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Alert

Employment and Discrimination

New Challenges for Transportation Employers - Whistleblower Protection for Trucking Employees

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Trucking industry employees are encouraged to report non-compliance with safety regulations governing commercial motor vehicles, thanks to the Service Transportation Assistance Act ("STAA"). Although the law was originally enacted in 1982, it was amended in August, 2007 to implement regulations of the 9/11 Commission Act to include new rights and remedies for trucking industry employees.

STAA's primary purpose is to reduce the number of accidents resulting in serious injury or death caused by sleepy drivers, poor vehicle maintenance, and safety violations. The Act protects truck drivers who refuse to operate a motor vehicle when the employee has a reasonable apprehension of danger for himself or the public because of the vehicle's unsafe condition or where the operation of the vehicle violates a regulation or standard set by the government.

Examples of activities protected under STAA include the following:

- (a) refusing to drive a commercial vehicle when impaired due to illness or fatigue;
- (b) refusing to drive a commercial vehicle that exceeds highway weight restrictions;
- (c) refusing to violate hours of service regulations;
- (d) refusing to drive a vehicle in hazardous weather or in violation of Vehicle and Traffic laws, such as speeding;
- (e) refusing to falsify log books or violate hours of service regulations;
- (f) insisting on equipment inspections to ensure that equipment is in compliance and safe to operate;
- (g) making a complaint to the United States Department of Labor about possible violations of commercial vehicle safety regulations; and
- (h) making a complaint to the employer about possible violation of commercial vehicle safety regulations.

Whenever an employee engages in a protected activity, the employer may not discharge, discipline, or discriminate against the employee regarding the employee's pay, terms or conditions of employment (i.e. any adverse employment action). An adverse employment action is any action that materially affects the employee's employment status. This does not simply mean termination, but may include a demotion, denial of a promotion, pay cut, reduction of benefits, negative employment evaluations, and even bad job references.

An aggrieved employee may file a complaint with the United States Department of Labor within 180 days of any act the employee believes is in violation of the law. The Occupational Safety and Health Administration ("OSHA") is responsible for enforcement of STAA. Once OSHA investigates the complaint and makes a decision, either or both sides may request a hearing before an Administrative Law Judge. Employees prevailing in the proceeding may be entitled to reinstatement, compensatory damages - including back pay, front pay, and interest - and an award of reasonable attorneys' fees and costs.

Transportation employers must not only be intimately familiar with all rules and regulations for operating a commercial motor vehicle, but must understand their employees' rights and their need to respond to safety complaints quickly and effectively.

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