

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.

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 Pittsburgh, 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

OSCAR L. HAMPTON III
Regional Solicitor

s/ Geoffrey Forney
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Thomas E. Perez, United States Secretary of Labor

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Geoffrey Forney, Department of Labor - Solicitor of Labor's Office
170 S. Independence Mall West, Curtis Center, Ste. 630E
Philadelphia, PA 19106 (forney.geoffrey@dol.gov) 215-861-5137

DEFENDANTS

United States Steel Corporation

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. 660(c)

Brief description of cause:

Discrimination or retaliation against employees for reporting workplace injuries

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

02/17/2016

SIGNATURE OF ATTORNEY OF RECORD

s/ Geoffrey Forney

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.