

MEMORANDUM OF UNDERSTANDING

between

**THE FEDERAL AVIATION ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION**

and

**THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
U.S. DEPARTMENT OF LABOR**

Wendell H. Ford Aviation Investment and Reform Act for the 21st Century Coordination

I. PURPOSE

The purpose of this Memorandum of Understanding (MOU) is to facilitate coordination and cooperation concerning the protection of employees who provide air safety information under the provisions of Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121.

II. BACKGROUND

The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121, 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 pursuant to a request of the employee)--(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 Federal Aviation Administration (FAA) or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States; (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 law of the United States; (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.

FAA and the Secretary of Labor, through the Occupational Safety and Health Administration (OSHA), both have responsibilities related to 49 U.S.C. § 42121. FAA has responsibility to investigate complaints related to air carrier safety and has authority under the FAA's statute to enforce air safety regulations and issue sanctions to airmen and air carriers for noncompliance with these regulations. FAA enforcement action may include air carrier and/or airman certificate suspension and/or revocation and/or the imposition of civil penalties. Additionally, FAA may issue civil penalties for violations of 49 U.S.C. § 42121. OSHA has the responsibility to

investigate 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 fees.

Although FAA and OSHA will carry out their statutory responsibilities independently, the agencies agree that administrative efficiency and sound enforcement policies will be maximized by cooperation and the timely exchange of information in areas of mutual interest.

III. SUBSTANCE OF THE AGREEMENT

FAA and OSHA agree to cooperate with each other to the fullest extent possible in every case of alleged discrimination involving an employee of an air carrier or air carrier contractor or subcontractor. FAA and OSHA will establish a procedure for coordinating and supporting enforcement of 49 U.S.C. § 42121.

A. Process for Coordination

For the purposes of accuracy and timeliness, both agencies agree to transmit and receive documents and other information electronically. Each agency will designate an email address, website address, or other mutually acceptable means to be used by the other for communication.

OSHA agrees to promptly notify FAA of any discrimination complaints filed with the Department of Labor (DOL) under 49 U.S.C. § 42121. OSHA will promptly provide FAA with a copy of the complaint, including contact information for the individual filing the complaint. FAA will confirm receipt of this information via return email. OSHA will also provide FAA all investigative findings and preliminary orders, investigation reports, and orders associated with any hearing or administrative appeal related to the complaint. OSHA will also keep FAA informed of the status of any administrative or judicial proceeding seeking review of an order of DOL issued under 49 U.S.C. § 42121.

When an individual directly notifies FAA of alleged discrimination that involves air carrier safety, FAA will promptly provide OSHA with a copy of the complaint, including contact information for the individual filing the complaint. OSHA will confirm receipt of this information via return email. FAA will inform the individual that a personal remedy for discrimination is available only through DOL and that the individual should personally contact DOL. FAA will advise the individual that the law requires that complaints be filed with OSHA within ninety (90) days of the alleged discrimination. FAA will also provide OSHA the general results of any investigation conducted, to include whether or not FAA concluded there was a violation of a federal regulation, order, or standard relating to air carrier safety.

B. Process Measurement

To ensure the coordination process is working as intended and that all complaints have been properly forwarded between agencies, the parties agree to the following:

- At least once per quarter, each agency will provide a summary of all complaints received under 49 U.S.C. § 42121 in the current fiscal year, to include the agency's internal tracking number, identity of individual making the complaint, and identity of the air carrier, contractor or sub-contractor alleged to have violated 49 U.S.C. § 42121.
- At least once per fiscal year, representatives from each agency will meet to discuss performance under this MOU, investigation coordination issues, and other potential whistleblower investigation improvements beneficial to both agencies.

C. Training

Each agency acknowledges the mutual benefit of training, briefings, and other opportunities for information sharing involving both agencies. Whenever possible, OSHA and FAA agree to offer personnel of the other agency invitations as students, instructors or subject matter experts in areas involving investigation of complaints under 49 U.S.C. § 42121, or other areas of expertise by each agency. Any travel expenses for employees participating in such opportunities will be borne by that employee's agency, unless other arrangements are agreed upon prior to travel.

IV. INFORMATION SHARING

Each agency agrees to share all information it obtains related to each complaint made under 49 U.S.C. § 42121, upon request by the other agency. If an agency that has received information under this MOU receives a Freedom of Information Act (FOIA) request for which records that it received pursuant to this MOU are responsive, the agency will comply with provisions in its FOIA regulations governing the handling of referrals and consultations. For DOL those provisions are found at 29 C.F.R. § 70.20(b). For FAA those provisions are found at 49 C.F.R. § 7.28(c).

In such cases, the agency making the referral will notify the requestor that a referral has been made and that a response will issue directly from the other agency.

V. EFFECT OF AGREEMENT

This agreement is an internal Government agreement and is not intended to confer any right upon any private person. This MOU represents the broad outline of the Parties' present intent to collaborate in areas of mutual interest to FAA and OSHA. It does not create binding, enforceable obligations against either agency. This MOU does not alter, amend, or affect in any way the statutory or regulatory authority of the FAA or OSHA. This MOU and all associated agreements will be subject to the applicable policies, rules, regulations, and statutes under which FAA and OSHA operate.

All activities undertaken pursuant to this MOU are subject to the availability of personnel, resources, and funds. Nothing in this MOU shall obligate FAA and OSHA to any current expenditure or future expenditure of resources in advance of the availability of appropriations from Congress.

This MOU replaces the agencies' MOU of March 22, 2002. This MOU does not alter the agencies' MOU dated August 26, 2014, concerning the occupational safety and health standards for aircraft cabin crewmembers. This MOU does not affect the ability of the parties to enter into other agreements or arrangements related to this MOU.

VI. LIAISON OFFICERS

To facilitate the activities carried out under this MOU, each agency will establish a single agency liaison. The liaison will be:

For OSHA: Directorate of Whistleblower Protection Programs, OSHA—DOL
200 Constitution Ave, NW, Room N-4618, Washington, D.C. 20210;

For FAA: Office of Audit and Evaluation, AAE-100
800 Independence Ave, SW, Washington, D.C. 20591

Each agency may designate a new liaison at any time by notifying the other in writing. If at any time, an individual designated as a liaison under this agreement becomes unavailable to fulfill those functions, the agency will name a new liaison and notify the other agency through the designated liaison.

VII. EFFECTIVE DATE

This Memorandum is effective upon signature by both parties. It may be amended at any time by mutual agreement of the agencies and may be terminated by either agency upon sixty (60) days written notice.



Michael P. Huerta
Administrator
Federal Aviation Administration
U.S. Department of Transportation



David Michaels
Assistant Secretary
Occupational Safety and Health Administration
U.S. Department of Labor

Date: **NOV 30 2015**

DEC - 1 2015
Date: _____