

OSHA[®] FactSheet

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 officer or employee. For more information, call your nearest OSHA Regional Office:

- ✧ *Boston* (617) 565-9860
- ✧ *New York* (212) 337-2378
- ✧ *Philadelphia* (215) 861-4900
- ✧ *Atlanta* (404) 562-2300
- ✧ *Chicago* (312) 353-2220
- ✧ *Dallas* (972) 850-4145
- ✧ *Kansas City* (816) 283-8745
- ✧ *Denver* (720) 264-6550
- ✧ *San Francisco* (415) 625-2547
- ✧ *Seattle* (206) 553-5930

Addresses, fax numbers and other contact information for these offices can be found on the Whistleblower Protection Program's website, www.whistleblowers.gov, and in local directories. Complaints may be filed orally or in writing, by mail (we recommend certified mail), e-mail, fax, or hand-delivery during business hours. The date of postmark, delivery to a third party carrier, fax, e-mail, phone call, or hand-delivery is considered the date filed. If the worker or his or her representative is unable to file the complaint in English, 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 a preliminary order requiring the appropriate relief to make you whole. Ordered relief may include:

- ✧ Reinstatement with the same seniority and benefits.

- ✧ Payment of backpay with interest.
- ✧ Compensatory 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 Review

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 and order before the Department's Administrative Review Board. Under FRSA, if there is no final order issued by the Secretary of Labor within 210 days after the filing of the complaint, then you may be able to file a civil action in the appropriate U.S. district court.

To Get Further Information

For a copy of the statutes, the regulations and other whistleblower information, go to www.whistleblowers.gov. For information on the Office of Administrative Law Judges procedures, decisions and research materials, go to www.oalj.dol.gov and click on the link for "Whistleblower."

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.

