

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**THOMAS E. PEREZ, UNITED STATES** )  
**SECRETARY OF LABOR,** )  
) )  
**Plaintiff,** )  
) )  
**v.** )  
) )  
**UNITED STATES STEEL CORPORATION,** )  
) )  
**Defendant.** )  
\_\_\_\_\_ )

**CIVIL NO. \_\_\_\_\_**

**COMPLAINT**

Thomas E. Perez, United States Secretary of Labor (“the Secretary”) brings this action to enjoin defendant, United States Steel Corporation (“US Steel”), from violating Section 11(c) of the Occupational Safety and Health Act of 1970, as amended (“the Act”), 29 U.S.C. § 660(c), and for an order directing defendant to pay back wage compensation, to rescind and nullify the discipline of its employees based on their exercising rights under the Act and the implementing regulations, and granting any other appropriate relief that the Court deems proper to redress defendant’s employees who were or are adversely affected by US Steel’s injury reporting policy.

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action under Section 11(c)(2) of the Act, 29 U.S.C. § 660(c)(2), because the Secretary has determined after the investigation of two employee complaints against US Steel that the company’s injury reporting policy and its discipline of the two employees violates Section 11(c) of the Act.

2. Venue lies in the District of Delaware under Section 11(c)(2) of the Act, 29 U.S.C. § 660(c)(2), and under 28 U.S.C. § 1391(b) because the defendant is incorporated under Delaware

law and resides in this district.

### **PARTIES**

3. The Secretary is charged with enforcing the Act, and Section 11(c)(2) of the Act, 29 U.S.C. § 660(c)(2), authorizes the Secretary to bring civil actions in any appropriate district court to obtain remedies and to redress and restrain violations of the anti-discrimination provision of the Act.

4. Defendant US Steel, a corporation organized under the laws of Delaware with its headquarters in Pittsburg, Pennsylvania, is an integrated steel producer. US Steel is now, and has been at all times relevant to the allegations in this complaint, an employer within the meaning of Section 3(5) of the Act, 29 U.S.C. § 652(5), because it has employees and is engaged in a business affecting commerce.

### **STATUTORY AND REGULATORY BACKGROUND**

5. The stated purpose of the Act is to prevent workplace injuries and illnesses by, among other things, providing for appropriate procedures for the reporting and recording of workplace injuries and illnesses. *See* 29 U.S.C. § 651(b)(12).

6. Section 8(c)(2) of the Act, 29 U.S.C. § 657(c)(2), authorizes the Secretary to prescribe regulations requiring employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses, other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

7. The Secretary, through the Occupational Safety and Health Administration (“OSHA”), promulgated final regulations requiring employers to involve employees and their representatives in the injury and illness recordkeeping system. *See* 66 Fed. Reg. 5916, 6132 (final rule) (Jan. 19, 2001) (codified at 29 C.F.R. § 1904.35). The purpose of the agency’s recordkeeping regulation is to

remove all barriers that may exist to the reporting of work-related injuries and illnesses. *See* 66 Fed. Reg. at 6052.

8. Under OSHA's regulations, an employer must record each recordable injury or illness within seven (7) calendar days of receiving information that a recordable injury or illness has occurred. *See* 29 C.F.R. § 1904.29(b)(3).

9. Section 11(c)(1) of the Act, 29 U.S.C. § 660(c)(1), prohibits any person from discharging or otherwise discriminating against any employee because of the exercise by such employee on behalf of himself or other others of any right afforded by the Act. OSHA has interpreted this statutory provision to prohibit "discriminating against an employee for reporting a work-related fatality, injury or illness." 29 C.F.R. § 1904.36.

#### **FACTUAL ALLEGATIONS**

10. At all times relevant to the allegations in this complaint, US Steel published and enforced, and continues to publish and enforce, a general safety and plant conduct rule requiring all employees to report immediately all injuries to a supervisor ("immediate reporting policy").

11. The company's general safety and plant conduct rule does not define the term "injury." The company's general safety and plant conduct rule does not define the term "immediately."

12. On or about August 5, 2014, US Steel hired John Armstrong ("Armstrong") as an employee of the company. At all times relevant to the allegations in this complaint, Armstrong was employed by US Steel as a full-time bander at US Steel's Irvin Plant in West Mifflin, Pennsylvania.

13. On February 15, 2014, while employed by US Steel at the Irvin Plant, Armstrong slightly bumped his head on a low-hanging beam while wearing a protective hard hat. Armstrong did not feel any pain or notice any discomfort at the time and was able to complete his shift without further incident. At the time of the event, Armstrong did not report it to his supervisor.

14. On February 19, 2014, after experiencing stiffness through his right shoulder, Armstrong visited a doctor.

15. On February 19, 2014, following Armstrong's visit to the doctor, Armstrong's collective bargaining representative reported to US Steel that Armstrong had bumped his hard hat on a low-hanging beam.

16. On February 21, 2014, US Steel suspended Armstrong for five days without pay because Armstrong failed to comply with the company's immediate reporting policy. Alternatively, on February 21, 2014, US Steel suspended Armstrong for five days without pay for reporting a workplace injury.

17. Armstrong subsequently filed a complaint with OSHA under Section 11(c)(2) of the Act, 29 U.S.C. § 660(c)(2), alleging that US Steel had suspended him without pay in retaliation for reporting a workplace injury.

18. OSHA investigated Armstrong's complaint and determined that US Steel violated Section 11(c)(1) of the Act, 29 U.S.C. § 660(c)(1), by suspending Armstrong without pay because he engaged in the protected activity of reporting a workplace injury when he realized he was injured, or, alternatively, because Armstrong reported a workplace injury.

19. To date, US Steel has failed to rescind its discipline of Armstrong and has refused to compensate him for lost wages and other damages suffered as a result of the company's improper discipline, in continuing violation of Section 11(c)(1) of the Act, 29 U.S.C. § 660(c)(1).

20. On or about March 7, 1994, US Steel hired Jeff Walters ("Walters") as an employee of the company. At all times relevant to the allegations in this complaint, Walters was employed by US Steel as a full-time utility technician at US Steel's Clairton Plant in Clairton, Pennsylvania.

21. On February 12, 2014, while employed by US Steel at the Clairton Plant, Walters

noticed a small splinter in his thumb. Walters removed the splinter and immediately returned to work. Walters subsequently completed his shift. At the time of the event, Walters did not report it to his supervisor.

22. On February 14, 2014, after experiencing swelling in his thumb, Walters visited a doctor and received treatment.

23. Immediately after visiting the doctor, Walters verbally informed his supervisor that he received treatment for an injury arising from a splinter.

24. On February 21, 2014, US Steel suspended Walters for five days without pay because Walters failed to comply with the company's immediate reporting policy. Alternatively, on February 21, 2014, US Steel suspended Walters for five days without pay for reporting a workplace injury. The company later reduced Walters' suspension to two days without pay.

25. Walters subsequently filed a complaint with OSHA under Section 11(c)(2) of the Act, 29 U.S.C. § 660(c)(2), alleging that US Steel had suspended him without pay in retaliation for reporting a workplace injury.

26. OSHA investigated Walters' complaint and determined that US Steel violated Section 11(c)(1) of the Act, 29 U.S.C. § 660(c)(1), by suspending Walters without pay because he engaged in the protected activity of reporting a workplace injury when he realized he was injured, or, alternatively, because Walters reported a workplace injury.

27. To date, US Steel has failed to rescind its discipline of Walters and has refused to compensate him for lost wages and other damages suffered as a result of the company's improper discipline, in continuing violation of Section 11(c)(1) of the Act, 29 U.S.C. § 660(c)(1).

28. Upon information and belief, based on the company's immediate reporting policy, US Steel has disciplined and continues to discipline employees in addition to Walters and Armstrong for

reporting workplace injuries when the employees become aware that they sustain workplace injuries after the “event” or “incident” causing the later-known injury.

29. US Steel’s stringent temporal reporting requirement under its immediate reporting policy makes it impossible or impracticable in many instances for employees to comply with the policy because there are necessarily many situations where an employee will be unaware at the time of an incident that he or she sustained an injury, especially where the nature of the work at issue involves physically strenuous activity.

30. US Steel’s immediate reporting policy discourages reasonable employees from reporting injuries as soon as they realize they have been injured because they must risk violating the company’s temporally stringent requirement under its immediate reporting policy. US Steel’s immediate reporting policy violates the governing regulations establishing a recordkeeping system for recording workplace injuries and illnesses by creating a barrier for reasonable employees to report workplace injuries and illnesses.

## **CAUSES OF ACTION**

### **Count I**

31. The Secretary incorporates by reference the allegations in paragraphs one through thirty.

32. US Steel disciplined Armstrong for reporting a workplace injury in violation of Section 11(c)(1) of the Act, 29 U.S.C. § 660(c)(1).

### **Count II**

33. The Secretary incorporates by reference the allegations in paragraphs one through thirty-two.

34. US Steel disciplined Walters for reporting a workplace injury in violation of Section 11(c)(1) of the Act, 29 U.S.C. § 660(c)(1).

**Count III**

35. The Secretary incorporates by reference the allegations in paragraphs one through thirty-four.

36. US Steel's immediate reporting policy facially and as applied violates OSHA's workplace injury and illness reporting and recordkeeping regulations.

37. US Steel's immediate reporting policy facially and as applied violates the anti-retaliation provision, Section 11(c)(1) of the Act, 29 U.S.C. § 660(c)(1), by discouraging or interfering with reasonable employees' exercise of their right to report workplace injuries and illnesses.

**PRAYER FOR RELIEF**

WHEREFORE, the Secretary prays that this Court enter an Order:

A. Permanently enjoining the defendant, its officers, agents, servants, employees, and all persons acting or claiming to act on its behalf and in its interest from violating Section 11(c)(1) of the Act, 29 U.S.C. §660(c)(1);

B. Directing and compelling the defendant to rescind and nullify its immediate reporting policy;

C. Permanently enjoining the defendant, its officers, agents, servants, employees, and all persons acting or claiming to act on its behalf and in its interest from adopting, publishing, applying, or enforcing any injury or illness reporting policy that requires employees to report their workplace injuries or illnesses earlier than seven (7) calendar days after the injured or ill employee becomes aware of his or her injury or illness;

D. Rescinding the discipline and sanction of Armstrong and Walters;

E. Compelling and directing the defendant to compensate Armstrong and Walters for any and all lost wages and benefits, including interest thereon, compensatory damages, including

damages for emotional distress, interest on compensatory damages for pecuniary losses, consequential damages, including attorney's fees, and punitive damages to deter such conduct by US Steel in the future;

F. Compelling and directing the defendant to post in prominent places at all of its worksites for 60 (sixty) consecutive days notices stating that US Steel will not in any manner discriminate or retaliate against employees because of their engagement, whether real or perceived, in activities protected by Section 11(c) of the Act, 29 U.S.C. § 660(c);

G. Granting the Secretary compensation for costs incurred in this civil action; and

H. Granting such other and further relief as may be necessary and appropriate.

Dated: February 17, 2016

M. PATRICIA SMITH  
Solicitor of Labor

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