OSHA and FAA Agree to Increased Cooperation and Information Sharing to Protect Aviation Whistleblowers

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The Occupational Safety and Health Administration and the Federal Aviation Administration have executed a memorandum of understanding (MOU) regarding the enforcement of the whistleblower provisions in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) (49 U.S.C. § 42121), a law enacted in 2000 to improve air safety. According to the December 1, 2015, MOU, OSHA and the FAA concluded that administrative efficiencies and sound enforcement policies will be maximized by the agencies cooperating and exchanging information in a timely manner.

The agencies will share information regarding whistleblower complaints and assist employees with the timely filing of such complaints. This MOU is an example of the Department of Labor expanding its reach, through other government agencies, to regulate and enforce safety issues in the workplace. (DOL’s Proposed Guidance implementing the Fair Pay and Safe Workplaces Presidential Executive Order (No. 13673) and the August 26, 2014, OSHA-FAA MOU granting OSHA jurisdiction to enforce occupational safety and health standards in the cabin of passenger aircrafts offer further examples.)

AIR-21 prohibits air carriers, air carrier contractors, and air carrier subcontractors from discharging an employee or otherwise discriminating against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting on the employee’s request):

1. provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the employer or federal government information relating to any violation or alleged violation of any order, regulation, or standard of the FAA or any other provision of federal law relating to air carrier safety under this subtitle or any other federal law;
2. has filed, caused to be filed, or is about to file (with any knowledge of the employer) or cause to be filed a proceeding relating to any violation or alleged violation of any order, regulation, or standard of FAA or any other provision of federal law relating to air carrier safety under this subtitle or any other federal law;
3. testified or is about to testify in such a proceeding; or
4. assisted or participated or is about to assist or participate in such a proceeding.

AIR-21 authorizes both OSHA and the FAA to investigate whistleblower and safety complaints and allegations of non-compliance related to aviation safety regulations.

OSHA is responsible for investigating employee complaints of discrimination and may order a violator to take affirmative action to abate the violation, reinstate the complainant to his or her former position with back pay, and award compensatory damages, including attorney’s fees. The FAA is responsible for investigating complaints related to air carrier safety and has authority to enforce air safety regulations and issue sanctions to airmen and air carriers.

According to the MOU, the two agencies will cooperate to the fullest extent possible in every case of alleged discrimination or retaliation against an employee of an air carrier, air carrier contractor, or air carrier subcontractor. Thus:
1. The agencies will promptly notify each other when a complaint is received;
2. OSHA will keep the FAA informed of the status of any administrative or judicial proceedings related to a discrimination or retaliation complaint;
3. If the FAA receives a whistleblower complaint from an employee, it will advise that individual to contact the Department of Labor and that the law (AIR-21) requires the individual to file his or her complaint with OSHA within 90 days of the alleged discrimination; and
4. The FAA also will provide OSHA with the general results of any investigation the FAA conducts.

The agencies will exchange summary information quarterly on the number of complaints under AIR-21 each agency received. Annually, the agencies will meet and confer regarding their performance under this MOU.

To the extent possible, the agencies will invite personnel from their agency counterpart to attend training, as students, instructors, or subject-matter experts, as applicable, in areas involving complaint investigations.

The MOU is not the final step in the agencies’ cooperative efforts. According to the MOU, the agencies will establish a procedure for coordinating and supporting enforcement of AIR-21. No timetable for the establishment of these procedures has been provided.

Jackson Lewis attorneys are available to answer inquiries regarding this and other developments.
The National Operations Center serves as the firm’s central administration hub and houses the firm’s Facilities, Finance, Human Resources and Technology departments.