint. STAA has a 180-day filing period while OSHA Sec.11(c) and other whistleblower laws only have a 30-day filing period. STAA allows for the reinstatement of a fired worker at the time the Department of Labor determines a complaint has "merit" status. STAA also allows for workers to hire a private attorney to bring action and, if discrimination is proven, may award attorney fees. Under Section 11(c), only the Department of Labor can bring action. STAA provides for back pay as well as damages.

What is a Violation of Federal Regulations or Safety Standards?

You should have a copy of DOT regulations; it is available from your employer. DOT covers the majority of safety regulations. Health condition violations are complicated and should not be relied upon unless you know the exact law.

- The most commonly violated regulation is "hours of service" (DOT Section 385.3). This regulation is strictly enforced under the STAA and courts have protected drivers who refuse to start a dispatch that will violate hours of service.
- Refusing to speed to complete a dispatch is also covered and strictly enforced.
- Your employer cannot demand that you operate a commercial motor vehicle while ill, fatigued or otherwise impaired. You must have a valid reason for the condition and present it to your employer.
- Failure to have proper placards, lack of safety inspections, and the indication of prior uncorrected safety violations on "cry cards" all qualify as violations of safety regulations.
- Failure to have required safety equipment, including lights, is protected. DOT, however, has ruled that stoplights have reflective qualities, which substitute for, required reflectors; and that burned out clearance lights are not safety violations.
- State laws covering overweight vehicles, speeding, over-length or over-height vehicles are covered under the regulations. This includes local ordinances involving routing or special height and width requirements.

In all cases you must communicate the safety violation to your employer. You do not have to cite the exact regulation. You do have to report that the condition involves a safety issue.

Illness, Fatigue and Bad Weather Conditions

Violation of safety laws is only part of the STAA law.

If you are concerned about serious injury to yourself or the public because of the vehicle's unsafe condition and refuse to drive because of this condition, you have remedies under STAA. This has been interpreted to mean not only the condition of the truck, but the circumstances that the truck is driven in, including driver illness or fatigue and bad weather.

Bad Weather Conditions

If weather conditions are such that driving your truck would be unsafe and you refuse to drive, you are protected. Courts have held that driving an empty bobtail on icy roads was unsafe and found the

driver acted reasonably in refusing to drive. Refusing to drive into bad weather has been upheld by courts. Remember, there really must be a dangerous situation, such as icy roads or high winds, not just the fear that this might occur. Highway patrol travel advisories or other travel alerts can help back up your claim.

The fact that others have driven through bad conditions, however, does not mean that you cannot refuse. Courts have ruled it is "blind luck" that others made the trip and survived while another driver refused.

In one instance, a vehicle that would not sustain highway speeds with a heavy load was held by the court to be in an unsafe condition. In another, refusal to drive with an unsafe co-driver was ruled as an unsafe condition, however, the co-driver's unsafe driving habits needed to be supported by the testimony of other drivers who had ridden with him.

Illness and Fatigue

Driver fatigue or illness has also been ruled to be an unsafe condition. This is very important to drivers who are pushed to work long hours. You do not have to be "out of hours," but you do need to give your employer a reason for your fatigue.

Stopping on the side of the road for a nap has been protected. In this case, it may not be necessary to inform your employer beforehand if that's not possible, but you must notify them of the reason for the stop afterwards. If you have waited an excessively long time for dispatch, the courts have held that refusing to go to work may be protected, if the wait was truly excessive and if you inform dispatch of your fatigue.

Illness that occurs at work is also protected. As with fatigue, you must notify your employer, and you must be specific. Tell your employer "I have a severe headache that would affect my driving," not "I don't feel good."

Tell Your Boss!

In all cases you must report the unsafe condition to your employer. Do not just go home without calling or reporting. This common mistake leaves drivers unprotected by the STAA law.

Unsafe conditions apply to more than just vehicle defects. To be protected, you must be able to say why the condition was unsafe, be able to show that the condition existed at the time you refused to drive, and you must inform your employer.

The employer must take adverse action for you to be protected. This might be a warning letter, change in working conditions, assignment to lesser paying runs, harassment, suspension or discharge. Since most of these actions are normally in writing, proving them is relatively easy. Proving a connection to your blowing the whistle about safety conditions may be more difficult.

Other adverse actions include loss of money, for example, an employer's refusal to pay for time spent waiting in bad weather conditions or waiting to have the vehicle repaired. In one case, the company had to pay for a motel when the driver stopped because of bad weather and needed to rest.

Document It

Drivers should carry a camera and tape recorder to capture evidence that might be useful later. You should also photocopy any vehicle condition report or other document that might be useful as

evidence. Workers who are worried that their employer is looking for a reason to fire or discipline them should carry a small notebook and regularly write down the specifics of important incidents, including information on witnesses and the "who, what, when, where, and why" of events.

Filing a Complaint

A complaint must be filed within 180 days, including weekends and holidays, from the day that your employer took action against you. The complaint must be filed with the Federal OSHA Regional Office in your area. The number will be listed in the phone book under US Government Department of Labor – Occupational Safety and Health Administration.

The complaint is simply a letter of brief facts stating what the unsafe condition was, what you did, the action your employer took, and how to contact you. OSHA will conduct an investigation within 60 days. Have dates, names, and any documentation available to give to the investigator.

If OSHA finds your case has merit, it will order that you be reinstated with backpay. This order is enforceable in court by the Department of Labor (DOL) which will provide you with an attorney.

If OSHA does not rule for you, which is most often the case, you will be notified by letter and can object to the finding. The best thing to do then is to contact a labor attorney. You can file an objection to the ruling by stating in writing that you object and mailing this objection to the company, the Department of Labor Office of Administrative Law Judges and the OSHA Regional Office Director. All of these addresses will be in the dismissal letter you receive. You must file your objection within 30 days.

After you file an objection a hearing will be held in front of an Administrative Law Judge within 45 days. You can represent yourself but unless you know the law and the procedure, you should contact an attorney to represent you.

Both you and the company have the right to have witnesses deposed. A deposition is sworn testimony that is recorded and can be introduced in court.

Co-workers Protected

You have the right to call witnesses and require them to appear. Your coworkers are protected from retaliation by the company. You may request any company documents necessary to support your case.

The company may approach you to settle out of court. All settlement agreements must be approved by the hearing judge.

If there is a hearing it will be conducted in court with you, the company representatives, and the judge present. The judge will hear the evidence, can question witnesses, and normally allows both sides to file a written brief to support their position. The judge will make a decision within 30 days from the time he or she receives all materials.

The STAA is designed to protect you, and if you have done everything right you have a good chance of winning an STAA case. But be prepared for the company to fight you every step of the way.

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