



TEAMSTERS **Safety &** **Health** **FACTS**

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THE RIGHT TO COMPLAIN ABOUT AND REFUSE DANGEROUS WORK IN THE SURFACE TRANSPORTATION INDUSTRY

Section 405

The Surface Transportation Assistance Act (STAA) of 1983—Section 405 (49 U.S.C. §31105)—protects drivers, mechanics, freight handlers and certain other employees in the surface transportation industry from discrimination or discharge for involvement in protected activities connected with commercial motor vehicle safety and health.

STAA DISCRIMINATION PROTECTION

This law is administered by the Occupational Safety and Health Administration (OSHA) and it prohibits an employer from firing, demoting, or in any other way discriminating against an employee who:

- ♦ refuses to operate a vehicle when operation of the vehicle would violate safety regulations or because of the employee's reasonable apprehension of serious injury to himself/herself or the public due to the unsafe condition of the equipment (in order to be protected, the employee must have requested, but have failed to obtain, correction of the unsafe condition)or
- ♦ complains or testifies about violations of vehicle safety requirements.

OSHA COMPLAINT PROCESS

(1) Any employee, or a local union acting on the employee's behalf, who believes that he/she has been discriminated against for exercising his/her rights under Section 405, may file a discrimination complaint with the nearest area office of Federal OSHA within 180 days of the alleged discrimination.

The address and telephone number is listed in the local telephone directory, under the U.S. Department of Labor, Occupational Safety and Health. This information can also be obtained on the Internet at <http://www.osha.gov/oskdir>.

A “commercial motor vehicle” is a vehicle which:

- has a gross vehicle weight rating of at least 10,000 pounds;
- is designed to transport more than ten passengers, including the driver; or
- is used in transporting materials defined as hazardous by the Department of Transportation.

(2) OSHA will investigate the complaint within 60 days. This includes providing the employer with the substance of the complaint and permitting an opportunity for a meeting and the filing of written statements, as well as interviewing witnesses. At the end of the investigation, OSHA issues a finding.

(3) If investigation confirms the merit of the complaint, OSHA issues a preliminary order requiring the employer to correct the violation, to reinstate the employee to his/her former position, and to reimburse back pay and compensatory damages.

(4) Within 30 days after OSHA issues a finding, either the employee or the employer may file an objection to the finding and/or the preliminary order and may request a hearing. If no one objects to the preliminary order, it will become a final order.

(5) If a hearing is held, it will be presided over by a U.S. Department of Labor administrative law judge. Decisions of the administrative law judges are automatically reviewed by the Administrative Review Board of the Labor Department.

At the hearing, if OSHA has made findings of discrimination, the employee's interests will generally be represented by a Labor Department attorney. If OSHA has not found merit in the employee's claims, the employee may obtain an attorney or represent himself/herself. When an employee uses a private attorney in the case before the Labor Department and wins, attorney's fees will be awarded.

If there is a challenge to an OSHA finding, back pay and compensatory damages do not have to be paid until a decision is reached by the Administrative Review Board. Job reinstatement orders issued by OSHA, an Administrative Law Judge, or the Board are, however, effective immediately.

(6) A final order is reached by the Board within 120 days of the judge's decision on the preliminary findings and order. Parties may appeal the Board's decisions to the U.S. Court of Appeals.

(7) OSHA investigators may attempt to settle the case informally, before the issuance of findings. Cases may also be settled thereafter. The Labor Department, the employer, and the employee must consent to any settlement.