Federal Whistleblower Statutes Kansas Tort Lawyers Should Know About

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Introduction

Kansas tort lawyers who represent employees are obliged to know about federal statutes that go beyond discrimination like Title VII, ADA, and FMLA. The Occupational Safety and Health Administration enforces 25 federal whistleblower statutes, many of which protect employees in industries central to the Kansas economy. These statutes carry powerful advantages over Kansas common-law retaliatory discharge actions, and the United States Supreme Court has recently reinforced just how employee-friendly they are. In *Murray v. UBS Securities, LLC*, decided unanimously in February 2024, the Court held that a Sarbanes-Oxley Act whistleblower need only prove that protected activity was a contributing factor in the adverse action – and critically, need not prove that the employer acted with retaliatory intent.[1]

Kansas's economic profile makes these statutes particularly relevant. Wichita is the "Air Capital of the World," home to Spirit AeroSystems, Textron Aviation, and their supply chains – many now covered by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21) following its 2020 expansion.[2] Kansas's interstate trucking corridors along I-70 and I-35 bring the Surface Transportation Assistance Act (STAA) squarely into play – as the Tenth Circuit recognized in *TransAm Trucking, Inc. v. Administrative Review Board*, a case involving a Kansas-based trucking company that fired a driver for unhitching a trailer with frozen brakes.[3] Publicly traded employers throughout the state implicate the Sarbanes-Oxley Act's whistleblower provision,[4] and BNSF Railway's extensive Kansas operations place the Federal Railroad Safety Act within reach – as the Tenth Circuit confirmed in a whistleblower retaliation case involving BNSF that addressed both liability and punitive damages under the FRSA.[5]

This article surveys the federal whistleblower statutes most relevant to Kansas practitioners, with particular attention to Tenth Circuit, District of Kansas, and Supreme Court authority. It examines the common substantive framework these statutes share – the contributing factor causation standard and the clear and convincing evidence affirmative defense – and offers practical guidance for Kansas tort lawyers encountering these claims in their wrongful termination practices.

I. Sarbanes-Oxley Act § 806

The Sarbanes-Oxley Act of 2002 (SOX) was enacted in the wake of the Enron and WorldCom scandals to protect investors by improving the accuracy and reliability of corporate disclosures.[6] Section 806, codified at 18 U.S.C. § 1514A, protects employees of publicly traded companies who report conduct they reasonably believe violates the federal mail fraud, wire fraud, bank fraud, or securities fraud statutes, any rule or regulation of the Securities and Exchange Commission, or any provision of federal law relating to fraud against shareholders.[7]

In *Lawson v. FMR LLC*, the Supreme Court broadened SOX's reach significantly, holding that its whistleblower protection extends to employees of private contractors and subcontractors serving public companies.[8] This holding dramatically expanded the universe of covered employees. A Kansas worker employed by a private accounting firm, IT contractor, or consulting company that serves a publicly traded client may now be protected by SOX if the worker reports securities fraud or shareholder fraud.

The Tenth Circuit has developed significant SOX jurisprudence. In *Lockheed Martin Corp. v. Administrative Review Board*, the court addressed the scope of protected activity under SOX. The case involved a director of communications at a publicly traded defense contractor who filed an OSHA complaint alleging SOX violations after she was constructively discharged for reporting what she believed to be fraud by her superior. The Tenth Circuit held that an employee's complaint need not specifically relate to shareholder fraud to be actionable under the Act, so long as the employee reasonably believed the reported conduct violated one of the enumerated federal statutes.[9]

The *Murray* decision in 2024 resolved a circuit split on the meaning of the contributing factor standard under SOX. The Second Circuit had held that a SOX complainant must prove not only that protected activity contributed to the adverse action, but also that the employer acted with "retaliatory intent." The Supreme Court unanimously rejected that heightened standard. Justice Sotomayor's opinion made clear that "contributing factor" means exactly what it says: the employee's protected activity need only be a factor that contributed to the unfavorable personnel action. No separate showing of retaliatory animus is required.[10]

On remand, however, the Second Circuit sounded a cautionary note for practitioners. In *Murray v. UBS Securities, LLC* (on remand), the court vacated the jury verdict, holding that the district court's instruction – which told the jury that a contributing factor was one that "tended to affect in any way" Murray's termination – was overbroad. The Second Circuit clarified that a contributing factor "must actually cause or help cause the termination decision – it is not enough merely to influence the termination, or generally to be the type of thing that tends to cause termination."[11] Kansas practitioners should ensure that jury instructions in kicked-out cases track this formulation, rather than the broader "tended to affect" language the Second Circuit rejected.

SOX's procedures were modeled on AIR21.[12] A complainant files with OSHA within 180 days of the adverse action. If there is no final administrative decision within 180 days, the complainant may "kick out" to federal district court for a de novo jury trial.[13] Importantly for Kansas practitioners, SOX contains an express savings clause preserving state-law rights and remedies. Whether a SOX remedy would nevertheless be treated as an adequate alternative remedy under Kansas retaliatory-discharge doctrine remains an open question.[14]

II. Surface Transportation Assistance Act

The STAA's employee protection provision, 49 U.S.C. § 31105, is one of the oldest OSHA-enforced whistleblower statutes, enacted in 1982 to combat the alarming rate of highway fatalities linked to unsafe commercial motor vehicles.[15] As the Supreme Court recognized in *Brock v. Roadway Express*, the statute serves a dual purpose: protecting individual drivers from retaliation and protecting the public from unsafe commercial vehicles on the highways.[16]

STAA provides two distinct forms of protection. Under § 31105(a)(1)(A), it protects employees who file complaints, institute proceedings, or testify regarding commercial motor vehicle safety violations. Under § 31105(a)(1)(B), it protects drivers who refuse to operate a vehicle when operation would violate a federal motor carrier safety regulation or when the driver has a reasonable apprehension of serious injury due to the vehicle's unsafe condition.[17]

The Tenth Circuit's decision in *TransAm Trucking, Inc. v. Administrative Review Board* illustrates the STAA's refusal-to-operate provision in vivid terms. The case involved a truck driver, Alphonse Maddin, who, after discovering that his trailer's brakes were frozen, unhitched the trailer and drove the tractor to a gas station rather than operate the unsafe combination vehicle. The employer fired him. The majority, per Judge Murphy, held that the driver's act of unhitching the trailer and driving off in the tractor was a "refusal to operate" within the meaning of the STAA, that his protected activity was a contributing factor in his termination, and that substantial evidence supported the Board's award of back pay.[18]

Then-Judge Gorsuch dissented, reasoning that Maddin had not "refused to operate" a vehicle because he drove the tractor away from the trailer. For Kansas practitioners, the split underscores both the breadth of the STAA's protections and the extent to which these statutes can generate serious interpretive disputes.[19]

STAA provides a 180-day filing deadline with OSHA and a kick-out to federal district court if no final decision is issued within 210 days.[20] Notably, STAA is one of the few OSHA-

enforced statutes that expressly authorizes punitive damages—subject to a statutory cap of $250,000 – in addition to reinstatement, back pay, compensatory damages, and attorney's fees.[21]

III. Aviation Investment and Reform Act (AIR21)

Of the statutes discussed in this article, AIR21 may be the most important for Kansas practitioners. Section 42121 of Title 49 (AIR21) protects employees in the aviation industry who provide information relating to violations of federal aviation safety laws or FAA orders, file or assist in proceedings relating to such violations, or testify in such proceedings.[22]

The 2021 Consolidated Appropriations Act significantly expanded AIR21's coverage beyond traditional air carriers to include holders of FAA type certificates and production certificates under 49 U.S.C. §§ 44704 and 44705, along with their contractors, subcontractors, and suppliers. This expansion directly affects Kansas's aviation-manufacturing sector, especially the Wichita region's network of more than 350 suppliers and the more than 450 aerospace suppliers across Kansas.[23] The stakes of AIR21 protection in Kansas became national news in 2024 when former Spirit AeroSystems quality personnel publicly alleged serious defects in Boeing 737 MAX fuselages shipped from Wichita, and former Spirit quality auditor Joshua Dean died while his Department of Labor retaliation complaint remained pending.[24] These events underscore both the safety function AIR21 whistleblowers serve and the real-world consequences Kansas aviation workers may face when they raise concerns.

A Kansas case illustrates the statute's application. In *McMullen v. Figeac Aero North America*, the Administrative Review Board addressed a whistleblower claim arising from a Wichita airline components manufacturing plant, demonstrating that AIR21 protection extends beyond airlines and pilots to the manufacturing workers who build aviation components.[25] The ARB has further held that an employee need not prove that an actual violation occurred; a subjectively held and objectively reasonable belief that a violation exists is sufficient.[26] Internal reporting to management, without filing a formal FAA complaint, qualifies as protected activity,[27] and even an employee's attempt to record a meeting about alleged retaliation has been held protected.[28]

AIR21's filing deadline is the shortest of the statutes discussed here – just 90 days. Unlike STAA, FRSA, and SOX, AIR21 does not include a kick-out provision permitting the complainant to file a *de novo* action in federal district court if the Department of Labor fails to issue a timely decision. Instead, an AIR21 complainant who is dissatisfied with the administrative outcome must pursue the ALJ and ARB process, with judicial review available only in the appropriate United States court of appeals.[29]

IV. Federal Railroad Safety Act and Other Statutes

The Federal Railroad Safety Act, 49 U.S.C. § 20109 (FRSA), deserves special attention from Kansas practitioners. The Tenth Circuit has produced significant jurisprudence under the FRSA. In *BNSF Railway Co. v. U.S. Department of Labor*, the court affirmed the Administrative Review Board's finding that BNSF violated the FRSA when it fired an employee for filing an amended injury report after a work-related vehicle accident.[30] Judge Phillips's opinion is a textbook application of the contributing factor framework: the court held that substantial evidence supported the ALJ's finding that the employee's protected activity – filing an amended injury report – was a contributing factor in his termination, and that BNSF failed to meet its burden of showing by clear and convincing evidence that it would have made the same decision absent the employee's report.[31]

The Supreme Court's *Murray* holding has already begun to reshape FRSA litigation. In *Ziparo v. CSX Transportation, Inc.*, the Second Circuit overruled its prior precedent requiring FRSA whistleblowers to prove retaliatory intent, holding that *Murray*'s reasoning applies with equal force to the FRSA because, like SOX, the FRSA derives its statutory framework from AIR21 and concerns an industry with significant potential to create public harm. The court held that an FRSA whistleblower can establish a prima facie case of retaliation through circumstantial evidence alone, including the timing of the employer's adverse action.[32] Although *Ziparo* is Second Circuit authority, the Tenth Circuit's *BNSF Railway* decision never imposed a retaliatory intent requirement, meaning Kansas practitioners can cite both circuits in support of the contributing factor standard's straightforward application.

Punitive damages under the FRSA are also capped at $250,000.[33] Practitioners should note that FRSA includes an election-of-remedies provision: an employee may not seek protection under both the FRSA and another provision of law for the same allegedly unlawful act of the railroad carrier.[34]

Several other OSHA-enforced statutes warrant Kansas practitioners' attention. The Energy Reorganization Act, 42 U.S.C. § 5851, protects nuclear-industry workers – relevant given the Wolf Creek Nuclear Generating Station near Burlington, Kansas, which has already generated ERA whistleblower litigation in the Tenth Circuit.[35] The Pipeline Safety Improvement Act, 49 U.S.C. § 60129, protects pipeline industry employees, relevant to Kansas's extensive pipeline infrastructure. The environmental whistleblower statutes – including the Clean Air Act, Clean Water Act, and CERCLA – cover employees who report environmental violations, though practitioners must be alert to their extremely short 30-day filing deadlines.[36]

The Taxpayer First Act of 2019, 26 U.S.C. § 7623(d) (TFA), is a newer addition to the OSHA-enforced whistleblower statutes and one that Kansas practitioners should not overlook. TFA protects employees who provide information regarding potential underpayment of taxes, tax fraud, or any conduct the employee reasonably believes violates the internal revenue laws – whether reported to the IRS, to Congress, or internally to a supervisor.[37] TFA uses the same contributing factor framework as the other statutes surveyed here, provides a 180-day filing deadline, and permits a kick-out to federal district court if no final decision is issued within 180 days.[38] TFA's damages are notably generous: double (200%) back pay with interest, full lost benefits, compensatory damages, and attorney's fees.[39] Two additional TFA features merit attention: the statute expressly prohibits the enforcement of predispute arbitration agreements requiring arbitration of TFA retaliation claims – a protection SOX shares, thanks to the Dodd-Frank Act's addition of 18 U.S.C. § 1514A(e) – and TFA complaints may overlap with SOX claims where a publicly traded employer's tax fraud also implicates securities fraud or shareholder fraud.[40]

The Moving Ahead for Progress in the 21st Century Act (MAP-21), 49 U.S.C. § 30171, protects employees of motor vehicle manufacturers, part suppliers, and dealerships who report motor vehicle defects, noncompliance with safety standards, or violations of notification and reporting requirements enforced by the National Highway Traffic Safety Administration.[41] MAP-21 uses the contributing factor standard, provides a 180-day filing deadline, and includes a 210-day kick-out provision.[42] The statute also expressly protects employees who object to or refuse to participate in any activity they reasonably believe violates motor vehicle safety law. For Kansas practitioners, MAP-21 extends whistleblower protection beyond the aviation and trucking sectors to the state's auto dealerships and any motor vehicle parts manufacturers or suppliers operating within its borders.

Finally, Kansas tort lawyers should be aware of the original OSHA whistleblower provision: Section 11(c) of the OSH Act itself, codified at 29 U.S.C. § 660(c). Section 11(c) prohibits retaliation against any employee who files a complaint, testifies in a proceeding, or exercises any right under the Act – including the right to report a workplace injury. An employee who is fired shortly after reporting a workplace injury, filing an OSHA complaint, or otherwise exercising a right under the Act may have a Section 11(c) claim.[43]

There is, however, a critical limitation: Section 11(c) provides no private right of action. If the Secretary of Labor declines to pursue the complaint, the employee has no recourse under federal law.[44] This makes 11(c) a complement to, not a substitute for, a Kansas retaliatory discharge claim – as the Kansas Supreme Court itself recognized in *Flenker v. Willamette Industries, Inc.*, where the court held that the availability of the 11(c) remedy does not bar a common-law wrongful discharge action under the public policy exception.[45] For Kansas practitioners, the practical takeaway is to file the 11(c) complaint within 30 days to preserve the federal option, while relying on the state retaliatory discharge claim as the primary vehicle.

V. The Common Framework: Contributing Factor and Clear and Convincing Evidence

These statutes share a common substantive framework that Kansas practitioners must understand. The contributing factor causation standard, now definitively interpreted by the Supreme Court in *Murray*, requires only that the complainant show protected activity was "a" contributing factor – not the sole, primary, or even a significant factor – in the adverse employment action.[46] Temporal proximity between the protected activity and the adverse action, standing alone, can be sufficient circumstantial evidence of contribution, as the Tenth Circuit recognized in *Lockheed Martin*.[47]

Once the employee establishes a prima facie case, the burden shifts to the employer to demonstrate by clear and convincing evidence that it would have taken the same adverse action absent the protected activity. This is a steep burden. As the Tenth Circuit held in *BNSF Railway*, the employer's bare assertion that it would have fired the employee anyway is insufficient; there must be substantial evidence supporting the Board's finding that the employer failed to carry its burden.[48] This framework is significantly more employee-friendly than the McDonnell Douglas burden-shifting framework used in Title VII and KAAD claims, where the employer need only articulate a legitimate, nondiscriminatory reason by a preponderance of the evidence. However, practitioners should heed the Second Circuit's *Murray* remand decision: a contributing factor must actually cause or help cause the adverse action, not merely "tend to affect" it in some general sense.[49]

VI. Practical Considerations for Kansas Tort Lawyers

The kick-out provision is a powerful strategic tool available under most – but not all – of these statutes. SOX provides a pathway to federal district court with a *de novo* jury trial right if the Department of Labor fails to issue a final decision within 180 days. STAA, FRSA, MAP-21, and TFA provide a similar pathway after 210, 210, 210, and 180 days, respectively. AIR21, however, does not include a kick-out provision; an AIR21 complainant must pursue the full administrative process and obtain judicial review only through the court of appeals. For Kansas practitioners accustomed to state-court practice, where a kick-out is available the DOL process can function as an initial administrative phase before a *de novo* federal action. Moreover, preliminary reinstatement may be available under some statutes before the administrative process concludes, providing an immediate remedy.

Filing deadlines vary dramatically and present a malpractice trap for the unwary. AIR21's 90-day deadline is unforgiving and begins running from the date of the adverse action. SOX, STAA, and the FRSA each provide 180 days. But some environmental whistleblower statutes allow only 30 days. Kansas tort lawyers who handle wrongful termination consultations should screen for these federal claims at intake and calendar the applicable deadlines immediately. A client who walks in on day 31 after a termination connected to Clean Air Act violations has already lost the federal claim.[50]

On damages, the federal whistleblower statutes offer advantages that Kansas common law does not. Most of the statutes discussed above – though not § 11(c) of the OSH Act – provide reinstatement, back pay with interest, compensatory damages, and attorney's fees, and several also authorize emotional-distress or other special damages. STAA and FRSA expressly authorize punitive damages – which the Tenth Circuit addressed in *BNSF Railway*. Although STAA and FRSA cap punitive damages at $250,000, these statutes impose no cap on compensatory or economic damages – unlike Title VII and the Kansas Act Against Discrimination – making them particularly attractive for employees with significant economic losses. And because SOX does not preempt state-law claims, a complainant can pursue both a federal SOX action and a Kansas retaliatory discharge claim simultaneously, maximizing recovery potential.

Conclusion

Federal whistleblower statutes represent a significant and underutilized practice area for Kansas tort lawyers. The law is rapidly developing in the whistleblower's favor. The Supreme Court's 2024 decision in *Murray v. UBS Securities* confirmed that no showing of retaliatory intent is required, and circuits are now extending that holding to transportation statutes like the FRSA. The Tenth Circuit's body of law – from *Lockheed Martin*'s expansive view of protected activity under SOX, to *TransAm Trucking*'s robust interpretation of the STAA's refusal-to-operate provision, to *BNSF Railway*'s analysis of the contributing factor standard and punitive damages under the FRSA – provides Kansas practitioners with strong appellate authority. Kansas's economic profile – aviation manufacturing in Wichita (where recent Boeing 737 MAX whistleblower disclosures have underscored the importance of AIR21 protection), interstate trucking along its major highway corridors, BNSF's extensive rail operations, publicly traded employers, and energy infrastructure including the Wolf Creek Nuclear Generating Station – places these statutes squarely within the scope of a Kansas tort practice. Practitioners who add these federal tools to their repertoire will find powerful remedies, flexibility through kick-out provisions, and an opportunity to serve clients who might otherwise fall through the cracks of state-law retaliatory discharge claims.

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1 *Murray v. UBS Sec., LLC*, 601 U.S. 23, 144 S. Ct. 445, 217 L. Ed. 2d 343 (2024) (Sotomayor, J., unanimous). Justice Alito filed a concurring opinion joined by Justice Barrett.

2 49 U.S.C. § 42121. The 2021 Consolidated Appropriations Act expanded AIR21 coverage to holders of FAA certificates and their contractors, subcontractors, and suppliers. Pub. L. 116-260, div. V, tit. I, § 118 (Dec. 27, 2020).

3 *TransAm Trucking, Inc. v. Admin. Review Bd.*, 833 F.3d 1206 (10th Cir. 2016). Then-Judge Gorsuch filed a dissent.

4 18 U.S.C. § 1514A, enacted as § 806 of Pub. L. 107-204 (2002).

5 *BNSF Ry. Co. v. U.S. Dep't of Labor*, 816 F.3d 628 (10th Cir. 2016).

6 Pub. L. 107-204, 116 Stat. 745 (July 30, 2002). See S. Rep. No. 107-205, at 2–3 (2002) (describing the corporate fraud scandals that prompted the legislation).

7 18 U.S.C. § 1514A(a)(1). Section 1107 of SOX added a criminal anti-retaliation provision, codified at 18 U.S.C. § 1513(e).

8 *Lawson v. FMR LLC*, 571 U.S. 429, 134 S. Ct. 1158 (2014) (Ginsburg, J.). Justice Scalia filed an opinion concurring in principal part and concurring in the judgment, joined by Justice Thomas. Justice Sotomayor dissented, joined by Justices Kennedy and Alito.

9 *Lockheed Martin Corp. v. Admin. Review Bd.*, 717 F.3d 1121, 1130–34 (10th Cir. 2013). Notably, the ALJ had required the complainant to "definitively and specifically" communicate her belief that illegal activity had occurred, but the ARB had already disavowed that standard in Sylvester v. Parexel Int'l LLC, ARB No. 07-123, ALJ Nos. 2007-SOX-039, -042 (ARB May 25, 2011), concluding it has no basis in the text of § 1514A. The Tenth Circuit declined to resolve the question because the complainant satisfied even the more demanding standard. *Id.* at 1132 n.7. The court further held that substantial evidence supported the finding that the employee's protected report was a contributing factor in her constructive discharge. *Id.* at 1136–37.

10 *Murray*, 601 U.S. at 35–38. The Court emphasized that Congress chose the contributing factor standard precisely because it is more employee-friendly than the motivating factor or but-for standards used in other employment discrimination statutes.

11 *Murray v. UBS Sec., LLC*, 128 F.4th 363 (2d Cir. 2025), cert. denied, No. 25-264 (U.S. Nov. 24, 2025).

12 See 69 Fed. Reg. 52104, 52107 (Aug. 24, 2004) (OSHA final regulations noting that SOX incorporates AIR21 procedures by reference); 68 Fed. Reg. 31859 (May 28, 2003) (interim final rule).

13 18 U.S.C. § 1514A(b)(1)(B), (b)(2)(D)–(E).

14 18 U.S.C. § 1514A(d) ("Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law, or under any collective bargaining agreement."). Whether the availability of SOX's remedy constitutes an "adequate alternative remedy" that would bar a Kansas common-law retaliatory discharge claim is an open question. Kansas courts apply a multi-factor test examining differences in procedures, claimant control, and available damages. *See Flenker v. Willamette Indus., Inc.*, 266 Kan. 198, 967 P.2d 295 (1998) (holding OSHA § 11(c) remedy did not bar state retaliatory discharge claim); *Hysten v. Burlington N. Santa Fe Ry. Co.*, 277 Kan. 551, 108 P.3d 437 (2004) (Railway Labor Act remedy not adequate alternative). SOX's savings clause, combined with the Kansas Supreme Court's reluctance to find federal administrative remedies adequate, suggests that SOX would not bar a parallel Kansas retaliatory discharge action—but the issue has not been squarely decided.

15 Pub. L. 97-424, § 405, 96 Stat. 2157 (1982). The statute was originally codified at 49 U.S.C. App. § 2305.

16 *Brock v. Roadway Express, Inc*., 481 U.S. 252, 258 (1987).

17 49 U.S.C. § 31105(a)(1)(A)–(B). The refusal-to-operate provision requires that the employee have first reported the unsafe condition to the employer and given the employer an opportunity to correct it. § 31105(a)(1)(B)(ii), (a)(2).

18 *TransAm Trucking, Inc. v. Admin. Review Bd.*, 833 F.3d at 1211–14 (10th Cir. 2016).

19 *Id.* at 1215–16 (Gorsuch, J., dissenting).

20 49 U.S.C. § 31105(b)(1), (c).

21 49 U.S.C. § 31105(b)(3)(C).

22 49 U.S.C. § 42121(a). AIR21's text does not contain an express refusal-to-participate clause. The ARB has nevertheless treated certain refusals to fly, and related safety objections, as protected under AIR21's "providing information" prong. *See Estabrook v. Fed. Express Corp*., ARB No. 2017-0047, ALJ No. 2014-AIR-00022 (ARB Aug. 8, 2019) (per curiam); *Furland v. Am. Airlines, Inc.*, ARB Nos. 09-102, 10-130, ALJ No. 2008-AIR-00011 (ARB July 27, 2011).

23 Pub. L. 116-260, div. V, tit. I, § 118 (Dec. 27, 2020), codified at 49 U.S.C. § 42121(a), (e); Greater Wichita Partnership, Aerospace Overview (noting more than 350 suppliers in the region and more than 450 across the state).

24 See Spirit AeroSystems Whistleblower Dies After Sudden Infection, TIME (May 2, 2024) (reporting that Dean's DOL retaliation complaint remained pending at the time of his death); Whistleblower Says 737 Fuselages Sent to Boeing with Defects, AeroTime (May 9, 2024) (reporting allegations that Wichita-built fuselages were shipped with serious defects).

25 *McMullen v. Figeac Aero N. Am., Inc.*, ARB No. 2017-0018, ALJ No. 2015-AIR-00027 (ARB Mar. 30, 2020) (per curiam).

26 *Sewade v. Halo-Flight, Inc.*, ARB No. 13-098, ALJ No. 2013-AIR-009 (ARB Feb. 13, 2015) (employer cannot "cure" the protected nature of a complaint by admitting wrongdoing or apologizing to employee for pressuring her to fly when she was uncomfortable doing so).

27 *Bondurant v. Southwest Airlines, Inc.*, ARB No. 14-049, ALJ No. 2013-AIR-007 (ARB Feb. 29, 2016).

28 *Benjamin v. CitationShares Mgmt., LLC*, ARB No. 14-039, ALJ No. 2010-AIR-00001 (ARB July 28, 2014) (affirming on remand and noting that the attempted recording of the meeting had been treated as protected activity).

29 49 U.S.C. § 42121(b). Compare 49 U.S.C. § 20109(d)(3) (FRSA kick-out after 210 days); 49 U.S.C. § 31105(c) (STAA kick-out after 210 days); 18 U.S.C. § 1514A(b)(1)(B) (SOX kick-out after 180 days).

30 *BNSF Ry. Co. v. U.S. Dep't of Labor*, 816 F.3d 628 (10th Cir. 2016) (Phillips, J.).

31 *Id.* at 636–39. The court also addressed punitive damages: it reversed the Board's arbitrary reduction of the ALJ's award and remanded for the Board to provide a reasoned explanation and to evaluate the award under the State Farm guideposts—degree of reprehensibility, ratio of harm to damages, and comparison to civil penalties in comparable cases. Id. at 642–45.

32 *Ziparo v. CSX Transp., Inc.*, 160 F.4th 314 (2d Cir. 2025). The court noted that requiring proof of retaliatory intent would undermine the FRSA's goal of promoting railway safety by encouraging workers to report hazardous conditions without fear.

33 49 U.S.C. § 20109(e)(3).

34 49 U.S.C. § 20109(f).

35 *See Hasan v. U.S. Dep't of Labor*, 298 F.3d 914 (10th Cir. 2002) (ERA whistleblower claim involving Wolf Creek).

36 See, e.g., 42 U.S.C. § 7622 (Clean Air Act, 30-day deadline); 33 U.S.C. § 1367 (Clean Water Act, 30-day deadline); 42 U.S.C. § 9610 (CERCLA, 30-day deadline). Compare 49 U.S.C. § 20109 (FRSA, 180-day deadline).

37 26 U.S.C. § 7623(d), enacted as § 1405(b) of Pub. L. 116-25 (July 1, 2019). Implementing regulations are at 29 C.F.R. Part 1989.

38 26 U.S.C. § 7623(d)(2). TFA generally incorporates the procedures of AIR21, 49 U.S.C. § 42121, but with modifications to the filing deadline and kick-out period. The 180-day filing deadline is at (d)(2)(B)(iv); the kick-out provision is at (d)(2)(A)(ii).

39 26 U.S.C. § 7623(d)(3)(B). TFA's anti-retaliation provision is distinct from the IRS whistleblower awards program under 26 U.S.C. §§ 7623(a)–(b), which provides monetary awards for information leading to tax collections.

40 Compare 26 U.S.C. § 7623(d)(5)(B) (TFA anti-arbitration provision) with 18 U.S.C. § 1514A(e) (SOX anti-arbitration provision, added by Pub. L. 111-203, § 922 (2010)). Both provisions render pre-dispute arbitration agreements unenforceable as to whistleblower retaliation claims.

41 49 U.S.C. § 30171(a). Implementing regulations are at 29 C.F.R. Part 1988. OSHA interprets the term "dealership" to refer to a "dealer" as defined in 49 U.S.C. § 30102.

42 49 U.S.C. § 30171(b)(1) (180-day filing deadline), (b)(3)(E) (210-day kick-out to federal district court for de novo review).

43 29 U.S.C. § 660(c)(1). The implementing regulations are at 29 C.F.R. Part 1977. OSHA also prohibits retaliation for reporting work-related injuries and illnesses under its recordkeeping rule. See 29 C.F.R. § 1904.35(b)(1)(iv).

44 *Taylor v. Brighton Corp.*, 616 F.2d 256, 263 (6th Cir. 1980) (holding that Section 11(c) does not create an implied private right of action). The employee's complaint must be filed within 30 days of the adverse action. 29 U.S.C. § 660(c)(2).

45 *Flenker v. Willamette Indus., Inc.*, 266 Kan. 198, 214–15, 967 P.2d 295 (1998). The court emphasized that 11(c)'s 30-day deadline, the Secretary's unfettered discretion to decline cases, and the absence of a private right of action make it inadequate as an alternative remedy.

46 *See Murray*, 601 U.S. at 35–38 (tracing the contributing factor standard across federal whistleblower statutes).

47 *Lockheed Martin*, 717 F.3d at 1136–37.

48 *BNSF Ry. Co.*, 816 F.3d at 637–38.

49 *Murray*, 128 F.4th at 366 (2d Cir. 2025). This distinction matters for jury instructions in kicked-out cases tried in federal court.

50 Practitioners should also be aware of Kansas's "adequate alternative remedy" doctrine, under which the availability of a statutory remedy may bar a common-law retaliatory discharge claim. The Kansas Supreme Court has generally declined to find federal administrative remedies adequate. *See Flenker v. Willamette Indus., Inc.*, 266 Kan. 198, 967 P.2d 295 (1998); *Hysten v. Burlington N. Santa Fe Ry. Co.*, 277 Kan. 551, 108 P.3d 437 (2004). The filing deadline for a federal whistleblower claim therefore should not be treated as the only deadline; practitioners must also calendar the applicable state-law limitations period for any parallel Kansas retaliatory discharge action.