
Investigator’s Desk Aid to the International Safe Container Act (ISCA) Whistleblower Protection Provision

46 U.S.C. § 80507

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This Desk Aid represents the Occupational Safety and Health Administration’s (OSHA’s) summary of the scope of coverage and protected activity and the procedures for handling investigations under the whistleblower protection provision of the International Safe Container Act (ISCA) as of the “last revised” date below. This Desk Aid is intended for OSHA’s use and the guidance herein is subject to change at any time. This Desk Aid is informational in content. It is not a standard or regulation, and it neither creates new legal obligations nor alters existing obligations. Furthermore, there may be a delay between the publication of significant decisions or other authority under this whistleblower protection provision and modification of the Desk Aid.

Abbreviations Used in this Desk Aid:

ISCA	International Safe Container Act
DWPP	Directorate of Whistleblower Protection Programs
USCG	United States Coast Guard
OSH Act	Occupational Safety and Health Act of 1970
RSOL	Regional Solicitor’s Office
WIM	Whistleblower Investigations Manual

I. ISCA in a Nutshell

ISCA is designed to promote the safety of intermodal cargo containers. Its whistleblower provision prohibits a person from discharging or otherwise discriminating against an employee because the employee has reported the existence of an unsafe container or a violation of a regulation issued under ISCA. ISCA was enacted in 1977 and details the requirements for compliance with the International Convention for Safe Containers signed in 1972 in Geneva. The Convention was motivated by the need to maintain a high level of safety of human life in the handling, stacking, and transporting of containers, to facilitate international container transport, and to recognize the advantage of formal, uniform international cargo container safety requirements. Containers can be transported by various modes, such as trucks, ships, and railroad cars. See 49 CFR. § 450.1 *et seq.*

Days to File	Respondents Covered	Kick-Out Provision	Allowable Remedies				Review		Burden of Proof
			Backpay	Preliminary Reinstatement	Compensatory	Punitive	Days to File	Venue	
60	Private-sector; Local government; Certain interstate compact agencies	No	Yes	No	Yes	Yes	15	OSHA	But-for

II. Statute and Regulations

46 U.S.C. § 80507. Employee protection.

(a) **Prohibition** - A person may not discharge or discriminate against an employee because the employee has reported the existence of an unsafe container or a violation of this chapter or a regulation prescribed under this chapter.

(b) **Complaints** - An employee alleging to have been discharged or discriminated against in violation of subsection (a) may file a complaint with the Secretary of Labor. The complaint must be filed within 60 days after the violation.

(c) **Enforcement** - The Secretary of Labor may investigate the complaint. If the Secretary finds there has been a violation, the Secretary may bring a civil action in an appropriate district court of the United States. The court has jurisdiction to restrain violations of subsection (a) and order appropriate relief, including reinstatement of the employee to the employee's former position with back pay.

(d) **Notice to complainant** - Within 30 days after receiving a complaint under this section, the Secretary of Labor shall notify the complainant of the intended action on the complaint.

As a matter of policy, ISCA investigations must generally be conducted in accordance with the procedures under Section 11(c) of the OSH Act. As there is no separate set of regulations for ISCA, the regulations contained in 29 CFR Part 1977 pertaining to the administration of Section 11(c) of the OSHA Act should be consulted.

III. Coverage

The general provisions of ISCA are administered by the USCG, an agency of the Department of Homeland Security. The definition of the term “person” is found in 1 U.S.C. § 1. The term includes private-sector companies and individuals, as well as local governments and interstate compact agencies that lack the attributes of state sovereignty (the RSOL should be consulted on this issue); federal and state governments are not included. By analogy, OSHA interprets the term “employee” in the same way that it interprets the term in enforcing the OSH Act, except that employees of local governments and the interstate compact agencies described above are covered.

IV. Protected Activity

A person may not retaliate against an employee because the employee:

- Reported to the USCG, the employer, or others, an unsafe intermodal cargo container, used in international transport, or a violation of ISCA, 46 U.S.C. § 80501, *et seq.*, which includes, among other things, procedures for the testing, inspection, and initial approval of containers. The report need not be accurate as long as it is based on the complainant’s reasonable belief.

Example

- *The Complainant alleges he was terminated in reprisal for voicing complaints to his supervisor regarding unsafe cargo containers.*

V. Procedures for Handling ISCA Complaints

As a matter of policy, ISCA investigations generally must be conducted in accordance with the OSH Act’s Section 11(c) procedures. However, the issuance of administrative subpoenas is not authorized.

A. Complaint

Who may file: An employee who believes that he or she has been retaliated against in violation of ISCA may file a complaint with OSHA. The employee may also have a representative file on the employee’s behalf. The complaint should be filed with the OSHA Area Office where the protected activity took place, but filing with any OSHA Regional or Area Office or online is acceptable.

Form: The complaint need not be in any particular form. Oral or written complaints are acceptable. If the complainant cannot make a complaint in English, OSHA will accept a complaint in any language.

Timing: The complaint must be filed within 60 days of the time when the complainant learned of the adverse action. Equitable tolling principles may extend the time for filing in limited circumstances, consistent with the guidance in OSHA’s [Whistleblower Investigations Manual](#).

Distribution of complaints and findings to partner agencies: Complaints and findings in ISCA cases must be sent to the USCG.

B. Investigation

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OSHA Whistleblower Protection Program

Upon OSHA receiving a complaint, OSHA will evaluate the complaint to determine if the complaint contains a *prima facie* allegation of retaliation. In other words, the complaint, supplemented as appropriate with interviews of the complainant, should allege that:

1. The employee engaged in ISCA-protected activity;
2. The respondent knew of or suspected that the employee engaged in ISCA-protected activity;
3. The employee suffered an adverse action;¹ and
4. There is a causal connection between the protected activity and the adverse action.

If the complaint meets these requirements, then OSHA will ask for a position statement from the respondent and proceed with the investigation.

OSHA must determine whether it has reasonable cause to believe that a violation occurred. In other words, OSHA must determine whether it has reasonable cause to believe that the complainant would not have suffered the adverse action *but for* the protected activity. If it does, OSHA will informally consult with the RSOL. In a merit case, a lawsuit may then be filed on behalf of the Secretary of Labor in federal district court.

If OSHA does not find reasonable cause to believe that respondent violated ISCA, then it sends a letter with findings to that effect to the complainant with a copy to the respondent. This letter must state that the complainant has a right to request review of the field's dismissal by OSHA's DWPP.

Relief in an ISCA case includes, but is not limited to, reinstatement, back pay, compensatory damages, and in the special circumstances described in the WIM, punitive damages.

C. Review

The complainant may disagree with OSHA's dismissal within 15 days of receipt and request a review of the field's findings by contacting the DWPP. The review process is the same as that for Section 11(c) dismissals.

D. Kick-Out

ISCA does not include a "kick-out" provision, and therefore does not permit a complainant to file his or her claim in federal district court if the Department of Labor has not made a final decision in the case within a specified number of days.

¹ An adverse action is an action that might dissuade a reasonable employee from engaging in ISCA-protected activity. Examples of adverse actions include (but are not limited to) firing, demoting, denying overtime or a promotion, and disciplining the employee.

Attachment 1: Optional Worksheet: Analyzing ISCA Whistleblower Complaints

In order to recommend the filing of an ISCA suit, answers 1 to 7 must be "yes."

	Yes	No
Timeliness		
1. Was complaint filed within 60 days of the alleged adverse action (or tolling applies)?	<input type="checkbox"/>	<input type="checkbox"/>
Coverage (See Desk Aid p. 3)		
2. Is complainant an employee?	<input type="checkbox"/>	<input type="checkbox"/>
3. Is respondent a private-sector company, an individual, a local government, or an interstate compact agency that lacks the attribute of state sovereignty?	<input type="checkbox"/>	<input type="checkbox"/>
Protected Activity (See Desk Aid p. 3)		
4. Has complainant reported to the United States Coast Guard, the employer, or others, an unsafe intermodal cargo container, or a violation of ISCA, which includes, among other things, procedures for the testing, inspection, and initial approval of containers? (The report need not be accurate as long as it is based on the complainant's reasonable belief.)	<input type="checkbox"/>	<input type="checkbox"/>
Employer Knowledge		
5. Did respondent know or suspect that complainant or someone associated with complainant engaged in the protected activity? (Remember that knowledge may be imputed to respondent using a cat's paw theory or the small plant doctrine if warranted by the evidence.)	<input type="checkbox"/>	<input type="checkbox"/>
Adverse Action		
6. Did respondent discharge or take other adverse action against the employee? (Adverse action is any action that could dissuade a reasonable employee from engaging in ISCA-protected activity. Common examples include demoting or disciplining the employee.)	<input type="checkbox"/>	<input type="checkbox"/>
Nexus (But-for)		
7. Was complainant's ISCA-protected activity a <i>but-for reason</i> for respondent's decision to take adverse action against complainant? Evidence that an adverse action occurred because of the protected activity includes, but is not limited to: <ul style="list-style-type: none"> • Close timing (temporal proximity) between the protected activity or an agency's response to the protected activity and the adverse action. • Evidence of hostility towards the protected activity. • Disparate treatment of complainant as compared to other employees following the protected activity. • Changes in respondent's treatment of complainant after the protected activity. • Indicators that respondent's stated reasons for the adverse action are pretext. 	<input type="checkbox"/>	<input type="checkbox"/>