



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
National Policy

ORDER
3770.14

Effective Date:
01/29/16

SUBJ: Federal Aviation Administration (FAA) Procedures for Responding to Allegations of Occupational Safety and Health (OSH) Reprisals

1. Purpose of This Order . The purpose of this Order is to establish procedures to protect employees from reprisal for engaging in activities protected under the Occupational Safety and Health ("OSH") Act. This Order will ensure that reprisal allegations reported under this Order will be investigated and resolved in a consistent and uniform manner and that managers are held accountable.

2. Audience. All FAA employees.

3. Where Can I Find This Order. You can find this Order on the MyFAA Employee Web site: https://employees.faa.gov/tools_resources/orders_notices/. This Order is available to the public at http://www.faa.gov/regulations_policies/orders_notices/.

4. Scope. These procedures cover the process to be followed for the reporting, investigating, and resolving allegations of reprisal. Reprisal, which includes restraint, interference, coercion, or discrimination, is an action taken against an employee for engaging in OSHA related activities. These activities include: filing a report of an unsafe or unhealthful working condition, declining a work task based on a reasonable belief that it could cause imminent death or serious injury, or other participation in agency occupational safety and health program activities as required by Executive Order 12196, Section 19 of the OSH Act, 29 Code of Federal Regulations (CFR) Part 1960 and FAA Order 3900.19.

5. Background.

a. This Order develops procedures to carry out the intent of Executive Order 12196, Part 19 of the Occupational Safety and Health Act of 1970, and 29 CFR 1960. It implements a comprehensive program to prevent and protect against reprisal for engaging in OSH protected activities.

b. Exercising one's occupational safety and health rights, as outlined in Section 4, is a legally protected activity. An individual who engages in reprisal against another employee for exercising those rights may be subject to disciplinary or other corrective action.

c. Implementing this Order and procedure will provide:

(1) Promotion of a culture of safety that emphasizes accountability and places a premium on timeliness, consistency, and appropriate action;

(2) Support and maintenance of a safe and healthful work environment to enhance mission accomplishment;

(3) A method to properly handle all allegations and incidents of misconduct within the scope of this Order;

(4) A uniform and consistent approach to address and track all such allegations or incidents; and

(5) A demonstration of the Agency's ongoing commitment to address and reduce misconduct, within the scope of this Order, from the workplace.

6. Definitions. For the purpose of this Order, the following definitions apply to these terms:

a. Center. Center refers to the Mike Monroney Aeronautical Center and the William J. Hughes Technical Center.

b. Day. Day means one business day unless otherwise indicated.

c. Designated Agency Safety and Health Official (DASHO). The DASHO is the individual responsible for the oversight of the OSH program in the agency, as designated or appointed by the Head of the Agency. The DASHO supervises the Office of the DASHO.

d. Designated Region/Center Safety and Health Official (DR/CSHO). Each of the nine Regions and two Centers have a DR/CSHO who monitors the OSH program in that Region or Center.

e. Designee. An individual designated to carry out a role or duties on behalf of another.

f. Employee. Any individual employed by the FAA.

g. Fact Finder. The title given to a person in management (ineligible for inclusion into a bargaining unit as identified by a BUS code of 8888), who performs the internal inquiry pursuant the procedures in this Order.

h. Formal Investigation. An investigation performed by a Special Agent from the Office of Security and Hazardous Materials Safety (ASH). In certain circumstances, a formal investigation may be performed by a qualified investigator from another agency.

i. Internal Inquiry. An investigation conducted by Fact Finder(s). The Internal Inquiry is distinct from the Formal Investigation.

j. Investigator. The individual that investigates allegations of reprisal in a formal investigation pursuant to the procedures in this Order. The Investigator will normally be an ASH Special Agent. As determined by the DASHO and Assistant Administrator for Security and Hazardous Materials Safety, an Investigator may be assigned from outside the agency (ex. Inspector General (IG), Office of Special Counsel (OSC)).

k. Management Official. A management or supervisory official within the Respondent's (see Section 5w) chain of command with decision making authority.

l. Manager. A person who supervises another employee. This definition includes executives.

m. Office of the DASHO. The office or group of personnel designated by the DASHO to perform the tasks described as being performed by the Office of the DASHO in the Order.

n. Protected Activity. Protected activities, as defined in this Order include filing a report of an unsafe or unhealthful working condition, declining a work task based on a reasonable belief that it could cause imminent death or serious injury, or other participation in agency occupational safety and health program activities. Specific examples include but are not limited to:

- (1) Reporting a safety or health hazard to the FAA;
- (2) Reporting an accident or injury to the FAA;
- (3) Participating in a FAA safety and health investigation;
- (4) Participating in an OSHA inspection, including providing statements;
- (5) Communicating with OSHA;
- (6) Filing a complaint with OSHA;
- (7) Requesting an injury and illness report; and
- (8) Cooperating with investigations under this Order.

o. Recommendation of Finding (ROF). A written document generated by the DR/CSHO in their Region, (or by the Office of the DASHO at Headquarters), in coordination with the Office of the Chief Counsel, or servicing Regional or Center Counsel, Human Resources Employee Relations (AHR ER) or servicing Labor/Employee Relations (LER) office, that provides a recommendation concerning an allegation of reprisal. The ROF contains a statement of the facts supporting the recommendation. If appropriate, it provides a recommendation of corrective or disciplinary action to be taken.

p. Redress. A remedy or compensation for a wrong or damages sustained.

q. Region. The FAA's standard nine regions.

r. Region/Center Counsel's Office. The FAA's Office of Regional Counsel at the FAA's nine Regions and two Centers.

s. Report of Internal Inquiry (ROII). A compilation of statements and evidence prepared by the Fact Finder(s).

t. Report of Investigation (ROI). A compilation of statements and evidence submitted by an ASH Special Agent.

u. Reporting Party. The party who was allegedly reprimanded as described in this Order.

v. Reprisal. Any act of restraint, interference, coercion, or discrimination against an employee for exercising OSH rights under the Executive Order 12196, Section 19 of the OSH Act, and 29 CFR Part 1960.

w. Respondent. An individual against whom an allegation of reprisal is made.

x. Unjustified Personnel Action. Any action that would dissuade a reasonable employee from engaging in protected activity.

7. General.

a. The intent of this Order is to hold accountable those managers who engage in acts of OSH reprisal. These procedures apply to all allegations of reprisal within the scope of this Order. Allegations of OSH reprisal may come to light through reports from employees or through agency administrative processes, including a grievance, the Office of Civil Rights at the pre-complaint or formal complaint stage, or an appeal filed with MSPB or the OSC. The Office of Inspector General of the Department of Transportation may also refer allegations to the Agency.

b. The elements of an allegation of reprisal are: (1) the Reporting Party was engaged in protected activity, (2) the Respondent knew about that activity, (3) the Respondent subjected the Reporting Party to an unjustified personnel action; and (4) a nexus exists between the unjustified personnel action and the protected activity. Depending upon the circumstances of the case, an "unjustified personnel action" may include, but is not limited to:

- (1) Disciplinary or corrective action;
- (2) Demotion;
- (3) Negative decision about pay, benefits, awards, education or training opportunities;
- (4) Negative performance evaluation;
- (5) Any other significant change in duties, responsibilities or working conditions;
- (6) Failure to reinstate, restore or reemploy;
- (7) Failure to appoint or promote; and

(8) Intimidation, harassment, making threats.

c. Information gathered in connection with an investigation into OSH reprisal may be disseminated only as permitted by applicable law and regulation, such as the Privacy Act, 5 U.S.C. § 552a.

8. Methods for Seeking Redress.

a. An employee seeking redress for allegations of OSH reprisal may do so through one of several forums, depending on the nature of the allegation. For instance, an employee seeking relief for a suspension of 14 days or less may:

(1) File a grievance through a negotiated grievance process found within the employee's Collective Bargaining Agreement (CBA), for bargaining unit employees;

(2) File an administrative grievance through the procedures found within the Personnel Management System (PMS)-Chapter III, for non-bargaining unit employees; or

(3) File a complaint with the Office of Special Counsel (OSC).

b. In addition to the venues listed above, an employee seeking redress for a removal, suspension of more than 14 days, a reduction in grade or pay, or a furlough of 30 days or less, may:

(1) File an appeal with the Merit Systems Protection Board (MSPB); or

(2) File an appeal through the Guaranteed Fair Treatment (GFT) process.

c. Reporting an allegation of reprisal to the Office of the DASHO does not impact the processing of a grievance, appeal or a complaint filed by an employee in another forum where the employee is seeking relief on the same matter. The process outlined in this Order is separate and distinct from an employee grievance, appeal or complaint filed seeking relief. Making an allegation of OSH reprisal to the Office of the DASHO does not extend the timeframes for filing a grievance, appeal or complaint in another forum where the employee is seeking relief.

NOTE: Allegations that unjustified personnel actions were taken against an employee due to the employee's sex, race, national origin, age, disability, or for reprisal/retaliation for engaging in any other activity not specifically covered by OSHA are not subject to this Order. Employees must file those allegations within the appropriate forum.

9. Roles and Responsibilities.

a. Designated Agency Safety and Health Official (DASHO).

(1) The DASHO is the designated agency official with sufficient authority to represent the interest and support of the agency head to be responsible for the management and administration of the agency occupational safety and health program. He/she is responsible for

overseeing the processing of all allegations of reprisal against an employee for exercising their rights. The DASHO will ensure that allegations are resolved in a timely and appropriate fashion consistently throughout the agency. He/she is responsible for tracking and monitoring all reported allegations, and completing required reports to be submitted to the FAA Administrator on an annual basis and to the National Occupational Safety and Health Compliance Committee (OSHECCOM) on a semi-annual basis. Based on the analyses of data collected, the DASHO recommends policies and procedures to correct systemic problems in agency policies or practices.

(2) Where duties prescribed in this Order are described as being the responsibility of the Office of the DASHO, the DASHO may delegate such duties at his/her discretion and appoint personnel as needed to carry out such functions. The DASHO may not delegate the signing of decision documents.

b. The Office of the DASHO. The Office of the DASHO is responsible for accepting allegations of reprisal for OSH activity, dismissing cases that contain insufficient information, and initiation of an investigation. The Office of the DASHO will coordinate with ASH to determine if an internal inquiry or formal investigation is appropriate. Formal investigation will be handled by ASH. When it is determined that an internal inquiry is appropriate, the Office of the DASHO will notify the appropriate Designated Region/Center Safety and Health Official (DR/CHSO) and the Office of Employee Relations at Headquarters to initiate an inquiry. The Office of the DASHO serves in the same functional capacity as the DR/CHSO for allegations filed by employees located at Headquarters.

c. Designated Region/Center Safety and Health Official (DR/CSHO). The DR/CSHO is responsible for, appointing a Fact Finder to conduct internal inquiries referred to the region/center from the Office of the DASHO, coordinating the inquiry with the Regional and Center Counsel, Regional HR servicing office, and in consultation with the ER/LER POC, drafting Recommendations of Findings (ROF) to be submitted. ER/LER must be consulted on the appropriateness and consistency of the recommended corrective or disciplinary action. A copy of the ROF and a copy of the Fact Finder's Report must be submitted to the Office of the DASHO and AHR ER or the servicing LER office.

d. Human Resources Office (AHR). This refers to AHL-100 (Employee Relations) at HQ or the appropriate servicing Labor & Employee Relations (LER) office in the field. Identifies AHR-ER or LER POC to provide advice and guidance to the DASHO and DR/CSHO, respectively, on recommended corrective/disciplinary action, ensures sufficiency of the evidence of record to support the action, and assists with fact finding, which may include participation in the inquiry.

e. Office of Chief Counsel (AGC). Provides legal advice and guidance. Makes recommendations, in conjunction with AHR ER, to the DASHO or designee whether to approve or deny the recommendation.

f. Fact Finder. The Fact Finder conducts an internal inquiry to determine facts relevant to allegations of reprisal and on completion provides a Report of Internal Inquiry (ROII).

g. Investigator. In formal investigations, the Investigator is ordinarily an ASH Special Agent. The Investigator conducts an investigation to determine facts relevant to allegations of reprisal and on completion provides a Report of Investigation (ROI).

h. Respondent. Once a formal allegation of reprisal has been made, the Respondent must fully cooperate with any formal investigation or internal inquiry conducted pursuant to this Order.

i. ASH HQ POC. The ASH HQ POC is responsible for reviewing allegations forwarded by the office of the DASHO and determining whether ASH will conduct a formal investigation.

j. National OSHECCOM. Receives reports detailing reprisal activity semi-annually, which shall be used to carry out functions as outlined in the National OSHECCOM charter.

k. Employees. To promote a safe and healthful workplace, employees are encouraged to report any allegations of reprisal. Further, employees are required to participate in any investigation under this Order.

10. Procedures. There are five steps in the procedures:

- Step 1 - Reporting Allegations of Reprisal;
- Step 2 - Initial Processing and Coordination of the Allegation of Reprisal;
- Step 3 - The Inquiry/Investigatory Process;
- Step 4 - The Recommendation of Finding; and
- Step 5 - Final Determination.

a. Step 1 - Reporting Allegations of Reprisal. An employee may report an allegation of reprisal by:

(1) Notifying a Manager either orally or in writing;

(2) Notifying Employee Safety and Health Services within the office of the DASHO by phone at 1-866-267-5908 or email oshreprisalreports@faa.gov; or

(3) Calling the FAA Hotline.

(a) Any employee who wishes to report allegations of OSH reprisal taken against them or someone else should normally do so as soon as practicable from the time the employee knew or should have known of the reprisal incident, usually within thirty (30) days. The DASHO will accept allegations filed later than thirty (30) days after the incident; however, filing allegations as soon as possible will aid the agency in conducting a thorough investigation.

(b) When an allegation of reprisal is reported to a manager, that manager must notify the Office of the DASHO as soon as practicable, but within three (3) days.

(c) In instances where an allegation of OSH reprisal becomes known to an agency official as a result of an employee filing an appeal or complaint seeking redress in another forum, the official must report the reprisal allegation to the Office of the DASHO as soon as practicable, but within three (3) days. When management officials make such reports to the Office of the DASHO, they must provide all pertinent information known at that time. This information would include the identities of the Respondent and the Reporting Party, if known, and their employing organizations.

(d) When an allegation of reprisal within the scope of this Order is reported to the FAA Hotline, the Hotline Analyst will refer the allegation to the Office of the DASHO within two (2) days. Allegations of OSH reprisal reported to the FAA Hotline will be evaluated and processed in accordance with this Order. If it determined that the allegation does not involve reprisal for engaging in OSH related activities the allegation shall be returned to the Hotline Analyst within two days.

b. Step 2 - Internal Processing and Coordination of the Allegation of Reprisal.

(1) Upon receipt of allegations of reprisal, the Office of the DASHO will determine if the allegation(s) meets the criteria of OSH reprisal. The Office of the DASHO will submit the allegation of reprisal to the ASH HQ POC within two (2) days of receipt of the allegations. The ASH HQ POC must determine within five (5) days of the Office of the DASHO's receipt of the allegations whether ASH will conduct a formal investigation.

(2) If ASH decides that it will conduct a formal investigation into the allegation of reprisal, the Office of the DASHO will inform the DR/CSHO with jurisdiction over the matter, as well as the applicable AHR ER/LER POC, that ASH is investigating an OSH reprisal allegation. At this time the Office of the DASHO will not forward or discuss the details of the complaint with the DR/CSHO or the HR POC except to identify the Line of Business (LOB) and/or Staff Office (SO) involved.

(3) If the ASH decides that it will not conduct a formal investigation, the Office of the DASHO will forward information concerning the allegation of reprisal within five (5) days of receipt to the DR/CSHO with jurisdiction over the matter and to the applicable AHR ER/LER POC.

(4) Within five (5) days of receipt of an allegation of OSH Reprisal from the Office of the DASHO, the DR/CSHO shall appoint a fact finder to conduct an internal inquiry and notify the regional Labor and Employee Relations (LER) office. The regional LER Office will appoint a point of contact (POC) to assist the DR/CSHO with the investigation. In instances where the Reporting Party is a Headquarters employee, the Office of the DASHO will appoint another official to act as fact finder in Headquarters to perform the internal inquiry and notify the Office of Employee Relations at Headquarters for assistance.

(5) The DASHO will provide written notice to the Reporting Party concerning the acceptance or dismissal of a case for investigation within fifteen (15) business days of receipt of the allegation. When an allegation is not being accepted for investigation, the reason for dismissal will be included in the notification. If an allegation is too vague to support an inquiry,

the Office of the DASHO will dismiss the allegation with explanation of what additional evidence might be necessary. The Reporting Party will be provided with an opportunity to supplement the allegation and provide additional evidence.

c. Step 3 - The Inquiry/Investigatory Process.

(1) **Formal Investigations.** For those cases accepted by ASH, the investigation will be conducted in accordance with ASH procedures as set forth in FAA Policy No. 1600.38, Employee and Other Internal Security Investigations.

(2) **Internal Inquiries.** Internal inquiries will be conducted as follows:

(a) The appropriate management official(s) will be notified of the pending visit to arrange access to the facility and ensure the release/availability of employees to be interviewed. The nature of the investigation shall not be revealed.

(b) In internal inquiries, the interview process should begin within five (5) days of receipt of the allegation of reprisal from the Office of the DASHO.

(c) The purpose of initial interviews is to determine, to the extent possible, the nature of the conduct leading to the allegation, to identify any corroborating witnesses or documentary evidence, and to identify the parties involved. Initial interviews will be conducted with the Reporting Party, the Respondent and any corroborating witnesses.

(d) Written statements will be obtained from employees who are interviewed. Normally such statements shall be completed immediately after the interview is concluded, but if that is not possible, the statement shall be provided not later than the following day.

(e) Following the interview, the Fact Finder(s) will prepare written summaries detailing what was communicated during the interview.

(f) A ROII will be finalized not later than thirty (30) days upon concluding the investigation.

(g) The ROII will provide findings of fact, but not conclusions or recommendations.

d. Step 4 - The Recommendation of Finding ("ROF").

(1) Within fifteen (15) days of receipt of the ROI or ROII, the DR/CSHO or the Office of the DASHO must submit a ROF to the DASHO. The ROF will set forth a determination of whether reprisal has or has not occurred and the rationale for the determination. If more than one allegation of reprisal was alleged, the ROF will address each separately. In cases where the DR/CSHO determines that reprisal has taken place, the DR/CSHO will recommend the corrective/disciplinary action that should be taken against the Respondent. These actions will be coordinated with the servicing ER/LER office and AGC office.

(2) If the DR/CSHO and the responsible servicing ER/LER POC do not agree as to what finding is appropriate, both positions will be presented in the ROF. The positions will be elevated to the DASHO, who will consult with the Office of the Chief Counsel in Headquarters and the Office of Employee Relations in Headquarters to resolve the conflict.

e. Step 5 - Final Determination.

(1) Upon receipt of the ROF and investigative file (ROI or ROII), the management official must determine whether to take corrective action in coordination with the servicing ER/LER Office.

(2) The Office of the DASHO will notify the Reporting Party of the conclusion of the investigation and disposition of his/her allegation of reprisal.

11. Recordkeeping.

a. ROI's will be maintained by the appropriate ASH Servicing Security Element (SSE).

b. The AHR ER/LER POC must maintain case files in accordance with procedures for applicable law and agency policies covering conduct and discipline matters and preserve notes and reports of pertinent facts and decisions relating to each case, as appropriate.

c. The AHR ER/LER POC, the DR/CSHO, the SSE, and, where applicable, the Management Official (or his designee) will work collaboratively to ensure that a copy of all relevant documents pertaining to an allegation of OSH reprisal (including documents related to any disciplinary action taken against the Respondent as a result of the allegation) are forwarded to the Office of the DASHO after the case has been closed.

d. The Office of the DASHO will maintain files for each allegation of reprisal for five years from the date upon which the matter was closed.

12. Training and Awareness. Continuing training for managers and employees on procedures related to compliance with the OSH Reprisal Process are essential to the success of this Order and FAA compliance with [Executive Order 12196, Section 19 of the OSH Act, and 29 CFR 1960](#).

a. All Employees will be briefed on this Order. New employees will receive the briefing during their employee orientation.

b. All organizations are responsible for ensuring that a copy of this Order is made available to all managers and that they are trained in the OSH Reprisal Process commensurate with their responsibilities.

c. Managers will be briefed by their organizations on an annual basis as to their roles and responsibilities with respect to this Order. Managers are, in turn, responsible for ensuring the information is provided to their employees.

d. The training that is provided within 6 months of an appointment to an Occupational Safety and Health Committee (OSHECCOM) shall include the agency's procedures for reporting and investigating allegations of reprisal.

13. Evaluation.

a. On a semi-annual basis the DASHO will provide a report to the National OSHECCOM, which will provide information as to the investigations of allegations of OSH reprisals that were filed within the previous 6 months. The semi-annual report will be due one month before each National OSHECCOM regular meeting. Specifically, the semi-annual report will contain the following information:

(1) The number of allegations of reprisal filed within the previous 6 month period, the number closed, and the number still open.

(2) The number of allegations of reprisal the Office of the DASHO dismissed after determining that the criteria of OSH reprisal was not met.

(3) The name of the LOB(s) or Staff Office(s) and the Region(s)/Center(s) in which the allegations of reprisal arose.

(4) The types of unjustified personnel actions the Reporting Parties allege were taken against them.

(5) The number of cases that involve allegations that reprisal was taken against employees who reported an unsafe or unhealthful working condition.

(6) The number of cases that involve allegations that reprisal was taken against employees who declined to perform an assigned task because of a reasonable belief that the task poses an imminent risk of bodily harm or death.

(7) The number of cases that involve allegations that reprisal was taken against employees who otherwise participated in the FAA OSH program.

(8) The number of instances in which the allegations of reprisal were affirmed in whole or in part.

(9) The number of non-disciplinary corrective actions taken and the nature of those actions.

(10) The number and type of disciplinary actions taken.

(11) The number of allegation of reprisal that were filed on the same Respondent (over a five-year timeframe).

(12) The number of allegation of reprisal that were filed by the same Reporting Party (over a five-year timeframe).

b. The Office of the DASHO will analyze trends in allegations and the manner in which they are resolved to identify areas within the agency that need attention. The DASHO will report these trends in allegations to the FAA Administrator and the National OSHECCOM on an annual basis.

c. Members of the National OSHECCOM may request from the DASHO all investigative findings of allegations of reprisal. Investigative findings will include all information pertaining to each allegation except that which is prohibited by law. Prior to information being released, the informational report will be sanitized or redacted as appropriate.

A handwritten signature in black ink, appearing to read 'Michael P. Huerta', with a large circular flourish at the end.

Michael P. Huerta
Administrator