

**OSHA WHISTLEBLOWER STAKEHOLDER MEETING**  
**May 12, 2020**  
**Minutes**

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The OSHA Whistleblower Stakeholder Meeting was called to order by Rob Swick at 1:00 pm on Tuesday, May 12, 2020. The meeting was held via teleconference.

The following members of the public were present:

<b>NAME</b>	<b>TITLE &amp; ORGANIZATION</b>
Shahraim Allen	Locomotive Engineer, BNSF Railway / Sound Transit
Jan Aune	Attorney, The Law Office of Jan T. Aune
Mickey Baker	Union Steward, American Federation of Government Employees
Abderrazak Bari	Banker, Wells Fargo
Thomas Batchelor	Safety Director, Quantum North America
Daryl Brown	Safety Specialist, FPI Management, Inc.
Patricia Brown	OSHA Whistleblower Investigator (Retired), OSHA Region X
Maria Browne	Registered Nurse, Quality First
Carl Buchmiller	Loss Control Specialist, Nationwide Insurance
Ignacio Chavez	Not provided
Scott Clausen	Associate, Morgan Lewis
Laura Clements	Director of External Affairs, American Society of Safety Professionals
Mary Cobb	Not provided
Brian Conder	Safety Manager, Nightforce Optics
Lewis Csedrik	Partner, Morgan, Lewis & Bockius, LLP
Chip Darius	President, Safety Priority
Thomas Dash	Investigator, Office of Whistleblower Protection, Virginia Department of Labor and Industry-VOSH
Lindsay DiSalvo	Not provided
Sonja Dobek	Safety Risk Manager, Inglett & Stubbs, LLC
Kathleen Dobson	Safety Director, Alberici Constructors
Princy Doss	Director of Policy, Planning, & Public Info, Virginia Department of Labor and Industry
Mike Elliot	Whistleblower/Advocate (Retired), Rail Labor
Donald Elswick	Executive Director, UA SafeState
Amy Faulkner	Not provided
Maricel Flores-Díaz	Safety and Health Consultant, Safety in Paradise
Franixon	Not provided
Jim Frederick	Senior Consultant, ORC HSE Strategies, LLC
Lisa Fried-Gordon	Partner, Meyers Fried-Grodin LLP
Stephanie Howard	Not provided
Nicole Fuller	Executive Director, PhilaPOSH

Billie Garde	Attorney, Clifford and Garde, LLP
Daniel Gardner	International Representative, International Brotherhood of Electrical Workers
Angeline Gauntt	Attorney, Nuclear Care Partners
Michael Gillman	Associate, O'Donoghue & O'Donoghue LLP
Nichole Goluskin	Disabled
Ross Grooters	Working Locomotive Engineer and Co-Chair, Railroad Workers United
David Haron	Of Counsel, Hoyer Law Group, PLLC
Bob Hodgson	Corporate Safety Representative, The Branch Group
Thomas Hogue	Safety Manager, MJ Electric
Michelle Johnson	Safety Program Manager, Tennessee Valley Authority
Karen Johnston	Member, Jackson Kelly PLLC
Terrell Jones	Corporate Safety Manager, PacMoore Products
Ron Kaminkow	General Secretary, Railroad Workers United
Tarah Kile	Construction Enforcement Safety Supervisor, MIOSHA
Mike Killeen	Partner, Davis Wright Tremaine LLP
Brandi King	OHS, Novozymes
Terry Klingele	Operating Group Safety Director, Mortenson
Karl Kumli	Associate, Jackson Kelly PLLC
David LaRoss	Associate Editor, Inside Washington Publishers
Deidre Laws	Chief OSHA Counsel, South Carolina OSHA
Nancy Lessin	Retired, United Steelworkers - Tony Mazzocchi Center
Faye Lichtsinn	Health and Safety Specialist, Mackin Consultancy
Bryan Lovas	Corporate Director, Safety, Vitalant
Benny Lowe	Not provided
Patty McCarthy	Safety Auditor, P66
Tim Marcum	Safety & Health Specialist, Multnomah County
Peggy Merritt	Mine Safety Instructor, Missouri Department of Labor - Mine & Cave
James Meyer	International Representative, International Brotherhood of Electrical Workers
Gwen Multine	General Dentist, Renew Dental
Trever Neuroth	Assistant General Counsel, Exelon
Tara Nixon	Not provided
John Northrup	President, AJT Safety Solutions
Kay Oskvig	Attorney, Whitfield & Eddy, PLC
Kristen Osterkamp	Senior Industrial Hygienist, MIOSHA CET
Travis Parsons	Associate Director of Occupational Safety & Health, Laborers' Health & Safety Fund of North America
Kenneth Partee	EHS Manager, ITW Professional Automotive Products
Stefanie Pate	HR Manager, Compliance & Employee Relations, Oxy
Manuel J. Peralta	Director of Safety and Health, National Association of Letter Carriers
John Pietuszk	Discrimination Manager, Tennessee OSHA

Cille Pritchard	Whistleblower Investigator, New Mexico OSHA
Benjamin Pu	Reporter, NBC News
Paul Rasmussen	Attorney, Hildebrand McLeod & Nelson
Denise Richards	Not provided
Regina Rodriguez	Human Resources Manager, Crown Linen LLC
Melody Russo	Safety Compliance Officer/Whistleblower Investigator, State of Alaska, Occupational Safety & Health
Steven Schrag	Co-chair, ConnectiCOSH
Charles Sellards	Advanced EHS Professional, Marathon Petroleum Company, LP
Michael Selsen	Not provided
Gabe Sierra	President, Prometrix Consulting
Gabrielle Sigel	Partner, Jenner & Block
Matthew Spencer	Director of Human Resources & Safety Programs, U.S. Poultry and Egg Association
Emily Spieler	Edwin W. Hadley Professor of Law, Northeastern University
Amy Staley	Division EHS Manager, Hitachi Cable America Inc.
Juanita Stokes	Management and Program Analyst, Bureau of the Fiscal Service
Marc Thalheimer	AECOM
Ashlie Thornton	Safety & Training Coordinator, Premium Peanut
Shelia Thorpe	Analyst, Government Accountability Office
Katie Tracy	Senior Policy Analyst, Center for Progressive Reform
Marissa Tracy	EHS Manager ICU Medical
Kim Van Tran	Senior Deputy, State of California
Holly Trice	Senior Staff Attorney, Virginia Department of Labor and Industry
Kasey Vickers	EHS Manager, AZZ Electrical Solutions
Teri Watson	Whistleblower Program Manager, Oregon OSHA
Kyle Welch	Professor, George Washington University
Karia Williams	Michigan Conference of Teamsters Welfare Fund
Jason Zuckerman	Principal, Zuckerman Law

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

NAME	AGENCY	TITLE
Loren Sweatt	OSHA	Principal Deputy Assistant Secretary
Francis Yebesi	OSHA	Acting Director, Directorate of Whistleblower Protection Programs (DWPP)
Anthony Rosa	OSHA	Deputy Director, DWPP
Christine Stewart	OSHA	Division Chief, Division of Policy, Planning, and Program Development, DWPP
Anthony Incristi	OSHA	Division Chief, Division of Field Operations, DWPP
Luis Acevedo	OSHA	Regional Supervisory Investigator, Region VI
Connie Ackermann	SOL	Deputy Regional Solicitor, Region VI
Andrea Appel	SOL	Regional Counsel for Civil Rights, Region III
Philippe Blancáto	OSHA	Investigation Specialist, DWPP

Allison Bowles	SOL	Senior Trial Attorney, Region II
Nina Breakiron	OSHA	Chemical Engineer (DSG)
Ashley Briefel	SOL	General Attorney, OSH Division
Channah Broyde	SOL	Civil Rights Counsel, Region IV
Maureen Cafferkey	SOL	Counsel, Region V
Andrea Carlson	OSHA	Program Analyst, DWPP
Sudwiti Chanda	SOL	Counsel for Civil Rights, Region II
Andres Ciriello	OSHA	Program Analyst, Directorate of Cooperative and State Programs (DCSP)
Kevin Crain	OSHA	Assistant Regional Administrator for Whistleblower, Region VII
Kim Darby	OSHA	Writer-editor, Office of Communications (OOC)
Uche Egemonye	SOL	Acting Deputy Regional Solicitor, Region IV
Angela Fisher	OSHA	Regional Supervisory Investigator, Region VI
Allyson Gault	SOL	Attorney, Region VI
Megan Guenther	SOL	Counsel for Whistleblower Programs, FLS Division
Ryan Himes	OSHA	Assistant Regional Administrator for Whistleblower, Regions IX and X
Alcmene Haloftis	OSHA	Senior Technical OSH Specialist, Directorate of Cooperative and State Programs (DCSP)
Marisa Johnson	OSHA	Program Analyst, DWPP
Denise Keller	OSHA	Assistant Regional Administrator for Whistleblower, Region V
Barbara Goto	OSHA	Regional Administrator, Regions IX and X
Allison Kramer	SOL	Acting Counsel for Legal Advice, OSH Division
Mark Lerner	SOL	Senior Trial Attorney, OSH Division
Jennifer Levin	SOL	Attorney, OSH Division
Michael Mabee	OSHA	Assistant Regional Administrator for Whistleblower, Region I
Yevgeniya Maryash	OSHA	Whistleblower Investigator, Region I
Suzanne Reilly	SOL	Attorney, Region I
Tiffany Riddick	OSHA	Investigation Specialist, DWPP
Antione Robinson	OSHA	Assistant Regional Administrator for Whistleblower, Region IV
Kristen Rubino	OSHA	Regional Supervisory Investigator, Region I
Jack Rudzki	OSHA	Regional Supervisory Investigator, Region III
Marisa Schnaith	SOL	Attorney, OSH Division
Meghan Smith	OSHA	Program Analyst, DWPP
Natalie Starks	OSHA	Regional Supervisory Investigator, Region III
Sarah Starrett	SOL	Attorney, FLS Division
Gail Stewart	OSHA	Management Analyst, DWPP
Rob Swick	OSHA	Investigation Specialist, DWPP
Shawn Vollrath	OSHA	Regional Supervisory Investigator, Region VIII
Teri Wigger	OSHA	Assistant Regional Administrator for Whistleblower, Region II

Cory Wilson	OSHA	Assistant Regional Administrator for Whistleblower, Region VIII
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## **OSHA Speakers**

### **Rob Swick, Moderator**

Mr. Swick opened the meeting by noting that the agency would be taking notes on all stakeholder input and will upload this information to regulations.gov in docket OSHA-2018-0005. In addition, the agency will also upload any written comments you have to the docket for the record. Materials for this meeting and past meetings can be accessed by going to [www.regulations.gov](http://www.regulations.gov) and typing “osha-2018-0005” in the search bar.

Mr. Swick also explained the ground rules:

- OSHA will be in a listening mode for this meeting; we will not be answering questions right now, but we may be able to provide responses later, depending on the question.
- Please limit your remarks to a maximum of five minutes.
- When discussing a whistleblower case, do not state either the respondent’s or complainant’s name. Talk generally about your experience without giving case-specific details.
- After all of the participants who signed up to speak have spoken, we will open the floor for additional comments.

### **Loren Sweatt, Principal Deputy Assistant Secretary for Occupational Safety and Health**

Ms. Sweatt made the following remarks:

I would like to start by thanking all of you for joining us today. This is the fifth meeting seeking stakeholder input on OSHA’s whistleblower program. It is vitally important that all workers feel comfortable bringing issues to the attention of their supervisors and management, especially in light of the safety challenges presented today.

Over the last few weeks, the Secretary and OSHA have sent a strong message that retaliation will not be tolerated.

Today’s goal is to receive input on three important issues:

1. How can OSHA deliver better whistleblower customer service?
2. What kind of assistance can OSHA provide to help explain the agency's whistleblower laws to employees and employers?
3. Where should OSHA target whistleblower outreach efforts?

These sessions have been very helpful to the whistleblower program. I am certain today’s meeting will also help to improve our processes and our outreach for all members of the stakeholder community.

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.

### **Nichole Goluskin, Disabled**

Ms. Goluskin was a whistleblower. She explained that she had two months to decide what she wanted to do after she was asked to embezzle money – become a corporate criminal or a whistleblower. She read the laws and felt like the laws protect complainants well. Through her research, she learned that the OSHA investigation from beginning to end would take 180 days. She felt protected by the whistleblower laws, and assumed she would be awarded back pay and front pay (within 180 days). She felt she made the right decision by whistleblowing. Ms. Goluskin stated that approximately 100,000 people got health care because of what she did.

The problem she faced was that the investigation didn't take 180 days; it took 2-1/2 years. During that time, she went broke, had to live off loans, and sometimes went hungry. She had her name smeared in the press in her industry. The company she blew the whistle on attacked her in the news. In the end, she got a settlement, but it didn't make her whole. She simply broke even from the debt she'd had to take on during the investigation.

She had two questions:

1. Will investigations be completed in 180 days in the future?
2. Is OSHA/DOL interested in helping people like her? Is the agency interested in making reparations to people in her position?

### **Donald Elswick, Executive Director, UA SafeState**

Mr. Elswick noted that there are more than 20 federal laws protecting workers from retaliation. For employees who believe they are retaliated against, these laws allow them an avenue to voice a complaint. Mr. Elswick had several suggestions for delivering better customer service in the time of COVID-19:

- Alabama has had a surge in whistleblower cases.
- There is a strain on OSHA offices.
- OSHA should utilize its consultation program.
- OSHA should retain the whistleblower program.
- The consultation program could help enhance the whistleblower program.

### **Katie Tracy, Senior Policy Analyst, Center for Progressive Reform**

Ms. Tracy's written comments can be accessed in the meeting docket - <https://www.regulations.gov/docket?D=OSHA-2018-0005>.

Ms. Tracy noted that the whistleblower program is critical for ensuring safe and healthy workplaces without fear of retaliation. If OSHA does not adequately enforce the laws, employees will not be safe. Essential workers are seeing retaliation for such things as asking for personal protective equipment. She made a few recommendations for improvements:

- OSHA should provide more comprehensive data.
- There should be a portal so that complainants can track their cases.
- OSHA should publish more real-time data, similar to what the agency is already doing for COVID-19 cases.
- There should be a portal so that workers can access documents in their case file.
- OSHA whistleblower should refer cases to OSHA enforcement, especially if a company is a repeat offender.
- OSHA should ensure that investigators are following the Whistleblower Investigations Manual (WIM) and docketing cases under all applicable statutes.
- OSHA should provide timely results. If not, they should discuss with the complainant why their case is delayed.
- OSHA should ensure that all workers have knowledge of their protections under the laws. Outreach should focus on workers on the front lines. The agency should ensure businesses know the risk COVID-19 poses to employees remains high.
- In the near and longer term, the agency should focus on industries where retaliation is most likely to occur and provide that information in multiple languages.

**Emily Spieler, Edwin W. Hadley Professor of Law, Northeastern University**

Ms. Spieler indicated that all of her remarks would pertain to customer service. She noted that there is a lack of national consistency, which leads to inconsistent work results. This is an organizational problem that OSHA needs to resolve. She also believes there is a lack of transparency. There are many aspects to this, including what information a complainant would want in order to inform the decision to file a complaint. The potential for long delays might be information a complainant would want. The WIM requires that complaints be docketed under all applicable statutes. Is this being followed? A large number of complaints are screened out. A lack of transparency means that the public can't verify if proper procedures are being followed. We know there are problems with delays. OSHA needs to triage claims. Preliminary reinstatement needs to be used. Safety complaints need to be sent to enforcement. If a complainant has alleged protected activity under multiple statutes, it needs to be investigated under all applicable statutes. OSHA must refer cases to other agencies that have jurisdiction, such as the NLRB. OSHA should reestablish the Whistleblower Protection Advisory Committee.

Ms. Spieler had concerns related specifically to COVID-19 complaints. She noted that there have been approximately 1,100 11(c) cases. Of those, 92 have been docketed, and 11 have been completed. She wondered why so few have been docketed and noted that the numbers do not provide specific information. What's the nature of the complaint? What's the final resolution or outcome? OSHA isn't currently conducting onsite investigations. She suggested that there should be special procedures for COVID-19 cases. They should be expedited. Investigators need to alert state and local officials. Complainants should be referred to the Wage and Hour Division for COVID-19 relief information.

### **Kyle Welch, Professor, George Washington University**

Mr. Welch researches internal whistleblowing at companies. We see in the media that more whistleblowing means more problems. The data is counterintuitive. Academics would like more data. This could help OSHA as well.

More reports mean that people are more comfortable reporting, not necessarily that a company has more problems. Firms with more internal whistleblower reports tend to be better off because they can fix problems more quickly. More external reports generally mean more problems.

### **Chip Darius, President, Safety Priority**

Mr. Darius spoke about ways that OSHA could deliver better customer service. Currently, OSHA receives complaints online, fax, mail, and telephone. Complainants should be able to file complaints via text as well. OSHA should add videos to its whistleblower site. These could be 3-4 minute videos that instructors can use in trainings. They should be in English and Spanish. The agency should partner with unemployment agencies, workers' compensation insurance providers, hospitals, and physical therapy clinics by providing them with outreach materials. The materials can have a QR code that people can use to look up information on smartphones. They can also go to the Small Business Administration to educate new businesses. Finally, outreach should be provided to the railroad industry.

### **Nancy Lessin, Retired, United Steelworkers - Tony Mazzocchi Center**

Ms. Lessin's written comments can be accessed in the meeting docket - <https://www.regulations.gov/docket?D=OSHA-2018-0005>.

Ms. Lessin noted that there will never be enough inspectors to keep everyone safe. Workers must be the eyes, ears, and voices when things are not right. Real, meaningful protection has never been needed more than now. There is imminent danger when going to work during a pandemic.

Ms. Lessin believes that changes need to be made to Section 11(c), including extending the time to file complaints, a private right of action, preliminary reinstatement, and changing the standard of proof to contributing factor.

Ms. Lessin urged OSHA to step up safety and health enforcement. She also recommended that OSHA stop rolling back guidelines and issue standards, not voluntary guidelines. In addition, Ms. Lessin suggested that OSHA issue an enforcement directive establishing a policy that Section 11(c) prohibits employers from retaliating against workers who raise concerns not just with employers or the government, but via social media and to the press.



**Thomas Batchelor, Safety Director, Quantum North America**

Mr. Batchelor spoke about a whistleblower case that did not have an outcome he agreed with. The case was screened out and not investigated. He thinks that if a person disagrees, they should be able to take it a step above OSHA or be able to bring it in a different forum.

**Abderrazak Bari, Banker, Wells Fargo**

Mr. Bari recommended that OSHA consider global risk management and act as a neutral party to resolve whistleblower issues. OSHA has to work to resolve the issues and not be a part of the issues.

**Billie Garde, Attorney, Clifford and Garde, LLP**

Ms. Garde noted that, as a preliminary matter, whistleblower protections provide a critical barrier to protect the rest of us. That barrier is being eroded. Whistleblower laws are ultimately about preventing the chilling effect. In some cases, settlements are late, inadequate, and do not deter the act of retaliating against whistleblowers. Complaints take so long to investigate that the chilling effect continues.

The agency needs to change to a bias toward action. Instead of a complaint going to the bottom of the stack, if it's publicly known retaliation, the agency should make it a priority. The agency can make changes to the WIM. OSHA's timeliness issues relate to a lack of resources.

OSHA should put together a two-year task force to look at the backlog and bring all cases up to date.

Congress wants OSHA to have a bias toward investigation. One investigator told her they have 100 cases. After a year, the investigator still had 100 cases. This is a problem with case management.

There are some good investigators, but they are overwhelmed. Some don't understand burden of proof. Investigators will accept Respondent's defense because they are overworked.

**Lisa Fried-Grodin, Partner, Meyers Fried-Grodin LLP**

Ms. Fried-Grodin is an employment attorney who represents both employers and employees. During the COVID-19 crisis, companies have closed or shifted employment to remote work. They're waiting for guidance on reopening. Small businesses are stressed. They really need information. What she's hearing is that there's a time lag at OSHA in dealing with complaints. She anticipates a huge problem as more employers return people to work without sufficient resources to address questions and complaints.

Ms. Fried-Grodin made the following recommendations:

- Employers are crying for detailed information from OSHA on what they need to do to keep workplaces safe. They need practical, easy to understand guidance, such as Q and As and webinars. Employers also need information on how to respond to an inspection, especially those who may be facing safety issues for the first time.
- Many employees are afraid, vulnerable, and need information on what is reasonable for them to expect from their employers when they come back to work, such as what is reasonable to say no to. The same type of guidance for employees is needed. There needs to be very easily understandable guidance on when they can refuse to work. For example, EEOC did a good webinar on scenarios people might encounter.

Ms. Fried-Gordon also commented on overwhelming situations facing OSHA offices. State departments of labor are overwhelmed with people applying for unemployment, people whose financial health is hanging in the balance. As lots of workers come back to work, employees don't want to feel like they have no options. OSHA can assume there will be a bump in complaints. The agency needs to educate people. Situations don't have to get to the point of needing OSHA to get involved.

#### **Maria Browne, Registered Nurse, Quality First**

Ms. Browne used to work for a company that provided medical staff to various places. She was retaliated against because she submitted a truthful review about understaffing on the internet. She wrote about violations of inmate rights prior to COVID-19. She filed a whistleblower complaint. Her previous employer and facility terminated her. Why did OSHA wait for a pandemic to protect nurses? OSHA should also protect her situation regardless of whether there's a pandemic or not. She submitted claims to Georgia Department of Labor. She talked to the National Labor Relations Board. They said her situation didn't qualify because she worked as a manager. She wants to tell OSHA about her retaliation and appeal to OSHA to consider understaffing as an occupational hazard to nurses.

#### **Tim Marcum, Safety & Health Specialist, Multnomah County**

Mr. Marcum wanted to emphasize the need for additional resources for whistleblowers. With a changing work force and how communications are done, it's important to have educational resources for the younger generation. They prefer texting and email. It would be great to add information about how the process works to the OSHA website. The site should have real world time lines, so that people understand what they're getting into. We should encourage people to participate in calls like this. How can we improve the system and process? Mr. Marcum agreed that the OSHA whistleblower investigators have too many cases and can't be effective.

#### **Melody Russo, Safety Compliance Officer/Whistleblower Investigator, State of Alaska, Occupational Safety & Health**

Before she was a whistleblower investigator, Ms. Russo was in the chemical industry. During that time, she had never heard of 11(c). Small employers don't have a clue about the range of responsibilities they have as an employer. They know they need to register their business and pay taxes but not much else. Ms. Russo recommended targeting outreach efforts at small

business owners. She noted that employers need some kind of list of what their responsibilities are. OSHA should push information to businesses about what they can expect. The agency could provide different things for specific North American Industry Classification System (NAICS) codes. The agency should also consider working with human resource associations, chambers of commerce, public assistance agencies, trade unions, industry representatives, and so on. Information discussed with these groups should include information about OSHA whistleblower regulations, website content, a QR code, and licensure elements. Non-profit organization boards of directors should receive this information as well.

### **Mike Elliott, Whistleblower/Advocate (Retired), Rail Labor**

Mr. Elliott is a former whistleblower under the Federal Railroad Safety Act (FRSA). He noted that complaints should be investigated timely and that there are not enough investigators. Investigators shouldn't have more than 20 cases at a time. The agency should also have adequate clerical staff. Once a complaint is investigated, it should go directly to the administrative law judge (ALJ). Employers should not have access to confidential witnesses. OSHA should continue to seek subpoena power for witnesses and necessary documents

He also recommended that OSHA keep a list of attorneys who will take cases for a reasonable amount. The punitive damages cap needs to be removed.

### **Ron Kaminkow, General Secretary, Railroad Workers United**

Written comments from Mr. Kaminkow can be accessed in the meeting docket - <https://www.regulations.gov/docket?D=OSHA-2018-0005>.

Mr. Kaminkow relayed that he believes the FRSA is so fatally flawed that there's nothing we can do until the law is modified. The long process is a deterrent to workers filing claims. He recommended removing the statutory punitive damages cap. He noted that there is no requirement that employers tell their employees about the law.

Mr. Kaminkow made several suggestions to make FRSA more effective:

- Employees with an active whistleblower case should get to stay on the job during the investigation
- The punitive damages cap should be removed
- An OSHA ruling should be introduced as evidence at the ALJ hearing
- Whistleblower rights need to be clearly outlined and presented to all workers
- Managers who violate the law need to be disciplined

### **Steven Schrag, Co-chair, ConnectiCOSH**

Worker voices are muffled. There is no good reason for workers to have a voice on the street but not at work. Their voice at work helps us protect their health and safety. During the pandemic, he talked to many kinds of workers. Many of them do not have adequate protections and are afraid to go to work.

The current OSHA poster is not effective and should be replaced. There needs to be a new poster in every workplace. The version of the poster from 1979 is better.

OSHA can tell employers to hand out information to workers about successful OSHA 11(c) violations where workers win. The agency needs to use its authority to make the program more user friendly. There needs to be a list of violators published on the OSHA website. OSHA needs to revise the poster. Workers need information in their hands about their rights every quarter.

### **Patricia Brown, OSHA Whistleblower Investigator (Retired), OSHA Region X**

Ms. Brown is a former whistleblower investigator and alleged that the work environment was hostile. She recommended raising staffing levels to meet demand, modernizing technology, and streamlining procedures so investigations can be quickly closed. The agency should create small teams to review data of repeat offenders and bring them into compliance. Relatively few employers lead to a bottleneck.

She recommended moving the whistleblower program to another agency or to the Department of Justice but not during this administration.

She indicated that the program is not adequately funded. Ms. Brown alleged that Region X had been in backlog reduction mode. She alleged that some investigations were prematurely closed out, and the mission became about statistics, not protecting whistleblower rights.

### **Ross Grooters, Working Locomotive Engineer and Co-Chair, Railroad Workers United**

Workers are left to pick up the pieces when they blow the whistle. Some have lost jobs and careers. There is a fear of reporting health and safety conditions. Many workers will put themselves at risk rather than speak up. Employees don't want to have a target on their backs. Managers must be held responsible. Mr. Grooters relayed a scenario in which he reported a safety issue and feared retaliation. He noted that problems won't be solved just by asking how to improve communication. There needs to be stronger penalties and faster resolution.

In addition to railroads being big violators, now there are severe outbreaks of COVID-19 in meatpacking plants. Life threatening issues should be able to be reported without fear of retaliation.

### **Open Floor**

### **Melody Russo, Safety Compliance Officer/Whistleblower Investigator, State of Alaska, Occupational Safety & Health**

Ms. Russo noted that at-will employment laws are often cited as a defense by employers. OSHA needs to give 11(c) information to employers in at-will states. Federal OSHA needs to provide training that at-will does not mean action with impunity.

### **Terrell Jones – Corporate Safety Manager, PacMoore Products**

Mr. Jones noted that it is imperative that we have a robust plan for employees to have a voice. We need to address the way the new workforce communicates. There is a trend that the new generation finds a way to complain. He remarked that we must look at employees that complain even though protections are available to them. Mr. Jones added that many young employees simply don't want to work. We need to look at the effect on business when they're berated with constant false claims and need to invest dollars into resolving those claims. There needs to be a plan that works for both sides. That way, we can get to a comfortable place with whistleblower protections.

### **Nichole Goluskin, Disabled**

Ms. Goluskin noted that, regarding customer service, OSHA needs to follow through on its promises. This is easier said than done. The agency needs to look at concluding its investigations within the legal time frame. This would require more resources. Whistleblowers are people who tend to be proactive by nature and would like to be involved in helping you help us. There should be a campaign to ask Congress to give the whistleblower program more funds.

Ms. Goluskin wondered how often a whistleblower says in writing that this settlement doesn't make me whole, and the settlement is approved anyway. It would improve service if agents did not stand for bullying whistleblowers around by not approving agreements that don't make whistleblowers whole.

### **Maria Browne, Registered Nurse, Quality First**

Ms. Browne agreed with comment regarding at-will states. She also advocated for a policy that if an employee submits a whistleblower complaint, they can't be fired right away. She also wondered, if she doesn't qualify under 11(c), where does she go? Understaffing is the biggest risk for patients and nurses who are caring for patients. For COVID-19, we need healthcare workers to battle the invisible enemy.