

**OSHA WHISTLEBLOWER STAKEHOLDER MEETING:
FINANCIAL INDUSTRY
October 16, 2018
Minutes**

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, N.W.
Washington, DC

The OSHA Whistleblower Stakeholder Meeting was called to order by Kelly Schnapp at 1:00 pm on Tuesday, October 16, 2018.

The following members of the public were present:

NAME	TITLE & ORGANIZATION
Audrey Lewis*	Safety Manager, Consulting
Beth Callaghan*	Legal Support Specialist, Husch Blackwell
David Reynolds*	Associate Editor, Inside EPA Newsletter
Erik Burggraf*	Attorney, Siff & Associates, PLLC
Bruce Rolfsen	Senior Reporter, Bloomberg BNA
Joseph Sirbak*	Member, Cozen O'Connor
Sean Mahoney*	General Counsel, Northern Bank & Trust Company
Tammy Marzigliano*	Partner, Outten & Golden LLP
Teresa Marzolph*	Founder, Culture Engineered
Subhashini Bollini*	Of Counsel, Correia & Puth, PLLC
Holly Carr	Assistant Director, U.S. Securities and Exchange Commission
Linda Aase	Management Analyst, MBDA/Department of Commerce
Deborah Berkowitz	Program Director, Worker Safety and Health, NELP
Gloria Gonzalez	Deputy Editor, Business Insurance Magazine
Eduardo Martinez	Senior Counsel, U.S. Securities and Exchange Commission
Donn Meindertsma	Partner, Conner & Winters, LLP
Jason Zuckerman	Principal, Zuckerman Law

Note: * denotes attendees who participated via teleconference

The following U.S. Department of Labor staff were present:

NAME	AGENCY	TITLE
Loren Sweatt	OSHA	Deputy Assistant Secretary
Francis Yebesi	OSHA	Acting Director, Directorate of Whistleblower Protection Programs (DWPP)
Anthony Rosa	OSHA	Deputy Director, DWPP

Kelly Schnapp	OSHA	Director, Office of Science and Technology Assessment, Directorate of Technical Support and Emergency Management
Christine Stewart	OSHA	Division Chief, Division of Policy, Planning, and Program Development, DWPP
Meghan Smith	OSHA	Program Analyst, DWPP
Yasmin Wardlaw	OSHA	Program Analyst, DWPP
Robert Swick	OSHA	Acting Regional Supervisory Investigator, Region I
Sarah Caudrelier	OSHA	Program Analyst, DWPP
Dale Caldwell	OSHA	Program Analyst, DWPP
Yevgeniya Maryash	OSHA	Investigator – ROAD Detailee, DWPP
Mark Lerner	SOL-OSH	Senior Attorney
Megan Guenther	SOL-FLS	Senior Attorney
Frank Meilinger	OSHA	Director, Office of Communications (OOC)
Amy Louviere	OPA	Public Affairs Director
Michael Mabee*	OSHA	Assistant Regional Administrator, Region I
Teri Wigger*	OSHA	Assistant Regional Administrator, Region II
Allison Bowles*	OSHA	Region II
Anthony Incristi*	OSHA	Assistant Regional Administrator, Region VI
James Wulff*	OSHA	Deputy Regional Administrator, Region IX
Kristen Rubino*	OSHA	Regional Supervisory Investigator, Region I
Katrina Bielomyza*	OSHA	Investigator, Region I
Michael Burros*	OSHA	Tech-13, Region IX
Rebecca Bowen*	OIG	Audit Manager
Renata Hobbs*	OIG	Auditor
Jennifer Roberts*	OIG	Program Analyst

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OSHA Speakers

Kelly Schnapp, Moderator

Ms. Schnapp welcomed the participants and gave the ground rules for the meeting:

- OSHA was in a listening mode for the meeting and would not be answering questions during the meeting.
- Speakers should limit their remarks to 10 minutes.
- When discussing a whistleblower case, participants should not state either the respondent's or complainant's name. They should speak generally about their experience without giving case-specific details.
- After all of the participants who signed up to speak have spoken, OSHA will open the floor for additional comments.

OSHA Deputy Assistant Secretary Loren Sweatt

This is the second in a series of meetings seeking stakeholder input on OSHA's whistleblower program. As you know, this program has a big mission – ensuring that employees are protected from retaliation under 22 different whistleblower statutes.

It is so vitally important that employees feel comfortable bringing issues to the attention of their supervisors and management – and it is truly in everyone's best interest.

Today we will focus on whistleblowers in the financial industry, who are primarily covered under the Sarbanes-Oxley Act (SOX) and the Consumer Financial Protection Act (CFPA).

These protections apply to worker reports of mail, wire, bank, securities, or shareholder fraud; as well as violations of Securities and Exchange Commission (SEC) regulations.

Workers dealing with consumer financial products or services are also protected for reporting violations of any provision of title X of the Dodd-Frank Act, or other provisions subject to the jurisdiction of the Consumer Financial Protection Bureau (CFPB).

Our goal today is to receive input on two important issues for the financial industry:

1. How can OSHA deliver better whistleblower customer service?
2. What kind of assistance can OSHA provide to help explain the whistleblower laws it enforces?

Thank you again for being here, and for your commitment to working with us to help ensure these important protections for workers in this industry.

Financial Industry Speakers

Deborah Berkowitz, Program Director, Safety and Health, NELP

Ms. Berkowitz read from her prepared remarks, which can be found in the docket here - <https://www.regulations.gov/document?D=OSHA-2018-0005-0016>.

Jason Zuckerman, Principal, Zuckerman Law

Mr. Zuckerman expressed his belief that ongoing dialogue between OSHA and its stakeholders is important. He represents whistleblowers.

Mr. Zuckerman noted that investigations can consume a lot of resources. The Government Accountability Office (GAO) reports said that OSHA's whistleblower program doesn't have adequate resources to keep up with a large volume of work. At the end of the day, it's about a lack of resources. The lack of resources means that OSHA's investigations are too slow. The length of time OSHA took to investigate some of the cases against Wells Fargo isn't acceptable. It's not about just helping one client; when these types of claims are brought, there's more at stake because workers see each other speaking out. While timeliness of investigations is important, too much emphasis on the speedy investigations could lead to OSHA just accepting the employer's defense if it sounds reasonable.

On the issue of outreach, the whistleblower website does a good job of explaining the elements of a claim, but there are no FAQs which explain how the process works. There are a lot of lawyers everywhere, but it can be hard for people to get a lawyer for these claims. He also suggests posting advice from the Office of the Solicitor on specific legal issues on the website.

Mr. Zuckerman then turned to the question of how OSHA can provide better customer service. Many of the people he represents are at the mid-point of their careers, and risk not only their careers but any future employment by speaking out against workplace violations. They face numerous obstacles, with many of their co-workers for years past refusing to speak to them. On the other side, employers can come with a huge stack of affidavits. Investigators working these claims must understand that one side has endless access to evidence, but the other side does not.

Mr. Zuckerman noted that he has never had an opportunity to supply his client's position on contested issues of law. He should not be receiving a closing letter without the opportunity to submit input.

OSHA should also offer lower level employees the opportunity and option to talk off-site without the presence of an industry attorney. If OSHA speaks to employees with a lawyer for the employer in the room, the willingness of the employee to speak candidly with OSHA will be adversely affected.

He also recommended an increase in inter-agency cooperation. Had employee claims gone to the Consumer Financial Protection Bureau years ago, this would have been helpful. Mr. Zuckerman also noted that there has been progress on educating OSHA investigators on laws. He would like to see additional training on how employees are impacted.

Follow-up Questions

Ms. Schnapp asked the group about ways to improve the effectiveness of OSHA's whistleblower outreach materials.

Ms. Berkowitz recommended utilizing the training programs presented through the Susan Harwood Training Grant Program to distribute OSHA outreach materials. In some industries, it's hard to find workers to inform them of their rights. OSHA should look to employee organizations to figure that out. For example, the Communication Workers of America represents some workers in the financial industry.

Ms. Schnapp asked the group about how to improve OSHA's whistleblower investigator training and in what areas additional training was necessary.

Ms. Berkowitz recommended including information for investigators on what it's like to actually work in the financial sector for average, everyday workers. Unions organize some of these workers and can help to find out what their job duties are and what kind of pressure they're under. We want them to blow the whistle on practices that are bad for consumers. Currently, OSHA almost never inspects banks.

Mr. Zuckerman recommended setting something up to let the public know what their options are for reporting various kinds of retaliation, such as a website that would explain the options of filing with various agencies to members of the public. A lot of people are currently unaware of their options.

Ms. Schnapp asked whether the regulated community knows that OSHA handles these kinds of complaints or does the community believe such claims are solely under the purview of the SEC?

Ms. Berkowitz stated that the regulated community isn't hearing anything about OSHA. The last administration tried to get information out to employers about their obligations. OSHA is issuing one-eighth the number of press releases that it did under the previous administration. Ms. Berkowitz believes this will make things worse for workers.

Mr. Zuckerman recommended that OSHA let the public know when the agency gets a good result for a worker. If an employer is aware of a reinstatement, they might want to resolve it at the last minute to avoid a negative press release. He wants people to know that the employee almost won at OSHA and believes the agency needs to tell the public more about what it does.

Mr. Zuckerman also recommended more use of Alternative Dispute Resolution. He would like to see it offered in every region. In addition, he would like to see some changes to the Secretary's Findings. He has seen several Findings that appear to only take the employer's side into account. If an Administrative Law Judge (ALJ) is reviewing it, they're not supposed to use the Findings, but they can have an impact on the ALJs. When OSHA closes out a claim, it should make sure that the evidence supports its conclusions. For example, he has seen closing letters that clearly reflect the respondent's position statement rather than witness interviews or other types of evidence.