

Whistleblower Protection for Railroad Workers

Individuals working for railroad carriers and their contractors and subcontractors 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) 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 (such as a manufacturer or repairer of operational equipment for a railroad carrier) 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 employer about an alleged violation of federal laws and regulations related to railroad safety and security, or about gross fraud, waste, or abuse of federal grants or other public funds intended for railroad safety or security.
- Refused to violate or assist in a violation of any federal law, rule, or regulation relating to railroad safety or security.
- Filed a complaint, caused a proceeding to be brought, cooperated with an investigation

or testified in a proceeding under federal laws or regulations relating to railroad safety and security.

- Reported a hazardous safety or security condition.
- Reported a work-related injury or illness.
- Accurately reported hours of duty.
- Refused to work when confronted with an imminent hazardous safety or security condition.
- Refused to authorize the use of any safety- or security-related equipment, track, or structures if those structures present an imminent hazardous safety or security condition.
- Requested medical or first-aid treatment or followed orders or a treatment plan of a treating physician.

You may also be protected if you were perceived as having engaged in the activities described above.

What Is Retaliation?

Retaliation is an adverse action against an employee because of activity protected by the FRSA. Retaliation can include several types of actions, such as:

- Firing or laying off
- Blacklisting
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire
- Intimidation
- Reassignment affecting promotion prospects
- Reducing pay or hours
- Making threats
- Denying, delaying, or interfering with the medical or first aid treatment of an employee who is injured during the course of employment

Deadline for Filing Complaints

Complaints must be filed within 180 days after the alleged retaliatory action (that is, when the employee is notified of the retaliatory action).

How to File a FRSA Complaint

An employee, or his or her representative, can file a FRSA complaint with OSHA by visiting or calling his or her local OSHA office, sending a written complaint to the closest OSHA office, or filing a complaint online. No particular form is required and complaints may be submitted in any language.

Written complaints may be filed by fax, electronic communication, hand delivery during business hours, U.S. mail (confirmation services recommended), or other third-party commercial carrier.

The date of the postmark, fax, electronic communication, telephone call, hand delivery, delivery to a third-party commercial carrier, or in-person filing at an OSHA office is considered the date filed.

To file a complaint electronically, please visit: www.osha.gov/whistleblower/WBComplaint.html.

To contact an OSHA area office, please call 1-800-321-OSHA (6742) to be connected to the closest area office. Or visit our website at www.osha.gov/html/RAmap.html and click on your state to find your local OSHA office address and contact information.

When OSHA receives a complaint, the agency will first review it to determine whether certain basic requirements are met, such as whether the complaint was filed on time. If so, the complaint will then be investigated according to the procedures required by 29 CFR Part 1982.

Results of the Investigation

If the evidence supports an employee's complaint of retaliation, OSHA will issue an order requiring the employer to, as appropriate, put the employee

back to work, pay lost wages, restore benefits, and other possible relief. The exact requirements will depend on the facts of the case. If the evidence does not support the employee's complaint, OSHA will dismiss the complaint.

After OSHA issues a decision, the employer and/or the employee may request a full hearing before an administrative law judge of the Department of Labor. The administrative law judge's decision may be appealed to the Department's Administrative Review Board. The employee may also file a complaint in federal court if the Department does not issue a final decision within 210 days. See 49 U.S.C. § 20109.

To Get Further Information

For a copy of FRSA, 49 U.S.C. § 20109, the regulations (29 CFR 1982), and other information, go to www.whistleblowers.gov.

OSHA's Whistleblower Protection Programs enforces the whistleblower provisions of more than twenty federal whistleblower laws. To learn more about the whistleblower statutes which OSHA enforces, view our "Whistleblower

Statutes Desk Aid" at www.whistleblowers.gov/whistleblower_acts-desk_reference.pdf.

For information on the Office of Administrative Law Judges procedures and case law research materials, go to www.oalj.dol.gov and click on the link for "Whistleblower."

For information on railroad safety laws and regulations, visit the Federal Railroad Administration's website at www.fra.dot.gov.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education, and assistance. For more information, visit www.osha.gov.

This is one in 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 is (202) 693-1999; teletypewriter (TTY) number: (877) 889-5627.



U.S. Department of Labor



**Occupational
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