

**Pennsylvania Federation BMWED - IBT
Northeast System Federation BMWED- IBT
Amtrak Eastern General Committee - BRS
American Railway and Airway
Supervisors Association MW-IAM**

June 23, 2017

Dear Brothers and Sisters,

On June 12, 2017, Amtrak posted and distributed an internal memo regarding an updated **"Amtrak Policy Prohibiting Harassment and Intimidation for Accident, Injury and Illness Reporting"**. As part of this updated policy, Amtrak purports an alleged commitment to complying with the FRA's accident reporting regulations as set forth in the 49 CFR Part 225 and the Federal Railroad Safety Act's (FRSA) Whistleblower Protections, set forth in 49 U.S.C. 20109.

With the implementation of this policy, Amtrak has established a vague, and loosely applied, internal investigation process that affords its employees the ability to file a complaint through Amtrak's Equal Employment Opportunity (EEO) Compliance Office by calling the Amtrak Helpline. Amtrak articulates the specifics of this policy as follows:

"...Alleged violations of the above-referenced policy or the Anti-Discrimination and Anti-Harassment Policy will be reviewed and investigated promptly as may be appropriate under the circumstances. Investigations may be done by the EEO Compliance Office, the employee's department or another appropriate office. Violation of the above-referenced policy or the Anti-Discrimination and Anti-Harassment Policy may result in discipline, up to and including termination.

Employees will be provided whistleblower protection from any retaliatory action taken, as the result of reporting conduct they reasonably believe violates this policy. Employees shall be free from restraint, interference, coercion, or reprisal for communicating directly, or indirectly, information they believe indicates violation of the law or company policy." (End excerpt)

There is no way to describe the language of Amtrak's policy as written except as very suspect. Amtrak is, and has been, regularly found responsible for numerous violations of the FRSA whistleblower protections under 49 U.S.C. 20109 and has paid millions of dollars to employees it has unjustly treated in connection with engaging in the protected activity provided by the law. These violations were found even before the hiring of the current Amtrak senior management team, many of whom came from freight roads that are known violators of this law.

While this policy could be viewed as an effort by Amtrak to "clean up" its act, it appears to be more of an attempt to show itself as a kinder and gentler rail employer in front of rail regulators. We do not believe for one minute that this policy was designed with the intention of keeping the best interests of the employees in mind.

This policy also appears very suspect given that Amtrak vaguely states that the matter will be investigated promptly *"as may be appropriate under the circumstances"*. What does that mean? Amtrak determines whether, or not, to investigate the matter based on whether they believe the circumstances warrant an investigation. In other words, Amtrak becomes its own overseer since they determine if the circumstances warrant an investigation and they conduct the investigation if they believe it is appropriate. Furthermore, the potential of serious liability against Amtrak if its own internal investigation found Amtrak, or one of its employees, guilty of violations of 49 U.S.C. 20109 Whistleblower Protection would make such a result highly unlikely. Amtrak would have a conflict of interest in the findings of its internal investigation.

It is very important that you understand that there is nothing within 49 U.S.C. 20109 that requires you to file any such complaints with your employer before going to the Federal Regulatory Agency (OSHA) to file a formal complaint. There is also nothing in this policy that exempts the strict time limits/statute of limitations of 180 days to file a complaint with OSHA.

We recommend that should you be in the unfortunate situation of reporting an injury, or any other protected activity covered under this law, that you seek counsel to assist you with filing a formal complaint with OSHA as opposed to using Amtrak's process under their policy. By seeking counsel for assistance and/or going directly through OSHA, as opposed to relying on Amtrak's disingenuous policy, you will protect yourself from the strong possibility that Amtrak may intentionally drag out its investigation of your complaint beyond the 180 days only to likely advise you that the results of its own investigation were inconclusive and then leaving you no other legal recourse to pursue against them. In other words, after 180 days has lapsed, even if you were dissatisfied with Amtrak's findings of its investigation, you would have no other avenue to pursue it given that the time to have done so had passed. **YOU ONLY HAVE 180 DAYS TO FILE A COMPLAINT WITH OSHA, THERE ARE NO EXCEPTIONS.**

Even assuming that Amtrak conducted its internal investigation within the 180 days outlined in the statute, and provided results of that investigation within such time, it is very hard to believe that Amtrak would implicate itself in any such investigation and admit wrongdoing. Obviously, an admission of any such wrongdoing in any internal investigation becomes subject to subpoena and could be used against them in any 20109 litigation brought forth against them in connection with violations it has readily admitted to in its own investigations. Furthermore, it is more likely that Amtrak would use the findings of an "inconclusive" investigation of a complaint as a means to defend itself in court in the event that OSHA found violations and pursued action against them.

There can be no positive result from using Amtrak's internal investigation process. Therefore, we see no other reason for Amtrak's creation of this policy other than to distract and/or deter its employees from filing a formal complaint with OSHA with the hope, and intent, of dragging out its own investigation well beyond the 180 day statute of limitations, to reduce any potential liability against violations that may otherwise have been found by OSHA.

We **strongly discourage** any member from using Amtrak's internal investigation process and **strongly recommend** that you use the Federal Agency (OSHA) and laws (FRSA 20109) provided for your protection. For ready reference, we have attached the OSHA Fact Sheet regarding Whistleblower Protection for Railroad Workers.

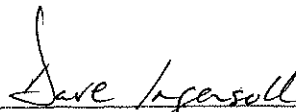
We believe that the attached OSHA Fact Sheet will provide you far better guidance with filing a complaint with OSHA as opposed to Amtrak's policy that appears on its face to only serve Amtrak's interests and not yours.

Please feel free to contact your Local and System Officers for any additional information, or any questions you may have related to this matter.

In Solidarity,



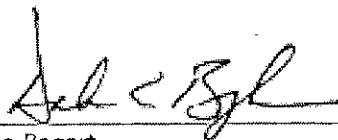
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OSHA[®] FactSheet

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.

For more complete information:



U.S. Department of Labor

www.osha.gov

(800) 321-OSHA

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