

# OSHA WHISTLEBLOWER STAKEHOLDER MEETING

May 10, 2023

Minutes

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The OSHA Whistleblower Stakeholder Meeting was called to order by Rob Swick at 1:01 PM ET on Wednesday, May 10, 2023. The meeting was held via Zoom.

The following members of the public were present:

First Name	Last Name	Job Title	Company
Judith	Anderson	Industrial Hygienist	AFA
Karen	Asch	N/A	N/A
Charles	Avery	Investigator II	Iowa OSHA
Alan	Bahl	EHS	MBCC Group
Kate	Baum	Human Resources/Safety Officer	Blendco LLC
Cristin	Bernhardt	Regulatory Coordinator	Virginia Department of Labor & Industry
Amanda	Bottorff	EH&S Coordinator	Ag Leader Technology Inc
Nikki	Burke	Business Development Rep	Falcon Safety Group
Val	Castaneda	FSC-COR	Dpt. De Transporacion
Eduardo	Casas	Owner	Se industria
James	Davis	Safety Director	Snowbelt Hardwoods
Thomas	Doyle	Unemployed -CPSIA	thomasdoyle.com
Lindsey	Edwards	HR Director, Employee Services	FPI Management
Ash	Farrow	SECM	FAA
Helen	Flynn	HR	Vericast
Clinton	Ford	President	Advanced Building Consultants
Felipe	Franchini	N/A	N/A
Stacy	Fuller	Safety Manager	Trans Pro Pak Inc.
Rachel	Gonzalez	Interpreter	N/A
Sherry	Glover	Workers' Compensation Program Manager	UC Health
Erica	Gomez	RN	UConn Health
William	Groshell	Letter Carrier	United States Postal Service
Christopher	Hand	Director of Research	Brotherhood of Railroad Signalmen
Charity	Hartman	HR Director	MHA Systems
Malia	Hepler	Flight Attendant	Spirit Airlines
Mariela	Hernandez	Consultor	Independiente

Rebecca	Hourihan	Unemployed	N/A
Cassie	Jacobs	Manufacturing Engineering Planner	Boeing
Fanny	Jangarathis	Funds Service Representative	Local 338 Retail Wholesale and Department Store Union/United Food and Commercial Workers
Susana	Kaneshige	Safety Consultant	Toyota Motor North America
Charlie	Kazemzadeh	Assistant General Counsel	Association of American Railroads
William	Keesler	Safety Director	R.F. Knox Company, Inc.
Andrea	Leonard	Compliance Officer	LivWell Community Health Services
Steve	Lindley	President and Chief Safety Officer	Suburban Safety Consultants
Bart	Miller	Director of EH&S	Mt. Diablo Resource Recovery
Yvonne	Miller	President	N/A
Sarah	Morris-Abbott	Senior HR Representative	Star City Games
Cliff	Myers	Safety Director	Ak-Chin Indian Community
Rita	Neiderheiser	Technical Advisor	UA Sprinkler Fitters 669
Michelle	Newell	Safety Compliance Officer	Plymouth, MA - DPW
Hensel	Phelps	N/A	N/A
Brenda	Pollack	Senior Manager	OLT
David	Pratt	HS Rep	NYSNA
Steve	Pynes	Deputy Labor Commissioner II	California Division of Labor Standards Enforcement
Lorna	Ramirez	EHS Specialist	Boston Scientific
Bruce	Rolfson	Writer	Bloomberg Law - DLR
Pentanova Systems	Sanchez Jimarez	TSI	Pentanova Systems
Jessica	Santiesteban	Senior Deputy Labor Commissioner	DIR/DLSE
Steven	Schrag	Legislative and Regulatory Analyst	CTcosh
Jerry	Shupe	Corporate Director of Safety and Health	N/A
Bruce	Swan	Technician	N/A
Sharita	Valentin Reyes	Supervisora de Discrimen	PR OSHA Oficina Central
David	Weisblatt	Assistant General Counsel	CSX Transportation, Inc.
Lisa	Wojtak	Manager	BJC Healthcare

Arthur	Wolf	Safety Manager	American Battle Monuments Commission
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The following U.S. Department of Labor (DOL) staff were present:

First Name	Last Name	Job Title	Agency and Division
Otis	Barrett	Investigation Specialist	OSHA, Directorate of Whistleblower Protection Programs (DWPP)
Ken	Beckstead	Regional Investigator	OSHA, Region VI
Nathaniel	Berman	Investigation Specialist	OSHA, DWPP
Philippe	Blancato	Investigation Specialist	OSHA, DWPP
Dale	Caldwell	Program Analyst	OSHA, DWPP
Christopher	Carlin	Assistant Regional Administrator for Whistleblower	OSHA, Region II
Otto	Dunaway	Curriculum Developer	OSHA, Training Institute
Jillian	Dupuis	Investigation Specialist	OSHA, DWPP
Nichelle	Engard	Investigation Specialist	OSHA, DWPP
Erin	Fitzgerald	Senior Policy Advisor	Office of the Assistant Secretary for Policy
Elaine	Fraser	Writer	OSHA, Office of Communications
Jim	Frederick	Principal Deputy Assistant Secretary	OSHA, Office of the Assistant Secretary (OAS)
Megan	Guenther	Counsel for Whistleblower Programs	DOL Office of the Solicitor, Fair Labor Standards Division
Megan	Harris	Attorney	Office of the Solicitor
Marisa	Johnson	Program Analyst	OSHA, DWPP
Kelly	Lawson	Counsel for Civil Rights	Office of the Solicitor, Region I
Joey	Lee	Program Analyst	OSHA, Directorate of Cooperative and State Programs
Lee	Martin	Director	OSHA, DWPP
John	Murphy	Regional Investigator	OSHA, Region II
Ed	Rhoades	Regional Investigator	OSHA, Region II
Christian	Rodriguez	Regional Investigator	OSHA, Region IX
Matthew	Sadler	Instructor	OSHA, Training Institute
Meghan	Smith	Program Analyst	OSHA, DWPP
Christine	Stewart	Division Chief	OSHA, DWPP, Division of Policy, Planning, and Program Development
Rob	Swick	Division Chief	OSHA, DWPP, Division of Field Operations
Nate	Terwilliger	Regional Supervisory Investigator	OSHA, Region V
Natalicia	Tracy	Senior Policy Advisor	OSHA, OAS
Justin	Williams	Investigation Specialist	OSHA, DWPP

Mr. Swick welcomed everyone to the meeting and introduced Jim Frederick.

**Jim Frederick, Principal Deputy Assistant Secretary, OSHA**

Mr. Frederick thanked everyone for attending. Mr. Frederick noted that this is a very important program, to everyone at OSHA, because it gets to the heart of what we are all trying to do to protect people. Workers have to feel safe to bring their concerns to their supervisors, or directly to us at OSHA, or they will not truly be engaged with the issues of concern at their workplace. The Whistleblower Protection Program is foundational to all of this, so, at OSHA, we often talk about the importance of safety and health being a core value in every workplace in America. That's our vision at the agency. We want to see every employer make safety and health the priority in every workplace for all workers, and we know that this must be an enterprise-wide effort. It can't just be something that's discussed at the highest levels of the organization, or just in the break room. It has to be addressed throughout the entire organization at all levels and by all workers.

Without the protections that the Whistleblower Protection Program provides, those conversations just cannot happen for all workers in all workplaces. The Whistleblower Protection Program and all of you who are involved in it, and are invested in it, are key parts of helping us realize that vision of safer workplaces. At OSHA, we develop enforcement programs and initiatives to protect workers from hazards like heat, falls, trenching, and many of the others that we have rules and standards for. But if workers don't feel confident to speak up about their safety concerns with their supervisors or directly with us in OSHA, those standards and rules may not protect those workers. We know that workers are the key to understanding health and safety concerns, hazards, and unsafe conditions in any workplace. We also know that the workers' voice matters and must be heard, because workers are essential to workplaces.

Mr. Frederick shared a few updates from the agency since the last stakeholder meeting. First, we launched a national heat emphasis program last year in April. This emphasis program allows the agency to preemptively inspect more than 70 industries before workers face the brunt of heat hazards and suffer heat injuries, illness, or death. OSHA has conducted hundreds of these inspections over the last year and provided information and resources to thousands of workers and employers.

In trenching, we saw a tragic and disturbing trend in the first half of last year. More workers had died in trenching and excavation work from January through June of last year than in all of the previous year. OSHA responded to that and implemented an enhanced enforcement initiative to increase awareness and bring more attention to trenching and excavation hazards across the country and to use all of the tools in our toolbox to make sure that we are enforcing the requirements.

Just in the last two weeks, we've begun a fall protection national emphasis program that will protect workers in all industries where falls from heights are a hazard. We have known for many years how to protect workers from falls from heights, yet workers continue to get injured and die from falls. This national emphasis program will protect workers and save lives.

Of course, equity is at the foundation of all of this. All workers in all workplaces deserve to be part of the safety and health process and have their voices heard. Last September, we hosted a first ever Workers Voice Summit at the National Office. Workers came from across the country, and from many different industries, and they told us about their experiences, their concerns, and their fears, as well as their dreams and hopes for the future of a safe workplace. Listening to workers and making sure they are heard – it's essential to their safety. Workers have the experiences and the insights into their work that must be considered when planning and designing work, as well as developing your protections and controls and for us at OSHA, in developing rules, requirements, guidelines, and standards.

Too many workers have different kinds of vulnerabilities that makes it hard or even dangerous for them to raise these concerns. We must listen to them. We're taking significant steps in this arena to increase worker participation across the country and reduce those barriers that keep workers from participating in that process. The relatively recent addition of OSHA being involved in the U and T visa certification process is one of those steps. The U and T visa is a certification process. This is about more than occupational safety. Now, it is really about the broader need to protect workers. This will allow OSHA to have a bigger role in the fight against human trafficking and other crimes that are committed against workers so that we can help in protecting worker and labor rights. This process at OSHA will provide protections to workers and give them greater confidence in the ability to speak up when wrongs have been done to them or to others in their workplace, and it really means all workers must be safe and feel safe again.

I thank all of you for your time and your involvement today, and not just today, in this program for weeks, months, and in some cases with many of you for years. We look forward to hearing from you and to our future collaboration with all of you.

### **Lee Martin, Director, DWPP**

Mr. Martin gave a brief update on recent activities involving OSHA's Whistleblower Protection Program. He noted that we produced an educational video on the Criminal Antitrust Anti-Retaliation Act. This short video, available on OSHA's YouTube page, explains the most important facts for employees to know before filing a complaint under that statute. We hope to create more videos like this.

We implemented an intake pilot which will allow the regions to spend less time closing cases erroneously filed with OSHA, so they can focus more on cases within our jurisdiction. This also helps people who mistakenly file complaints with us get their complaints to the right agency faster.

Last year, we completed a comprehensive overhaul of the Whistleblower Investigations Manual, which improved many of our investigation processes. This new manual was issued in August.

On March 30, 2023, OSHA began exercising authority to complete U and T visa certifications for certain victims of crimes and trafficking. This OSHA program builds on the work the Department of Labor (DOL) began in 2011 and 2015, when the Wage and Hour Division (WHD) first started completing U visa certifications and then T visa declarations, respectively. By

expanding DOL's U and T visa certification authority to OSHA, DOL is able to provide additional support to workers who are victims of human trafficking and other crimes.

Also in March of this year, we published the final rule – Procedures for the Handling of Retaliation Complaints Under the Taxpayer First Act. This law says that employers cannot retaliate against workers for exercising their right to report federal tax fraud or underpayment. Finally, we'd like you to know that we will be rolling out a whistleblower rights awareness campaign in late July around the time of National Whistleblower Appreciation Day. Sign up for OSHA QuickTakes to receive more information as the day approaches. You can sign up on [osha.gov](https://www.osha.gov).

Mr. Martin explained that we will be taking notes on all of your input and will upload this information to [regulations.gov](https://www.regulations.gov) in the docket. In addition, we will also upload any written comments you have to the docket for the record. Materials for this meeting and past meetings can be accessed at [regulations.gov](https://www.regulations.gov). Minutes from past meetings are also available on our website, [www.whistleblowers.gov](https://www.whistleblowers.gov).

#### **Meghan Smith, Program Analyst, DWPP**

Ms. Smith shared her screen with the meeting attendees to provide a tour of information available on [www.whistleblowers.gov](https://www.whistleblowers.gov), including how to file a complaint, helpful information to have when filing a complaint, and how to find information about the whistleblower statutes OSHA enforces.

#### **Rob Swick, Chief, Division of Field Operations**

Mr. Swick provided the ground rules for the meeting and opened the meeting for comment.

#### **Val Castaneda**

Mr. Castaneda began by stating he believed these meetings are important. He lives around a community of mainly blue-collar employees and assists people with various needs. He stated that putting these meetings together is very, very important and beneficial for his community because otherwise he doesn't think he would ever have the opportunity to share with the agency. He has an understanding of the challenges in his community. Primarily, he is involved with the Brazilian workforce and the Spanish workforce. He would like to see Portuguese translation offered for these meetings as well.

Mr. Castaneda noted that there is not enough information in the community as far as OSHA. The community does have its share of undocumented workers that creates an additional layer of an additional challenge. He understands, based on the agency's literature, that a person being undocumented is irrelevant to the benefits that OSHA can provide. In addition, Mr. Castaneda recommended that the agency expand its points of contact that it maintains with communities. This way, they could provide updates to local communities.

The focus in his community is almost exclusively in the roofing area. It's very difficult, dangerous work. Mr. Castaneda did it many, many years ago, so he knows how difficult it is. Roofing is one of the most challenging jobs. The deadlines are very, very punishing to

employees. If we could come up with this strategy to, in some way, come up with flyers or handouts that he can pass along to his community or things along those lines to educate them and to give them peace of mind, that would be very beneficial.

### **Charity Hartman**

Ms. Hartman discussed her background and the whistleblower cases she filed. She relayed various concerns she had regarding the whistleblower complaint investigation process. She raised concerns that OSHA is biased in favor of employers.

### **Steven Schrag, Legislative and Regulatory Analyst, CTCOSH**

Mr. Schrag explained that he has had a long career in safety and health, and on average, he has conducted training workshops for over 1,000 workers a year. His experience indicates to him that the biggest obstacle we have to a safe workplace are what he calls the two fear factors: employers are not afraid of OSHA, but workers are afraid of their boss.

Mr. Schrag believes that prior versions of the OSHA Job Safety and Health poster are superior to the current version. He submitted a [comment](#) with photos of prior posters. Mr. Schrag believes the poster needs to be bigger and bolder. Colors and size matter; the bigger it is, the more important people will think it is. The brighter it is, the more likely people are going to read it. He believes the agency needs a better poster to make sure people can see what their rights are. He has heard about some workplaces that don't post the poster and recommended the agency look at issuing citations for not putting the poster in a conspicuous location.

He also noted that enforcing whistleblower rights is crucial to getting workplace safety. If people don't feel comfortable raising their voice, they won't ask for OSHA. They won't ask for hazards to be abated. They won't ask for an inspection, because they'll feel like they're all going to lose their jobs. People are afraid of retaliation, and we have to do everything we can to bolster the investigative process.

New employees need to understand what their rights are, and we can't presume that people are going to go to a website. Not everybody is digitally confident. Employers should be required to give every worker an education every year on what their whistleblower rights are. The Secretary of Labor could mandate that every employer hand out every year a whistleblower fact sheet to every worker. That would send a signal to workers that the employer knows what they can and can't do, and make sure the workers know what they are allowed to do. That would be a small step forward.

### **Felipe Franchini**

Mr. Franchini explained that he had filed a whistleblower complaint in the past and previously attended a whistleblower stakeholder meeting. He filed a complaint with OSHA after he was threatened by an employer who was preying mostly on undocumented immigrants, and who tried to get him to certify all the documents after somebody had already done it. He didn't think it was right to do so, not because these individuals didn't deserve a right to work but because of the way

they were treated in this time and age. For employers to treat employees like slaves should be unacceptable. Mr. Franchini filed an appeal on his case.

Mr. Franchini doesn't believe enough is being done by Congress to address corruption. They create departments to have more oversight, but in the end not much gets done. Congress needs to be more involved in enforcing the laws that protect employees. He will be visiting Washington D.C., and he will be advocating for whistleblowers.

### **William Groshell, Letter Carrier, National Association of Letter Carriers**

Mr. Groshell attended on behalf of the National Association of Letter Carriers. He is a letter carrier and President of the Union in the state of Oregon. He wanted to highlight a few of the issues that they experience with the Postal Service and access to the OSHA whistleblower process for their employees.

One of their big problems is that there is very little communication provided to postal workers on the workroom floor. In many cases, you are hard pressed to find any posters, either older or newer. There are no notifications provided when these things are being placed, there does not seem to be any requirements or enforcement of substance that comes back against the Postal Service for failure to put these sorts of things out there publicly on the workroom floor on a regular basis.

There needs to be a push from above to have better communication coming from the Postal Service to its employees, so that people are even aware of the process, let alone how to access it. There are no trainings. The Postal Service has created a network that they call the hero training system that's meant to be accessible online for employees. There are no trainings available in there to educate someone about the whistleblower process, so they're not even providing any backdrop for that, even in a separate online, accessible training program. They don't mention it. He has never heard a single supervisor or manager in his 17 plus year career mention anything about OSHA, or the OSHA whistleblower process, or that it's even something that employees have available in case of instances where necessary. Our biggest problem is that the outreach and communication simply isn't there. There doesn't seem to be any enforcement mechanism outside the Postal Service in the government forcing them to actually actively educate and make people aware of it. In an ideal world, it would be something that would be part of a requirement for their training for new employees. So, as people begin work, they know that it's something that's accessible, that they can have access to if they need it.

In the long term, it would be great if it was something that they were required to do on a yearly basis, provide an actual training or discussion to employees on the workroom floor, just to keep it in the front of people's minds, so that it's a tool that can be useful. People only use it because really bad things have happened to them, and it's come to us through the Union process. We then educate them and help them to navigate it, and it shouldn't be that difficult. It should be something that everyday workers on the workroom floor should know about and should have the ability to access. It's just too difficult right now.



New employees in their probationary period are most affected. The way the contracts exist between the Postal Service and the unions, there is no avenue for the grievance procedure for probationary employees. There are numerous instances all around the country where an employee will have an on-the-job injury while they're in their probationary period, they will file a claim correctly with the Department of Labor and the Office Workers Compensation. They'll have their claims approved. Because of their injuries, they're not able to work after a period of time. The Postal Service will send them a notice of removal, stating that it's due to their attendance, and they will then be removed. Because of the nature of the language within our contracts, we can't grieve that removal; so we rely upon agencies like OSHA and the whistleblower process for these people to get reinstated due to a direct violation of Federal law.

When the Postal Service retaliates against a worker who has filed an on-the-job injury claim that has been approved, they are removed from their employment while in their probation. You're one of the only avenues they have, and the process currently for instances like that takes so long that in many cases, these employees, even if their claims do get processed and they are able to be reinstated, cannot be reinstated because they've already had to go find a different job in a different career to keep a roof over their head and to keep food on their table.

If there was some sort of process, for probationary workers that had been removed, to expedite their cases so that they don't have to give up on their chosen career, that would be a great improvement. We need better communication and protections, especially for probationary staff.

### **Christopher Hand, Director of Research, Brotherhood of Railroad Signalmen**

Mr. Hand explained that he is from the Brotherhood of Railroad Signalmen. They are covered under the Federal Railroad Safety Act (FRSA). Mr. Hand believes that most of their members probably think they're just covered under the Federal Railroad Administration. More presence on the railroads would definitely help for their members to know that they have whistleblower protections. There is systemic retaliation toward railroad employees when they report issues.

They had some issues in the South. He went out and tried to find information. He found that it was difficult to talk to somebody about how these individuals would be protected under FRSA. He may have missed the information on the website. He noted that there was no place on the online complaint form to indicate that you work for a railroad and recommended that the agency add something to the form.

### **Rebecca Hourihan**

Ms. Hourihan explained that she previously worked in higher education and had an open whistleblower case. She noted there was not enough information on OSHA's website to assist employees in bringing issues to their employers. She wondered what kind of data is on the website about the amount of complaints that are coming into OSHA versus the amount of settlements that are actually done. She also wanted to know if OSHA would be willing to provide more information on how to do a mediation with your employer.

Mr. Swick concluded the meeting at 2:34 PM.