

**Federal Railroad Safety Act (FRSA)  
49 U.S.C. §20109**

**In an attempt to control reportable injuries, the railroad industry engaged in tactics to discourage its workers from reporting injuries or unsafe work practices. Many injured railroad workers were not compensated for their injuries due to these tactics. In August 2007, federal legislation was passed which provides specific whistle-blower protections for railroad workers pursuant to the Federal Rail Safety Act (FRSA), 49 U.S.C. § 20109. Under the FRSA, individuals working for railroad carriers are protected from retaliation for reporting potential safety or security violations to their employers or to the government.**

**Some specific information about the FRSA follows:**

**Employee Protections.**

**(a) In general.**--A railroad carrier, its contractor or subcontractor, or an employee of such a railroad carrier, may not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee if such discrimination is due, in whole or in part, to the employee's lawful, good faith act done, or perceived by the employer to have been done or about to be done--

**(1)** to provide information or directly assist in an investigation regarding any conduct which the employee believes constitutes a violation of any Federal law, rule, or regulation relating to railroad safety or security, or gross fraud, waste, or abuse of Federal grants or public funds intended to be used for railroad safety or security;

**(2)** to refuse to violate or assist in the violation of any Federal law, rule or regulation related to railroad safety or security;

**(3)** to file a complaint about railroad safety or security OR to testify in a proceeding related to same;

**(4)** to report a railroad a work-related personal injury or work-related illness of an employee to the railroad;

**(5)** to cooperate with a safety or security investigation by the federal Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board or furnish information related to any accident or incident resulting in injury or death to an individual or damage to property occurring in connection with railroad transportation;

**(6)** to accurately report hours on duty.

**(b) Hazardous safety or security conditions.—**

**(1)** A railroad carrier or an employee of a railroad shall not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee for—

**(A)** reporting, in good faith, a hazardous safety or security condition;

**(B)** refusing to work when confronted by a hazardous safety or security condition related to the employee's duties, if the conditions described in paragraph (2) below exist; or

**(C)** refusing to authorize the use of any safety-related equipment, track or structures, if the employee is responsible for the inspection or repair of same, when the employee believes that the equipment, track or structures are in a hazardous safety or security condition, as described in paragraph (2) below.

**(2)** A refusal is protected under paragraph (1)(B) and (C) if—

**(A)** the refusal is made in good faith and no reasonable alternative to the refusal is available to the employee;

**(B)** a reasonable individual in the same situation as the employee would conclude that—

**(i)** the hazardous condition presents an imminent danger of death or serious injury; and

**(ii)** the urgency of the situation does not allow sufficient time to eliminate the danger without such refusal; and

**(C)** the employee, where possible, has notified the railroad of the existence of the hazardous condition and the intention not to perform further work, or not to authorize the use of the hazardous equipment, track or structures, unless the condition is corrected immediately or the equipment, track or structures are repaired properly or replaced.

**(c) Prompt medical attention.—**

**(1) Prohibition.—**A railroad carrier or person covered under this section may not 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 the appropriate care.

**(2) Discipline.—**A railroad carrier or person covered under this section may not discipline, or threaten to discipline, an employee for requesting medical or first aid treatment, or for following orders of a treating physician, except that a railroad's refusal to permit an employee to return to work following medical treatment shall not be considered a violation of this section if the refusal is pursuant to the FRA medical standards for fitness of duty.

**(d) Enforcement action.—**

**(1) In general.—**An employee who alleges discharge, discipline, or other discrimination in violation of subsection (a), (b) or (c) of this section, may seek relief in accordance with the provisions of this section, with any petition or other request for relief under this section to be initiated by filing a complaint with the Secretary of Labor.

**(2) Procedure.—**

**(i) Burdens of Proof.**--Burdens of proof can define the duty placed upon a party to prove or disprove a disputed fact, or it can define which party bears these burdens.

**(ii) Statute of limitations.**--File a written complaint not later than **180 days** after the date on which the alleged violation occurs.

**(iii) Provide notice.**--to the official who committed the alleged violation and to the railroad.

**(e) Remedies.**--

**(1) In general.**--An employee who prevails in any legal action shall be entitled to all relief necessary to make the employee whole.

**(2) Damages.**--Relief in an action under subsection (d) above shall include--

**(A)** Reinstatement with the same seniority status the employee would have had, but for the discrimination;

**(B)** Any backpay, with interest;

**(C)** Compensatory damages, including compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

**(3) Possible relief.**--Relief in any action under subsection (d) may include punitive damages in an amount not to exceed \$250,000.

**(f) Election of remedies.**--An employee may not seek protection under both this section and another provision of law for the same allegedly unlawful act of the railroad carrier.

**(g) No preemption.**--Nothing in this section preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law.

**(h) Rights retained by employee.**--Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form or condition of employment.

Sources:

- <http://www.whistleblowers.gov/acts/frsa.html>
- <https://www.osha.gov/Publications/OSHA-factsheet-whistleblower-railroad.pdf>