Whistleblower Protection for Railroad Workers

Individuals working for railroad carriers are protected from retaliation for reporting potential safety or security violations to their employers or to the government.

On August 3, 2007, the Federal Railroad Safety Act (FRSA), 49 U.S.C. §20109, was amended by The Implementing Recommendations of the 9/11 Commission Act (Public Law 110-53) to transfer authority for railroad carrier worker whistleblower protections to OSHA and to include new rights, remedies and procedures. On October 16, 2008, the Rail Safety Improvement Act (Public Law 110-432) again amended FRSA, to specifically prohibit discipline of employees for requesting medical treatment or for following medical treatment orders.

Covered Employees

Under FRSA, an employee of a railroad carrier or a contractor or subcontractor is protected from retaliation for reporting certain safety and security violations.

Protected Activity

If your employer is covered under FRSA, it may not discharge you or in any other manner retaliate against you because you provided information to, caused information to be provided to, or assisted in an investigation by a federal regulatory or law enforcement agency, a member or committee of Congress, or your company about an alleged violation of federal laws and regulations related to railroad safety and security, or about gross fraud, waste or abuse of funds intended for railroad safety or security. Your employer may not discharge or in any other manner retaliate against you because you filed, caused to be filed, participated in, or assisted in a proceeding under one of these laws or regulations. In addition, you are protected from retaliation for reporting hazardous safety or security conditions, reporting a work-related injury or illness, refusing to work under certain conditions, or refusing to authorize the use of any safety- or security-related equipment, track or structures. You may also be covered if you were perceived as having engaged in the activities described above.

In addition, you are also protected from retaliation (including being brought up on charges in a disciplinary proceeding) or threatened retaliation for requesting medical or first-aid treatment, or for following orders or a treatment plan of a treating physician.

Adverse Actions

Your employer may be found to have violated FRSA if your protected activity was a contributing factor in its decision to take adverse action against you. Such actions may include:

- Firing or laying off
- Blacklisting
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire
- Intimidation
- Making threats
- Reassignment affecting promotion prospects
- Reducing pay or hours
- Disciplining an employee for requesting medical or first-aid treatment
- Disciplining an employee for following orders or a treatment plan of a treating physician
- Forcing an employee to work against medical advice

Deadline for Filing a Complaint

Complaints must be filed within 180 days after the alleged adverse action occurred.

How to File a Complaint

A worker, or his or her representative, who believes that he or she has been retaliated against in violation of this statute may file a complaint with OSHA. The complaint should be filed with the OSHA office responsible for enforcement activities in the geographic area where the worker lives or was employed, but may be filed with any OSHA office or employee. For more information, call your nearest OSHA Regional Office:
Whistleblower Protection for Railroad Workers

On August 3, 2007, the Federal Railroad Safety Act (FRA) 49 U.S.C. 20100, was amended by the Implementing Recommendations of the NTSB Commission Act (Public Law 110-82) to transfer authority for railroad carrier worker whistleblower protection to OSHA and to include new rights, remedies, and procedures. On October 19, 2008, the Rail Safety Improvement Act (Public Law 110-333) again amended FRA, to specifically prohibit discrimination of employees for requesting medical treatment or for following medical or first-aid treatment, or for following orders or a treatment plan of a treating physician.

Adverse Actions
Your employer may be found to have violated FRA if your protected activity was a contributing factor in his decision to take adverse action against you. Such actions may include:

- Firing or laying off
- Demoting
- Denying overtime or promotion
- Discipline
- Denying benefits
- Failing to hire or rehire
- Intimidation
- Making threats
- Retaliation affecting a promotion prospect
- Reducing pay or hours
- Disciplining an employee for requesting medical or first-aid treatment
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- Boston (617) 565-9800
- New York (718) 229-3377
- Philadelphia (215) 686-4909
- Atlanta (404) 552-2300
- Chicago (312) 233-2220
- Dallas (214) 233-3400
- Kansas City (816) 233-3700
- Denver (303) 364-7498
- San Francisco (415) 293-2587
- Seattle (206) 532-5260

Address those numbers and other contact information for these offices can be found on the Whistleblower Protection Program’s website, www.OSHA.gov/railwhistleblower, and in local directories. Complaints may be filed orally or in writing, by mail or electronic delivery. The most common methods of delivery are delivery in person or by mail, fax, or phone call. The name and address of the complainant, the name and address of the employer, the employer’s location, the type of industry, and the nature of the complaint must be included in the complaint. If the name and address of the employer is not included, OSHA will accept the complaint in any language.

Results of the Investigation
If the evidence supports your claim of retaliation and a settlement cannot be reached, OSHA will issue an order requiring the appropriate relief to make you whole. Covered relief may include:

- Reinstatement with the same seniority and benefits
- Payment of backpay with interest
- Compensation for psychological or other non-economic damages, including compensation for special damages, expert witness fees, and reasonable attorney’s fees
- Punitive damages of up to $250,000

OSHA’s findings and preliminary order become a final order of the Secretary of Labor, unless a party objects within 30 days.

Hearings and Reviews
After OSHA issues its findings and preliminary order, either party may request a hearing before an administrative law judge of the U.S. Department of Labor. A party may seek review of the administrative law judge’s decision in the U.S. Court of Appeals for the appropriate U.S. district court.

To Get Further Information
For a copy of the statute, the regulations, and other whistleblower information, go to www.OSHA.gov. For information on the Office of Administrative Law Judge procedures, decisions and research materials, go to www.dol.gov. For more information, call 1-800-321-OSHA.

This is one of a series of informational fact sheets highlighting OSHA programs, policies or standards. It does not impose any new compliance requirements. For a comprehensive list of compliance requirements of OSHA standards or regulations, refer to Title 29 of the Code of Federal Regulations. This information will be made available to sensory impaired individuals upon request. The voice phone (202) 693-1999; TTY number: (877) 889-5627.

For more complete information:

OSHA Safety and Health Administration
U.S. Department of Labor
www.OSHA.gov

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