

SLIDE: FEDERAL EXPRESS SAFETY CULTURE: FEDEX PILOTS EXPRESS FEAR

The purpose of this video is to bring to the public's attention concerns raised by Federal Express pilots concerning the safety culture within their company.

All quoted references in this video come from three sources: federal regulation, federal case law, or the sworn testimony of FedEx pilots.

SLIDE: THE CRITICAL IMPORTANCE OF FREE AND OPEN PILOT COMMUNICATIONS

The Federal Aviation Administration mandates that all air carriers maintain a Safety Management Systems (SMS) program in accordance with 14 CFR Part 5.

SLIDE: SMS requires that a carrier develop a program that provides for the “promotion of a safety culture.”

This safety culture must promote robust reporting “without fear of reprisal.”

Source: 80 Fed. Reg. 1308, 1318 (Jan. 8, 2015); 14 C.F.R. §§ 5.21(a)(4), 5.71(a)(6) and (7).

In order to ensure that pilots can report compliance issues without fear, the United States Congress enacted the AIR 21 whistleblower statute.

Federal law prohibits an air carrier from taking any **non-trivial** adverse action – including an NOQ grounding – in retaliation for reporting non-compliance with federal aviation standards.

Remedies available under AIR 21 include back pay, compensatory damages, and reasonable attorney's fees.

A complaint must be filed with the OSHA division of the United States Department of Labor within 90 days of the adverse action.

For an overview of your rights under the AIR 21 statute, please go to the video listed on the following screen.

SLIDE: AIR 21 – Whistleblower Statute: A Kitchen Table Conversation
<https://www.youtube.com/watch?v=xzRxxwvA-dGk>

**SLIDE: FEDEX PILOT WHISTLEBLOWERS
SUBJECT TO COMPULSORY PSYCHIATRIC EXAMINATION**

In 2021, a pilot named Captain Phil Seubert reported to FedEx management his determination that his aircraft had been dispatched with a 5,000 pound discrepancy in weight and balance due to the presence of an undocumented 5,000 pound weight cart.

When FedEx failed to provide a response that satisfied him, Seubert boldly pushed the issue up the chain of command.

In December 2021, FedEx removed Seubert from his flight duties and ordered him to submit to a compulsory evaluation to determine if he had an “impairment.” After Seubert satisfied the examiner that he was fit for duty, FedEx **still** declined to reinstate him. Instead, FedEx advised him that he would be subject to a disciplinary investigation that could result in his termination.

FedEx has an unfortunate history in this regard. In a 2017 decision, federal administrative law judge Scott R. Morris, while refraining from imposing liability on the carrier, chastised FedEx for invoking the Germanwings incident as a basis for compulsory psychiatric examination in the absence of any history of a mental health issue:

SLIDE: Sending someone for a mental health evaluation merely because his statements are odd or because one “knew too much” is a slippery slope that must be guarded against.

Respondent treads on thin ice by offering such a flimsy justification for referring Complainant to a mental evaluation in this case. Complainant was well justified to raise his concerns and object to Respondent’s actions.

Source: *Estabrook v. Federal Express Corporation*, Case No. 2014-AIR-00022 at 61 (May 16, 2017).

Judge Morris found FedEx’s actions against the pilot to be “deeply troubling” and sternly admonished:

SLIDE: The quickest way to chill open dialogue in the area of aviation security is to place a person’s livelihood at stake for speaking up.

Source: *Estabrook v. Federal Express Corporation*, Case No. 2014-AIR-00022 at 61 (May 16, 2017).

SLIDE: **FEDEX PILOTS AFRAID TO SPEAK UP**

Has FedEx responded constructively to Judge Morris' warnings?

Do FedEx pilots operate in an environment where they are free to speak up concerning flight operations and safety issues?

It does not appear so.

SLIDE: [Cover page of complaint]

In response to the adverse actions taken against him, Captain Seubert brought an AIR 21 whistleblower action against Federal Express Corporation.

The matter went to trial in the summer of 2024 and is still awaiting a final decision.

However, the sworn testimony of FedEx pilots is disturbing.

SLIDE: ~~[Do not read—skip to post-quote comment]~~

Witness: I'm sure the co-pilots that you've seen or will see are all saying the same thing. Do I want to be the guy, captains saying, "I better stay straight because I know you're the guy that's going to **rat me out.**" Absolutely.

JUDGE MORRIS: I'm going to take this one step further and ask, I'll call it piercing the **fraternity of silence** would be a term that --- that's my term, no one else's.

~~WITNESS: Yes.~~

~~Source: *Seubert v. Federal Express Corp.*, Case No. 2023-AIR-00003
(Hearing on April 25, 2024 at 910).~~

When Judge Morris described FedEx reporting culture as a "fraternity of silence" the witness all too readily agreed with the characterization.

Another pilot witness described in jarring terms the self-censorship experienced by FedEx probationary pilots:

SLIDE: I think on probation, you just kind of want to, for lack of an Air Force term, we would say **shut up and color and get to the finish line** and I think that's kind of where my mindset was at.

Source: *Seubert v. Federal Express Corp.*, Case No. 2023-AIR-00003
(Hearing on April 25, 2024 at 767).

The deficiencies in FedEx's reporting culture were reflected in Judge Morris' incredulity with respect to a pilot's failure to report what he described as serious safety issues related to flight operations for a year and a half.

SLIDE: JUDGE MORRIS: [C]an you explain to me if you were so concerned about the safety of this captain, that you wouldn't even sit in his jump seat, why you waited 18 months to report it, and only reported it after you were **prompted** to report it?

Source: *Seubert v. Federal Express Corp.*, Case No. 2023-AIR-00003
(Hearing on April 23, 2024 at 311).

With respect to FedEx's treatment of safety whistleblower Captain Seubert, Judge Morris' questioning further reflected his concern with the cavalier manner in which the carrier left one of its pilot's twisting in the wind:

SLIDE:

JUDGE MORRIS: [Y]ou get a doctor involved to do a physical evaluation of him within a couple of months, but you can't get him to a hearing for resolution for eight months?

THE WITNESS: I guess from my perspective, you know, I was covered up with a lot of different stuff ... But I didn't, in my mind, put a high priority on it, from the standpoint of expediency, because I knew he was pay protected, he was still collecting a paycheck, and he wasn't working.

Source: *Seubert v. Federal Express Corp.*, Case No. 2023-AIR-00003
(Hearing on June 12, 2024 at 1357).

FedEx management cannot help but know that leaving a pilot in doubt concerning his career for such a prolonged period of time is something close to torture. It is worth remarking that such treatment has been deemed an adverse action under the AIR 21 whistleblower statute.

FedEx pilots should not live in fear. Their safety and our safety on the ground depends on it.

We urge Federal Express Corporation to take immediate steps to ensure that it is in full compliance with its SMS obligations **and** that its pilots are free to speak their minds concerning safety issues without fear of retaliation.

