

Whistleblower Protection for Railroad Employees

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

On August 3, 2007, the *Federal Rail Safety Act (FRSA)*, 49 U.S.C. Section 20109, was amended by *The Implementing Recommendations of the 9/11 Commission Act* (Public Law 110-53) to transfer authority for rail carrier employee whistleblower protections to OSHA, and to include new rights and remedies.

Covered Employees

Under FRSA an employee of a railroad carrier and its contractors and subcontractors are protected from retaliation for reporting certain safety and security violations.

In general, under FRSA a railroad carrier is covered if it provides any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, including commuter or other short-haul railroad passenger service in a metropolitan or suburban area, certain commuter railroad services, and high-speed ground transportation systems that connect metropolitan areas. However, rapid transit operations in an urban area that are not connected to the general railroad system of transportation are not covered.

Protected Activity

If your employer is covered under FRSA, it may not discharge 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 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, employees of railroad carriers are protected from retaliation for reporting hazardous safety or security conditions, refusing to work under certain conditions, or refusing to authorize the use of any safety- or security-related equipment, track or structures.

Unfavorable Personnel Actions

Your employer may be found to have violated this statute if your protected activity was a contributing factor in its decision to take unfavorable personnel 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
- Reassignment affecting promotion prospects
- Reducing pay or hours

Deadline for Filing a Complaint

Complaints must be filed within 180 days after the alleged unfavorable personnel action occurs (that is, when you become aware of the retaliatory action).

How to File a Complaint

An employee, or representative of an employee who believes that he or she has been retaliated against in violation of this statute may file a complaint with OSHA. It is important to note that FRSA prohibits complainants from filing multiple discrimination complaints under other laws for the same allegedly unlawful act of the employer.

The complaint should be filed with the OSHA office responsible for enforcement activities in the geographical area where the employee resides or was employed, but may be filed with any OSHA officer or employee. For more information, call your closest 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 OSHA's website, www.osha.gov, and in local directories.

Complaints may be filed orally or in writing, by mail (we recommend certified mail), fax, or hand-delivered during business hours. The date postmarked, faxed or hand-delivered is considered the date filed.

Results of the Investigation

If the evidence supports your claim of retaliation and a settlement cannot be reached, OSHA will issue an order requiring your employer to reinstate you, pay back wages, restore benefits, and other possible relief to make you whole, including:

- Reinstatement with the same seniority and benefits.
- Payment of back pay with interest.
- Compensatory damages, including compensation for special damages, expert witness fees, and reasonable attorney's fees.
- Punitive damages not to exceed \$250,000, in certain cases.

OSHA's findings and order become the final order of the Secretary of Labor, unless they are objected to within 30 days.

Hearings and Review

After OSHA issues its findings and order, either party may request an evidentiary hearing before an administrative law judge of the Department of Labor. The administrative law judge's decision and order may be appealed to the Department's Administrative Review Board for review.

If a final agency order is not issued within 210 days from the date your complaint is filed, then you have the option to file a civil action in the appropriate U.S. district court.

To Get Further Information

For more information on FRSA and other employee whistleblower protection provisions, including copies of the statutes and regulations, go to www.osha.gov and click on the link for "Whistleblower Protection."

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.

For more complete information:



U.S. Department of Labor

www.osha.gov

(800) 321-OSHA

DEP 11/2007

Frequently Asked Questions on Employee Protections for Reporting Work-Related Injuries and Illnesses in the Railroad Industry

Employees working for railroad carriers who notify, or attempt to notify, a railroad carrier, the Secretary of Transportation, or any Federal, State, or local regulatory or law enforcement agency, of a work-related personal injury or work-related illness are protected from retaliation under the Federal Rail Safety Act (FRSA), 49 U.S.C. 20109. Below are some answers to frequently asked questions about these employee whistleblower protections. The specific facts of every FRSA case will be different, so the information below may not apply in every instance.

Q: Who is protected under FRSA for reporting a work-related injury or illness?

A: The Federal Rail Safety Act protects public and private sector employees of railroad carriers, as well as employees of contractors and subcontractors of railroad carriers who report a work-related personal injury or work-related illness.

Q: Can a railroad carrier discipline an employee for reporting a work-related personal injury or work-related illness?

A: No. Reporting a work-related personal injury or work-related illness is specifically protected under FRSA.

Q: Can a railroad discipline an employee for violating safety rules which caused a work-related injury?

A: Yes. An employee can be disciplined for violating safety rules, but not for reporting the injury.

Q: Is it a violation of FRSA for a railroad to harass or intimidate an employee into not reporting an injury, or to report it as non-work related?

A: Yes. This violates FRSA.

Q: Is it a violation of FRSA for a railroad to classify an employee's work-related injury as not work-related?

A: Yes. If the railroad classifies a work-related injury as not work-related in an effort to avoid having the injury be "reportable" then this practice would violate FRSA.

Q: Is it a violation of FRSA for a railroad to force an employee to work against medical advice?

A: Yes. FRSA prohibits a railroad from requiring an employee to work against the orders of a treating physician. FRSA does not prohibit a railroad from requiring that an employee perform alternate duties that would be permitted under a treating physician's treatment plan.

Q: Is it a violation of FRSA for a railroad to discipline anyone who is injured on the job?

A: Yes. Except to the extent that a railroad may discipline an injured employee for violating work safety rules, a railroad may not discipline employees who get injured on the job. A policy or practice that disciplines employees who receive on-the-job injuries would violate FRSA.



NOTICE TO EMPLOYEES

PURSUANT TO AN ORDER BY THE U.S. DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION:

METRO-NORTH COMMUTER RAILROAD COMPANY (METRO-NORTH) has been ordered to make whole four employees who were found to have been retaliated against for exercising their rights under the Federal Rail Safety Act (FRSA). Metro-North has also taken affirmative action to ensure the rights of its employees under employee whistleblower protection statutes including the FRSA.

PURSUANT TO THAT ORDER, METRO-NORTH AGREES THAT IT WILL NOT:

1. Discharge or in any manner discriminate against any employee because such employee has engaged in any activity, filed any complaint or instituted or caused to be instituted any proceeding under or related to the employee protection provisions of the Federal Rail Safety Act (FRSA), 49 U.S.C. §20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. Law No. 110-53., or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself/herself or others of any right afforded by the FRSA.
2. Discharge, demote, suspend, threaten, harass, intimidate or in any other manner discriminate against an employee because such employee has reported a workplace injury or illness.
3. Deny, delay, or interfere with the medical or first aid treatment of an employee who is injured during the course of employment. If transportation to a hospital is requested by an employee who is injured during the course of employment, the railroad shall promptly arrange to have the injured employee transported to the nearest hospital where the employee can receive safe and appropriate medical care.
4. Discipline, or threaten discipline to, an employee for requesting medical or first aid treatment, or for following orders or a treatment plan of a treating physician.

Metro-North Commuter Railroad Company

Date

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE. THIS NOTICE
MUST REMAIN POSTED AND MUST BE NOT ALTERED, DEFACED, OR COVERED BY
OTHER MATERIAL.**