

# Investigator’s Desk Aid to the Pipeline Safety Improvement Act (PSIA) Whistleblower Protection Provision

49 U.S.C. 60129

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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 investigating and adjudicating retaliation complaints under PSIA as of the “last revised” date listed below. This Desk Aid is internal guidance directed to OSHA personnel and is subject to change at any time. This Desk Aid is not a standard or regulation, and it neither creates new legal obligations nor alters existing obligations. 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. The Federal Register, Code of Federal Regulations, and decisions of the Department of Labor’s Administrative Review Board remain the official sources for the views of the Secretary of Labor on the interpretation of this whistleblower protection provision.*

### Abbreviations Used in this Desk Aid:

<b>PSIA</b>	Pipeline Safety Improvement Act (used in this Desk Aid to refer just to the Act’s whistleblower protection provision)
<b>PHMSA</b>	Pipeline and Hazardous Materials Safety Administration
<b>DOT</b>	Department of Transportation
<b>OSHA</b>	Occupational Safety and Health Administration
<b>chapter 601</b>	49 U.S.C. chapter 601, relating to pipeline safety

## I. PSIA in a Nutshell

The Pipeline Safety Improvement Act (PSIA) protects employees from retaliation for reporting violations of federal laws related to pipeline safety and security, refusing to violate such laws, or engaging in other protected activities.

PSIA's whistleblower protection provision can be found at 49 U.S.C. 60129. The procedures for the investigation and resolution of PSIA whistleblower complaints can be found at 29 CFR Part 1981. Most of the definitions relevant to PSIA whistleblower complaints can be found at 49 U.S.C. 60101 and 29 CFR 1981.101.

### A. Covered Entity

Under PSIA, no covered employer may discharge or otherwise retaliate against an employee because the employee, whether at the employee's initiative or in the ordinary course of the employee's duties, engaged in any PSIA-protected activity.

#### 1. Pipeline Owner or Operator Coverage

*Who is a covered "employer" under PSIA?*

The statute defines an employer as: (1) a person owning or operating a pipeline facility, or (2) a contractor or subcontractor of such a person.

A **person** for purposes of the PSIA is a corporation, company, association, firm, partnership, joint stock company, an individual, a state, a municipality, or a trustee, receiver, assignee, or personal representative of a person.

*What is a "pipeline facility" under PSIA?*

There are two types of pipeline facilities covered by the PSIA: (1) gas and (2) hazardous liquid.

A **gas pipeline facility** is defined as "a pipeline, a right of way, a facility, a building, or equipment used in *transporting* gas or treating gas during its transportation."

- "Gas" means natural gas, flammable gas, or toxic or corrosive gas.

A **hazardous liquid pipeline facility** is defined as "a pipeline, a right of way, a facility, a building, or equipment used or intended to be used in *transporting* hazardous liquid."

- "Hazardous liquid" means: (1) petroleum and petroleum products; (2) nonpetroleum fuel, including biofuel, that is flammable, toxic, or corrosive or would be harmful to the environment if released in significant quantities; or (3) a substance the Secretary of

Transportation decides may pose an unreasonable risk to life or property when transported by a hazardous liquid pipeline facility in a liquid state (except for liquefied natural gas).

*What does “transporting” gas or a hazardous liquid mean?*

The definitions of gas pipeline facility and hazardous liquid pipeline facility both indicate that the pipeline must be “**transporting**” gas or a hazardous liquid to be covered by the PSIA.

- “**Transporting gas**” means the gathering, transmission, or distribution of gas by pipeline, or the storage of gas, in interstate or foreign commerce, and the movement of gas through regulated gathering lines.<sup>1</sup>
- “**Transporting hazardous liquid**” means the movement of hazardous liquid by pipeline, or the storage of hazardous liquid incidental to the movement of hazardous liquid by pipeline, in or affecting interstate or foreign commerce, and the movement of hazardous liquid through regulated gathering lines.<sup>2</sup>

*What are “gathering pipelines” and how do they impact PSIA coverage?*

**Gathering pipelines** transport gases and liquids from the commodity’s source – such as rock formations located below the drilling site – to a processing facility, refinery, or a transmission line. Gas gathering pipelines collect natural gas from production areas. Hazardous liquid gathering pipelines collect oil and other petroleum products. These pipelines then typically transport the products to processing facilities, which in turn refine the product(s) and send them to transmission pipelines.

Chapter 601 gives limited statutory authority to PHMSA to regulate gathering pipelines under 49 U.S.C. 60101(b). Therefore, unlike transmission and distribution pipelines, many gathering pipelines are not subject to PHMSA regulation. If a respondent’s work relates only to gathering lines not regulated by PHMSA, the respondent will not be regarded as transporting gas or hazardous liquid by pipeline and generally will not be covered by the PSIA whistleblower provision. (See 49 U.S.C. 60101(a)(21) - (22))

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<sup>1</sup> Not including gathering gas (except through regulated gathering lines) in a rural area.

<sup>2</sup> Not including moving hazardous liquid through: (1) gathering lines (except regulated gathering lines) in a rural area; (2) onshore production, refining, or manufacturing facilities; or (3) storage or in-plant piping systems associated with onshore production, refining, or manufacturing facilities.

## 2. Contractor and Subcontractor Coverage

A **contractor** or **subcontractor** of a person owning or operating a pipeline facility violates the PSIA if it retaliates against an employee for engaging in PSIA-protected activity, such as reporting conduct that the complainant reasonably believes is a violation of federal pipeline safety law.

Whether a respondent is a covered contractor or subcontractor depends on the facts of the case. For a contractor or subcontractor to be covered under PSIA, the protected activity must relate to conduct in the entity's capacity as a contractor or subcontractor to a person owning or operating a pipeline facility. Covered contractors and subcontractors can perform a wide variety of services for a person owning or operating a pipeline facility, such as installation and maintenance of a pipeline, testing of pipeline components, and engineering services, among other services.

### Examples:

- A local utility company owns a distribution pipeline for carrying natural gas to customers. The utility company hires a general contractor to upgrade part of the pipeline. The general contractor subcontracts the welding required for the upgrade to a subcontractor. The utility company, the general contractor, and the subcontractor are all PSIA-covered employers.
- A rural pipeline facility contains only crude oil gathering pipelines. These pipelines are five inches in diameter and operate under low pressure. The owner or operator of the pipeline facility is not a covered entity under PSIA because the statute specifically exempts crude oil gathering pipelines that: (1) have a diameter of not more than six inches; (2) operate at low pressure; and (3) are located in a rural area that is not unusually sensitive to environmental damage. (*See* 49 U.S.C. 60101(b)(2)(B)(ii))

## 3. Employee Coverage

A complainant must meet the definition of “**employee**” to be covered under the PSIA. The Department of Labor’s regulations define an employee under the PSIA as an individual presently or formerly working for a person owning or operating a pipeline facility or a contractor or subcontractor of such a person, an individual applying to work for a person owning or operating a pipeline facility or a contractor or subcontractor of such a person, or an individual whose employment could be affected by a person owning or operating a pipeline facility or a contractor or subcontractor of such a person.

## B. Protected Activity

An employee is protected from retaliation under PSIA because the employee:

1. Provided, caused to be provided, or is about to provide or cause to be provided, to the employer or the federal government, information relating to any violation or alleged violation of any order, regulation, or standard under chapter 601 of title 49 U.S. Code (“chapter 601”) or any other federal law relating to pipeline safety;

**OR**

2. Refused to engage in any practice made unlawful by chapter 601 or any other federal law relating to pipeline safety, if the employee has identified the alleged illegality to the employer;

**OR**

3. Provided, caused to be provided, or is about to provide or cause to be provided, testimony before Congress or at any federal or state proceeding regarding any provision (or proposed provision) of chapter 601 or any other federal law relating to pipeline safety;

**OR**

4. Commenced, caused to be commenced, or is about to commence or cause to be commenced, a proceeding under chapter 601 or any other federal law relating to pipeline safety, or a proceeding for the administration or enforcement of any requirement imposed under chapter 601 or any other federal law relating to pipeline safety;

**OR**

5. Provided, caused to be provided, or is about to provide or cause to be provided, testimony in any proceeding described in the previous bullet;

**OR**

6. Assisted or participated, or is about to assist or participate, in any manner in any proceeding described above or in any other action to carry out the purposes of chapter 601 or any other federal law relating to pipeline safety.

*Does the employee need to prove an employer's actions violated the law?*

No. An employee need not prove that the employer's actions actually violated the law. However, when the employee's protected activity consists of providing information or refusing to participate in alleged violations of pipeline safety law, the employee must **reasonably believe** the conduct at issue would violate pipeline safety law. A report or work refusal based on a reasonable but mistaken belief that conduct violates pipeline safety law is protected.

To have a **reasonable belief**, an employee must have a **subjective belief** (i.e., actually believe that a violation has occurred, is occurring, or is likely to occur), and the belief must be **objectively reasonable** (i.e., it must be possible that a reasonable person in the employee's position would share this belief). In determining whether the employee had an objectively reasonable belief, the employee's training, experience, and educational background are relevant. The employee's report will be considered a protected activity so long as a **reasonable person with the same training and experience** would also believe the relevant activity constitutes a violation.

*How specific does the employee's report of a violation or alleged violation need to be?*

The information the employee provides to the employer or the federal government must be specific enough in relation to a given practice, condition, directive, or event that affects pipeline safety for the employer or the federal government to investigate it. However, the employee's communication to the employer or the federal government need not specifically identify the safety law, regulation, or standard they believe is being violated.

*What are some examples of protected activities under PSIA?*

PSIA-protected activities include:

- Reporting pipeline safety complaints to management
- Filing pipeline incident reports with the National Response Center hotline (maintained by the United States Coast Guard)
- Filing pipeline incident reports with PHMSA's National Pipeline Incident Coordinator (NPIC) hotline

Pipeline safety concerns that may give rise to PSIA-protected activity include, but are not limited to, allegations of: faulty pipeline manufacturing procedures, defects in pipeline materials, dangerous pipeline installation procedures, falsification of inspections and records, improper pipeline repairs, unabated pipeline corrosion, equipment failure, pipeline failure, deficient gas detection practices, insufficient required training, unqualified personnel, operator errors, operational deficiencies, and/or inadequate investigation and analysis of pipeline accidents.

The following are examples of cases in which the Department of Labor has found the complainant engaged in PSIA-protected activity:

- An employee was responsible for welding gas pipelines. He refused to weld a segment of corroded and rusted pipe because he believed it was unfit for transporting natural gas. The employer investigated the employee's safety concerns and proposed a solution that

would address them. However, the employee continued to refuse to complete the weld and install the pipes. The employee's initial work refusal was protected because it was: (1) communicated to the employer, and (2) based on a reasonable and good faith belief that he would be engaging in a practice made unlawful by federal pipeline safety law. However, the employee's ultimate work refusal was not protected as it lost its protected status after a responsible management official investigated and found the perceived hazard to be safe, and adequately explained this to the employee.

- An employee was an energy technician supervisor trainee who worked for a utility that operated natural gas pipelines. During an employer-provided training session on natural gas that was required by PHMSA rules, the employee expressed concerns to instructors that trainees should be trained on the safe way to perform certain procedures. These comments were protected because the employee reasonably believed that the training did not adequately address safe procedures for working with natural gas and his comments provided information to his PSIA-covered employer regarding his concerns that the training for individuals responsible for maintaining and repairing pipeline facilities did not properly address safety.
- While working as a pipeline inspector, an employee (1) reported to his employer that another employee has been falsifying inspection reports; (2) issued a stop work order to a buffing and grinding crew based on a defect in a pipeline segment; and (3) submitted complaints to a safety committee. These activities were protected because the employee's concerns about fraudulent inspections and physical defects on the pipe related to pipeline safety and implicated reasonably perceived violations of federal pipeline safety law.

*When should OSHA investigate a case under both PSIA and Section 11(c) of the Occupational Safety and Health Act (OSH Act), 29 U.S.C. 660(c), or another OSH-enforced whistleblower protection statute?*

Some of the whistleblower complaints that OSHA receives under PSIA only allege that the employee suffered retaliation for having raised concerns related to pipeline safety or violations of PHMSA rules and do not allege protected activity that would relate to any other OSHA-enforced whistleblower protection statute. However, in some cases, the allegations in the employee's complaint may implicate both PSIA and another OSHA-enforced whistleblower protection statute such as Section 11(c) of the OSH Act or one of the environmental whistleblower statutes.<sup>3</sup>

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<sup>3</sup> The environmental whistleblower statutes that OSHA enforces are: (1) the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9610; (2) the Toxic Substances Control Act (TSCA), 15 U.S.C. 2622; (3) the Clean Air Act (CAA), 42 U.S.C. 7622; (4) the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. 1367; (5) the Safe Drinking Water Act (SDWA), 42 U.S.C. 300j-9(i); and (6) the Solid Waste Disposal Act (SWDA), 42 U.S.C. 6971.

### *Overlap Between PSIA and Section 11(c) of the OSH Act*

Employees performing work involving gas or hazardous liquid pipeline facilities may complain to OSHA regarding retaliation for raising concerns related to safety or health in the workplace. Such complaints should be investigated, as appropriate, under Section 11(c) of the OSH Act. For example, trenching issues arise when proper cave-in protection is not in use or buried electrical power lines might be contacted. Thus, OSHA should docket a case under both PSIA and Section 11(c) of the OSH Act if the complaint alleges retaliation for having engaged in activity that would be protected under both statutes.

#### *Example of a case that may require investigation under both PSIA and Section 11(c):*

- An employee working as an inspector for a transmission pipeline operator is assigned to monitor a third-party excavation procedure near its buried pipelines in order to prevent damage to the existing pipelines. When the employee arrives at the worksite, he notices that some flags and markers designating existing buried pipelines have been damaged or removed during initial site preparation. He notifies his supervisor and excavation work is not allowed to begin until the situation can be remedied. Later in the morning as excavation equipment is being loaded back onto the trailer due to work stoppage, the transmission pipeline worker sustains a crushing injury during a back-over event and is terminated immediately after self-reporting his injury. The employee's report to his employer about missing flags marking existing buried pipelines could be protected under PSIA and the employee's report to his employer about the work-related injury could be protected under Section 11(c). Therefore, if the retaliation complaint was timely filed with OSHA under both statutes, OSHA should docket and investigate this case, as appropriate, under both PSIA and Section 11(c).

### *Overlap between PSIA and an environmental protection statute*

Employees performing work involving gas or hazardous liquid pipeline facilities may complain to OSHA regarding retaliation for raising concerns related to an environmental hazard at the worksite. Such complaints should be investigated, as appropriate, under the applicable environmental protection statute. For instance, if an employee raises concerns to the employer related to soil or water contamination in connection with the operation of a gas or hazardous materials pipeline, the employee's concerns may be protected under both PSIA and an environmental whistleblower statute. Or, an employee working on a pipeline may report both pipeline safety concerns to PHMSA and toxic chemical releases to the Environmental Protection Agency (EPA) or the state where the incident has occurred. OSHA should docket a case under both PSIA and all applicable environmental statutes if the complaint alleges retaliation for having engaged in activity that would be protected under multiple statutes.

*Example of a case that may require investigation under both PSIA and environmental whistleblower protection statutes:*

- While performing routine maintenance repairs, an employee of a pipeline maintenance and repair contractor for a major oil and gas producer finds discolored grass indicating that petroleum may have leaked out into the ground where a pipe was buried. Upon checking the maintenance records, the employee discovers that the section of leaking pipeline had not been periodically inspected as required. The worker notifies his supervisor about his observations and tells her they must report the incident to DOT/PHMSA and to the state department of environmental protection. The supervisor tells the employee not to fill out any paperwork until she can discuss it with officials at the company. The next day, the employee asks his supervisor about preparing an estimate of the amount of petroleum that leaked from the pipeline. The supervisor tells him not to worry about it because the incident is not reportable. The employee continues to press for reporting to both PHMSA and the state department of environmental protection, so his supervisor says that she will need more time to look into the reporting requirements. Later that afternoon, a representative of the oil company comes to the worksite and meets with the employee. The representative tells the employee that he has done a good job but his services are no longer needed, so he must pack up all his tools and leave the worksite within fifteen minutes. The employee believes he is being retaliated against for the protected activity of insisting on reporting the leak to the proper government agencies.

*Does PSIA contain any explicit exceptions to protection?*

The PSIA does not protect employees who, acting on their own, without express or implied direction from the employer (or the employer's agent), deliberately violate any requirement relating to pipeline safety under chapter 601 or any other federal law. This exception to protection is an affirmative defense that the employer must raise and requires an element of willfulness. In other words, for the exception to apply, the evidence must show that the employee knew or acted with reckless disregard for whether his or her conduct violated the law.

## **II. Procedures for Handling PSIA Complaints**

Procedures for handling PSIA complaints are set forth in [29 CFR Part 1981](#). Below is a summary of the procedural provisions most relevant to the OSHA investigation. More information is also available in the "[What to expect during an OSHA Whistleblower Investigation](#)" section of OSHA's website and in the [OSHA Whistleblower Investigations Manual](#).

## A. Complaint

*Who may file:* An employee who believes that he or she has been retaliated against in violation of PSIA may file a complaint with OSHA. The employee may also have a representative file on the employee's behalf.

*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 180 days of when the alleged adverse action took place. 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 PSIA cases must be sent to PHMSA.

## B. Investigation

Upon receiving a complaint, OSHA will evaluate the complaint to determine whether 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 PSIA-protected activity;
2. The respondent knew or suspected that the employee engaged in PSIA-protected activity;
3. The employee suffered an adverse action;<sup>4</sup> and
4. The circumstances were sufficient to raise the inference that the protected activity was a contributing factor in the adverse action.

If the complaint meets these requirements, OSHA will ask for a position statement from the respondent and proceed with the investigation. If it does not meet these requirements, and the complainant does not agree to administrative closure of the case, OSHA will dismiss the complaint with notice to the complainant and the respondent of the right to request a hearing before a Department of Labor administrative law judge (ALJ).

PSIA uses a "contributing factor" standard of causation. Thus, following the investigation, OSHA will find that retaliation occurred if it determines that there is reasonable cause to believe that PSIA-protected activity was a contributing factor in the decision to take adverse action against the complainant and the respondent has not shown by clear and convincing evidence that

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<sup>4</sup> An adverse action is an action that might dissuade a reasonable employee from engaging in PSIA-protected activity. Examples of adverse actions include (but are not limited to) firing, demoting, denying overtime or a promotion, or disciplining the employee.

it would have taken the same action in the absence of the protected activity. A contributing factor is a factor which, alone or with other factors, in any way affects the outcome of a decision.

If OSHA finds reasonable cause to believe that retaliation occurred, it will issue findings and a preliminary order stating the relief to be provided. The relief may include reinstatement, back pay, compensatory damages, other remedies for the retaliation (such as a neutral reference), and reasonable attorney fees and costs.

If OSHA does not find reasonable cause to believe that retaliation occurred, it will issue findings dismissing the complaint.

If the complainant and respondent agree to settle their case during the investigation, they must submit the settlement agreement for OSHA's review and approval.

### **C. Administrative and Judicial Review**

Either the complainant or the respondent may object to OSHA's findings within 60 days and request a hearing before an ALJ. Filing objections will stay OSHA's order for all relief except reinstatement, which is *not* automatically stayed. If no objections are filed, OSHA's findings become the final order of the Secretary of Labor, not subject to review.

The ALJ proceeding is a *de novo*, adversarial proceeding in which both the complainant and the respondent have the opportunity to seek documents and information from each other in discovery and to introduce evidence and testimony into the hearing record. OSHA does not typically participate in the ALJ proceeding. Documents and other information submitted to OSHA during the investigation do not automatically become part of the record in the ALJ proceeding. However, both the complainant and the respondent may introduce evidence that they obtained or used during OSHA's investigation in the ALJ proceeding. The ALJ may hold a hearing or dismiss a case without a hearing if appropriate. Either the complainant or the respondent may appeal the ALJ's decision in the case to the Department of Labor's Administrative Review Board (ARB), which may either accept or reject the case for review. The ARB's decision is subject to discretionary review by the Secretary of Labor. A complainant or respondent may obtain review of a reviewable, final decision by the Department of Labor by appealing to the appropriate U.S. court of appeals.

### **D. Kick-Out**

PSIA permits a complainant to bring a *de novo* PSIA action in federal district court if the Department of Labor has not reached a final decision on the complainant's PSIA claim, 210 days have passed since the filing of the complaint with OSHA, and the delay is not due to the bad faith of the complainant.

### III. Resources

The PHMSA website contains a wealth of information that can be helpful to OSHA investigators in PSIA whistleblower cases, including PHMSA regulations and other advisory materials. Materials that may be particularly useful in whistleblower investigations include:

1) Directory of Information Highlights:

A directory with resources on major topics related to pipeline safety.

<https://primis.phmsa.dot.gov/comm/HighlightDirectory.htm?nocache=1178>

2) Pipeline Basics:

A simple pipeline Q&A.

<https://primis.phmsa.dot.gov/comm/PipelineBasics.htm?nocache=2327>

3) Pipeline Glossary:

A glossary with common pipeline terminology.

<https://primis.phmsa.dot.gov/comm/glossary/index.htm?nocache=3064#ASTMInternational>

4) Pipeline Library:

A reference library with links to fact sheets on various pipeline topics.

<https://primis.phmsa.dot.gov/comm/PipelineLibrary.htm?nocache=3834>

5) Interpretations:

Interpretations can provide insight into how regulations should be applied to different fact patterns.

<https://www.phmsa.dot.gov/regulations/title49/b/2/1/list?filter=Pipelines>

## Attachment 1: Optional Worksheet: Analyzing PSIA Whistleblower Complaints

In order to issue merit findings, answers 1 to 9 must be "yes" and answer 10 must be "no."

	Yes	No
<b>Timeliness</b>		
1. Was the complaint filed within 180 days of the alleged adverse action (or tolling applies)?	<input type="checkbox"/>	<input type="checkbox"/>
<b>Coverage</b>		
2. Is respondent a person owning or operating a pipeline facility, or a contractor or subcontractor? (See Desk Aid pp. 2-4)	<input type="checkbox"/>	<input type="checkbox"/>
3. Is complainant an employee within the meaning of PSIA? (See Desk Aid p. 4)	<input type="checkbox"/>	<input type="checkbox"/>
<b>Protected Activity</b>		
4. Has complainant (pick at least one): (See Desk Aid pp. 5-9)		
a. Provided information to the employer or the federal government relating to any violation or alleged violation of any order, regulation, or standard under chapter 601 or any other federal law relating to pipeline safety?		
b. Refused to engage in any practice made unlawful by chapter 601 or any other federal law relating to pipeline safety, if the employee has identified the alleged illegality to the employer?		
c. Provided testimony before Congress or at any federal or state proceeding regarding any provision (or proposed provision) of chapter 601 or any other federal law relating to pipeline safety?	<input type="checkbox"/>	<input type="checkbox"/>
d. Commenced a proceeding under chapter 601 or any other federal law relating to pipeline safety, or a proceeding for the administration or enforcement of any requirement imposed under chapter 601 or any other federal law relating to pipeline safety?		
e. Provided testimony in any proceeding described in the previous bullet?		
f. Assisted or participated in any manner in any proceeding described above or in any other action to carry out the purposes of chapter 601 or any other federal law relating to pipeline safety?		
5. For items 4a., 4b., or 4d., did complainant have a subjective, good faith belief that the conduct complained about violated the law? (See Desk Aid p. 6)	<input type="checkbox"/>	<input type="checkbox"/>
6. For items 4a., 4b., or 4d., could a reasonable person with similar training, knowledge, and experience believe that a violation occurred, is occurring, or is likely to occur? (See Desk Aid p. 6)	<input type="checkbox"/>	<input type="checkbox"/>
<b>Employer Knowledge</b>		
7. Did respondent know or suspect that complainant engaged in the protected activity? (Remember that knowledge may be imputed to respondent using cat's paw theory or the small plant doctrine if warranted by the evidence.)	<input type="checkbox"/>	<input type="checkbox"/>
<b>Adverse Action</b>		
8. 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 PSIA-protected activity. Common examples include firing, demoting, or disciplining the employee.)	<input type="checkbox"/>	<input type="checkbox"/>
<b>Nexus (Contributing Factor)</b>		
9. Was complainant's PSIA-protected activity a <i>contributing factor</i> in respondent's decision to take adverse action against complainant? Evidence that protected activity contributed to an adverse action includes, but is not limited to:		
• Close timing (temporal proximity) between 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.	<input type="checkbox"/>	<input type="checkbox"/>
• Changes in respondent's treatment of complainant after the protected activity.		
• Indicators that respondent's stated reasons for the adverse action are pretext.		
<b>Affirmative Defense</b>		
10. Is there clear and convincing evidence that respondent would have taken the same action against complainant absent the protected activity?	<input type="checkbox"/> No	<input type="checkbox"/> Yes