

Filing Whistleblower Complaints under the Seaman's Protection Act

Seamen are protected from retaliation for reporting alleged violations of maritime safety laws or regulations.

Covered Employees

The *Seaman's Protection Act* (SPA) prohibits persons from retaliating against seamen for engaging in certain protected activities pertaining to compliance with maritime safety laws and regulations.

A seaman is any individual engaged or employed in any capacity on board a U.S.-flag vessel or any other vessel owned by a citizen of the United States. For a definition of "citizen of the United States" you should refer to 29 CFR 1986.101(d).

Protected Activity

A person may not discharge or in any other manner retaliate against a seaman because the seaman:

- Reported (or is about to report) information relating to a violation of maritime safety laws or regulations to the U.S. Coast Guard (USCG) or other appropriate federal agency or department;
- Reported (or is about to report) sexual harassment or sexual assault against the seaman or knowledge of sexual harassment or sexual assault against another seaman to the vessel owner, Coast Guard, or other appropriate federal agency or department;
- Refused to perform duties because of a reasonable apprehension of serious injury to the seaman, other seamen, or the public, if the seaman has first requested that the employer correct the dangerous condition;
- Testified in a proceeding brought to enforce a maritime safety law or regulation (this includes internal complaints);
- Notified or attempted to notify the vessel owner or the USCG of a work-related injury or illness of a seaman;
- Cooperated with a safety investigation by the USCG or the National Transportation Safety Board (NTSB);
- Furnished information to any public official relating to any marine casualty where there is death, injury, or damage to property occurring in connection with vessel transportation; or
- Accurately reported hours of duty under Part A of Subtitle II of Title 46 of the United States Code.

Unfavorable Employment Actions

A person may be found to have violated SPA if the seaman's protected activity was a contributing factor in the person's decision to take an unfavorable employment action against the seaman. An unfavorable employment action ("adverse action") is any action taken by an employer which would dissuade a reasonable employee from engaging in protected activity. Such actions may include:

- Firing or laying off
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failure to hire or rehire
- Intimidation or harassment
- Making threats
- Reassignment affecting prospects for promotion
- Reducing pay or hours
- More subtle actions, such as isolating, ostracizing, mocking, or falsely accusing the employee of poor performance
- Blacklisting (intentionally interfering with an employee's ability to obtain future employment)
- Constructive discharge (quitting when an employer makes working conditions intolerable due to the employee's protected activity)
- Reporting the employee to the police or immigration authorities

Deadline for Filing Complaints

Complaints must be filed within 180 days after the alleged unfavorable employment action occurs (that is, when the seaman is notified of the retaliatory action).

How to File a SPA Complaint

A seaman, or representative of a seaman, who believes he or she has been retaliated against in violation of SPA, may file a complaint with OSHA. Complaints may be filed verbally by calling the local OSHA office at 1-800-321-OSHA (6742), or in writing by sending a written complaint to the closest OSHA office, or filing online at www.whistleblowers.gov/complaint_page.

Written complaints may be filed by facsimile, electronic communication, hand delivery during normal business hours, U.S. mail (confirmation services recommended), or other third-party commercial carrier.

The date of the postmark, facsimile, 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. No particular form is required and complaints may be submitted in any language.

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

To contact OSHA to file a complaint, please call 1-800-321-OSHA (6742) and they will connect you to the closest office; or visit www.osha.gov/contactus/bystate.

Upon receipt, OSHA will review the complaint to determine whether it is appropriate to conduct a fact-finding investigation (e.g., whether the complaint was filed within 180 days; whether the allegation is covered by SPA). All complaints are investigated according to statutory requirements explained in 29 CFR 1986.104.

Results of the Investigation

If the evidence supports a seaman's claim of retaliation and a voluntary settlement cannot be reached, OSHA will issue an order requiring reinstatement, as well as other possible relief to make the seaman whole, including:

- Payment of back pay with interest.
- Compensation for special damages, to include attorney's fees, and other expenses the seaman may have incurred as a result of the violation.
- Punitive damages of up to \$250,000.

OSHA's findings and order become a final order of the Secretary of Labor unless either party objects to the findings within 30 days. An order to reinstate is effective immediately, regardless of any objection.

After OSHA issues the findings and order, either party may request a full hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ). If OSHA has issued merit findings, OSHA (represented by a DOL attorney) will

ordinarily prosecute the case, but the parties retain their rights to litigate. Any party, including OSHA, may petition for review of the ALJ decision by the Department's Administrative Review Board (ARB). Decisions of the ARB, as well as unreviewed decisions of ALJs, may be appealed to the appropriate United States Court of Appeals.

If a final agency order is not issued within 210 days from the date the seaman's complaint is filed with OSHA, then the seaman may be able to file a civil action in the appropriate United States District Court.

To Get Further Information

For a copy of the *Seaman's Protection Act* (46 U.S.C. §2114), the regulations (29 CFR 1986), and other information, go to www.whistleblowers.gov.

OSHA's Whistleblower Protection Program 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.

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 Collection."

For information on maritime safety laws and regulations, visit the U.S. Coast Guard's website at www.uscg.mil and the Bureau of Safety and Environmental Enforcement's (BSEE) website at www.bsee.gov.

If you have questions or need more information, visit our website at www.whistleblowers.gov or call OSHA at 1-800-321-6742.

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 help ensure these conditions for America's workers 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: 1-877-889-5627.



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