



**Brotherhood of Maintenance of Way Employees Division  
of the International Brotherhood of Teamsters**

**NORTHEASTERN SYSTEM FEDERATION**

**Renato G. Rufo**  
Vice General Chairman  
Secretary-Treasurer

3321 B Vestal Parkway East  
Vestal, NY 13850  
Phone (607) 217-5333 • Fax (607) 217-5811

**Dale E. Bogart Jr.**  
General Chairman



February 12, 2014

To: Northeastern System Federation BMWED Membership

From: General Chairman Dale E. Bogart Jr.

**PRIORITY: HIGH!**

Re: 1. Reporting Injuries.  
2. Dealing with Carrier Claim Agents.  
3. Knowing your rights when dealing with an on-the-job injury.

Brothers and Sisters,

The purpose of this letter is to keep you informed in the best possible way regarding the reporting of personal injuries to your respective railroad employers, as well as what you can and should expect in the event you are dealing with a railroad manager and/or a claim agent.

In light of recent recurring trends and events within our industry, I felt it necessary to post this letter to ALL NESF-BMWED members in order that you will be aware of your rights when dealing with an on-the-job injury.

It is understandable that there are some of you out there that have been around for quite a while who fully understand the importance of the subject matter of this letter; however as the older members are retiring, along with the hiring of a new and younger workforce, it is important to ensure that ALL are fully informed of this important information.

This is a three part letter that goes over the above topics and I strongly encourage that you read this letter thoroughly. I believe that after reading it, you will have a better understanding of what you can expect to happen if and when you become injured.

**Reporting of Accidents/Injuries**

In the event that you are involved in an accident or become injured the first and most important step is to make sure that you **REPORT THE ACCIDENT/INJURY IMMEDIATELY!** This should be done at the time the injury occurs but if that is not possible, it should be done **NO LATER THAN THE END OF YOUR TOUR OF DUTY!**

This is very important as your health and safety is of the utmost importance and is dependent upon timely reporting to ensure that you are afforded and receive the proper treatment at the moment the injury occurs. By doing so will possibly prevent long term effects and/or disability from that injury as well as protect you from facing charges of not reporting or untimely reporting.

The railroad is required by law to afford you Medical Treatment immediately for that injury. If they do not, they may be subject to huge liabilities under Federal Law which I will touch on later<sup>1</sup>.

Furthermore, the Federal Rail Administration (FRA) mandates that all injuries are to be reported and it is your responsibility under these Federal Regulations that you report any injury you sustain while working on a railroad's property.

The railroads also have rules that outline your responsibility to timely report injuries and will strictly enforce them. Any deviation from the time it may have occurred to the time it was to be reported will ensure that the injured employee be charged with that offense. The injured employee will receive notice to attend a Formal Investigation and be subject to possible discipline, including dismissal, for an alleged violations related to timely reporting thereof. In common language, you will be charged and fired!

The takeaway here is that you understand the importance of reporting accidents/injuries as they occur, regardless of how minor they may seem at the time. Should they get worse and then you report them, the railroad will charge you with Late Reporting. **REPORT ALL ACCIDENTS/INJURIES WHEN THEY HAPPEN!**

### **After the Accident/Injury Report has been filed**

It is worth noting that when you do report the injury that the railroad and their Claim Agent (*Separate Section Below*) will ask you questions as to how you sustained that injury and/or how the injury occurred<sup>2</sup>. They may continually ask questions to the point of badgering in hopes that your information changes ever so slightly where they may try to charge you with giving a report with misleading and/or false information. They may also charge you with a violation of a safety rule that they believe may have contributed to the incident involving that injury. This is just another way that the Railroads continually try and hold you accountable for the injury under the guise of charging you with something else that they will only later take the position that is not related to that injury in the investigative process.

The railroads' choice to take such a position could constitute a violation of the Federal Rail Safety Act (FRSA), OSHA Whistleblower Protections. Under Section 20109 the law is very clear that no employee can be disciplined or be recipient of Negative Personnel Actions as result of engaging in protected activity under this statute.

One of the protected activities is reporting of personal injuries and/or requesting Medical Treatment for the injury. While in many instances the railroad will state that they are not investigating and/or disciplining for you the "injury" but rather the alleged violation of a Safety Rule or Policy they believe may have contributed to that injury. This investigation and/or discipline imposed to you (*Negative*

---

<sup>1</sup> *If you do require and/or request Medical Treatment and the Railroad does afford you Medical Treatment, preferably you should see your own doctor for that treatment. It is understandable as well as obvious that may not be possible if you are on a travelling gang far from home and require immediate, emergency medical treatment or in the event that you do not have a family doctor, it is preferable that you see a doctor who is not in any way associated with the Railroad!*

<sup>2</sup> *It is your right to receive Medical Treatment by Treating Physician Medical Facility **alone** and without Supervisor or Claims Agent present while being treated. You are not required to give report or surrender any information while being treated nor does the Supervisor or Claims Agent have the right to be in the Emergency Room while you are being treated to obtain information or for any other reason (i.e. coerce you in or out of treatment decisions). IF YOU DO NOT WANT THEM THERE IT IS YOUR RIGHT TO ASK THEM TO WAIT OUTSIDE IN THE WAITING AREA!*

*Personnel Action*) may be found in violation of the Law if the “**protected activity motivated or contributed to the adverse action.**” (i.e. Investigation or discipline thereof motivated by information you may have provided on an injury report or that the Carrier would otherwise have no knowledge of any alleged rule violation without the information provided by the employee reporting the injury). There have already been numerous cases to date where it has been found and upheld that the railroad's did just that (violated the law) and rulings were favorable to the complainant (i.e. employe).

**Remember, the Railroad cannot discipline you for reporting a Personal Injury under Federal Law!**

For your ready reference, I have enclosed a Fact Sheet from OSHA regarding your rights under the Law and strongly encourage that should you ever believe that your rights under the law have been violated notify this office immediately as well as you may consider seeking consultation from an attorney who specializes and practices this particular part of the law.

### **Dealing with the Railroad's Claims Department**

At some point after you have filed an injury report it is a fair assumption that you will be contacted by the railroad's Claim Agent who will handle, on behalf of the railroad the payment of your medical bills from that injury and possibly handling the matter of settling any monetary claim for damages associated with that injury. Keep in mind, the railroad Claim Agent is employed as a railroad MANAGER and anything stated will be recorded as official correspondence. Also be aware that this employee's main function is to settle a claim as "cheaply" as possible, even if it denies you of a just settlement!

I would strongly encourage, for your own piece of mind that you consider seeking consultation from a Designated Legal Counsel (FELA attorney) sooner rather than later in so to better prepare you and have an understanding of your rights under the law<sup>3</sup>.

Depending from which railroad you are employed, the duration from the time of your reported injury to the time you are contacted by the Claim Agent may vary. In some instances and obviously dependent on the severity of your injury and the treatment thereof, it may be as short as 30 minutes after the injury or weeks after when you are able to speak with him/her.

It is important to note that a Claim Agent has absolutely no business in attempting to obtain any information from you (i.e. *statement or signing of release forms, etc.*) while you are under any treatment in a Medical Facility. In addition, you should not be signing anything or offering any information to the Claim Agent in the emergency room or treatment facility when you are being treated, period! This is further emphasized especially if you are or may be under the influence of any prescription drug that may alter your judgment. This is why it is preferred that should the Claim Agent be present at the Medical Facility while you are being treated that you kindly ask him or her to leave the room (*which is your right!*).

While the Claim Agent may want you to sign release forms, it is important to know what you are signing and if you are not sure what you are being asked to sign you should respectfully decline until you speak with your Union Representative. While the railroad Claim Agent may only be looking to get you signed off on the HIPPA form to start the process of getting your medical bills paid, you should also be aware that he/she may not be so generous with other information regarding your rights under the law.

---

<sup>3</sup> Many FELA attorneys offer free consultation services, simply by seeking consultation from one you are not entering contract with that attorney nor are you obligated to hire an attorney

Before you sign anything in which you are not sure of, it is always best to lean on the side of caution by speaking with your Union Representative to protect you and your family's interests.

The reason that it is so important that you should know what you are signing when the Claim Agent is seeking your signature to any document is due to the fact that when an injured employee settles a claim with the railroad, he is required to sign a release before receiving the payment of money. A release is a FINAL statement between the parties. The injured worker, in accepting the settlement and signing the release, gives up any and all claims he/she may have against the railroad arising from that injury.

Generally, once the release is signed, it is final and no further claim can be made even if the injury becomes much more serious than anticipated. You should be sure of the extent of any injury you sustained before making settlement. This is exactly why it is a bad idea to allow the Claim Agent access to yourself while being treated or even shortly thereafter.

It is also important to remember that the railroad claim agent may and, more than likely, will use the information they gather in their interview with you against you should your accident/injury become the source of any future litigation under FELA (*Federal Employers Liability Act*).

What to take away from this letter and in summary, you should keep in mind the following steps to preserve your rights:

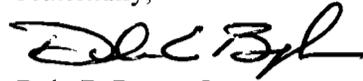
- 1.) **Report the accident (i.e. injury) ASAP**, regardless of how minor it may seem, describing it briefly and accurately.
- 2.) **DO NOT sign a statement, grant permission for or offer a recorded statement for a Claim Agent or the Railroad.**
- 3.) **Make notes while the accident is fresh in your mind.** Note how the accident occurred and anything else pertaining to it.
- 4.) **Be sure of your rights!** Do not rely upon the Railroad or its Claim Agents for advice on what your rights are, or how much you are entitled to receive.
- 5.) **Do not attend any hearing or investigation without union representation.**
- 6.) **Do not attempt to deal directly with the claim department without obtaining legal advice or consultation from your union representative concerning what is or may be the best procedure to follow to best protect your interests.**
- 7.) **Obtain names and addresses of any of the witnesses to the accident and make note of any rules that have or may have been violated that gave rise to the accident.**
- 8.) **Keep record of ALL the days that you lose, and if possible, the overtime that you would have been able to obtain had you not been injured.**
- 9.) **Do not hesitate, when in doubt as to what should be done to best protect your interests, to contact immediately your union representative or an experienced FELA attorney.**

I understand that this letter is very long and detailed; however all of this information is necessary in order to protect the best interest for you and your family. You and your family's interests and well-being are far too important to leave in the hands of the railroad and their claim agents who may attempt to take advantage of you.

I am truly hopeful that nobody will have to go through this experience. I also encourage you to follow the rules, work safe and challenge any directive given that you may feel your safety is or may be compromised. In the event that you unfortunately become involved in an accident or injury, report it immediately and follow the steps/guidelines provided in this letter.

In closing, I would encourage that you keep this letter somewhere safe and with ready access should you need it for reference. This letter is also available on the NESF-BMWED website for ready reference at [www.northeasternsystemfederation.org](http://www.northeasternsystemfederation.org). As normal, I am always available to answer any questions that you may have, so if you have any questions related to this letter or any other matter please feel free to contact the System Office at (607)-217-5333.

Fraternally,



Dale E. Bogart Jr.  
General Chairman

C: File  
Attachment: OSHA Fact Sheet – (3 Pages)

# OSHA<sup>®</sup> FactSheet

## Your Rights as a Whistleblower

You may file a complaint with OSHA if your employer retaliates against you by taking unfavorable personnel action because you engaged in protected activity relating to workplace safety or health, asbestos in schools, cargo containers, airline, commercial motor carrier, consumer product, environmental, financial reform, food safety, health insurance reform, motor vehicle safety, nuclear, pipeline, public transportation agency, railroad, maritime, motor vehicle safety, and securities laws.

### Whistleblower Laws Enforced by OSHA

Each law requires that complaints be filed within a certain number of days after the alleged retaliation.

- *Asbestos Hazard Emergency Response Act* (90 days)
- *Clean Air Act* (30 days)
- *Comprehensive Environmental Response, Compensation and Liability Act* (30 days)
- *Consumer Financial Protection Act of 2010* (180 days)
- *Consumer Product Safety Improvement Act* (180 days)
- *Energy Reorganization Act* (180 days)
- *Federal Railroad Safety Act* (180 days)
- *Federal Water Pollution Control Act* (30 days)
- *International Safe Container Act* (60 days)
- *Moving Ahead for Progress in the 21<sup>st</sup> Century Act (motor vehicle safety)* (180 days)
- *National Transit Systems Security Act* (180 days)
- *Occupational Safety and Health Act* (30 days)
- *Pipeline Safety Improvement Act* (180 days)
- *Safe Drinking Water Act* (30 days)
- *Sarbanes-Oxley Act* (180 days)
- *Seaman's Protection Act* (180 days)
- *Section 402 of the FDA Food Safety Modernization Act* (180 days)
- *Section 1558 of the Affordable Care Act* (180 days)
- *Solid Waste Disposal Act* (30 days)
- *Surface Transportation Assistance Act* (180 days)
- *Toxic Substances Control Act* (30 days)
- *Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century* (90 days)

### Unfavorable Personnel Actions

Your employer may be found to have retaliated against you if your protected activity was a

contributing or motivating factor in its decision to take unfavorable personnel action against you. Such actions may include:

- Applying or issuing a policy which provides for an unfavorable personnel action due to activity protected by a whistleblower law enforced by OSHA
- Blacklisting
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire
- Firing or laying off
- Intimidation
- Making threats
- Reassignment to a less desirable position, including one adversely affecting prospects for promotion
- Reducing pay or hours
- Suspension

### Filing a Complaint

If you believe that your employer retaliated against you because you exercised your legal rights as an employee, contact OSHA as soon as possible because you must file your complaint within the legal time limits.

An employee can file a complaint with OSHA by visiting or calling the local OSHA office or sending a written complaint to the closest OSHA regional or area office. Written complaints may be filed by facsimile, electronic communication, hand delivery during business hours, U.S. mail (confirmation services recommended), or other third-party commercial carrier. The date of the postmark, facsimile, 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. No particular form is required and complaints may be submitted in any language.

For OSHA area office contact information, please call 1-800-321-OSHA (6742) or visit [www.osha.gov/html/RAmap.html](http://www.osha.gov/html/RAmap.html).

Upon receipt of a complaint, OSHA will first review it to determine whether it is valid on its face. All complaints are investigated in accord with the statutory requirements.

With the exception of employees of the U.S. Postal Service, public sector employees (those employed as municipal, county, state, territorial or federal workers) are not covered by the *Occupational Safety and Health Act* (OSH Act). Non-federal public sector employees and, except in Connecticut, New York, New Jersey, the Virgin Islands, and Illinois, private sector employees are covered in states which operate their own occupational safety and health programs approved by Federal OSHA. For information on the 27 State Plan states, call 1-800-321-OSHA (6742), or visit [www.osha.gov/dcsp/osp/index.html](http://www.osha.gov/dcsp/osp/index.html).

A federal employee who wishes to file a complaint alleging retaliation due to disclosure of a substantial and specific danger to public health or safety or involving occupational safety or health should contact the Office of Special Counsel ([www.osc.gov](http://www.osc.gov)) and OSHA's Office of Federal Agency Programs ([www.osha.gov/dep/enforcement/dep\\_offices.html](http://www.osha.gov/dep/enforcement/dep_offices.html)).

Coverage of public sector employees under the other statutes administered by OSHA varies by statute. If you are a public sector employee and you are unsure whether you are covered under a whistleblower protection statute, call 1-800-321-OSHA (6742) for assistance, or visit [www.whistleblowers.gov](http://www.whistleblowers.gov).

### **How OSHA Determines Whether Retaliation Took Place**

The investigation must reveal that:

- The employee engaged in protected activity;
- The employer knew about or suspected the protected activity;
- The employer took an adverse action; and
- The protected activity motivated or contributed to the adverse action.

If the evidence supports the employee's allegation and a settlement cannot be reached, OSHA will generally issue an order, which the employer may contest, requiring the employer to reinstate the employee, pay back wages, restore benefits, and other possible remedies to make the employee whole. Under some of the statutes the employer

must comply with the reinstatement order immediately. In cases under the *Occupational Safety and Health Act*, *Asbestos Hazard Emergency Response Act*, and the *International Safe Container Act*, the Secretary of Labor will file suit in federal district court to obtain relief.

### **Partial List of Whistleblower Protections**

#### ***Whistleblower Protections under the OSH Act***

The OSH Act protects workers who complain to their employer, OSHA or other government agencies about unsafe or unhealthful working conditions in the workplace or environmental problems. You cannot be transferred, denied a raise, have your hours reduced, be fired, or punished in any other way because you used any right given to you under the OSH Act. Help is available from OSHA for whistleblowers.

If you have been punished or discriminated against for using your rights, you must file a complaint with OSHA within 30 days of the alleged reprisal for most complaints. No form is required, but you must send a letter or call the OSHA Area Office nearest you to report the discrimination (within 30 days of the alleged discrimination).

You have a limited right under the OSH Act to refuse to do a job because conditions are hazardous. You may do so under the OSH Act only when (1) you believe that you face death or serious injury (and the situation is so clearly hazardous that any reasonable person would believe the same thing); (2) you have tried, where possible, to get your employer to correct the condition, and been unable to obtain a correction and there is no other way to do the job safely; and (3) the situation is so urgent that you do not have time to eliminate the hazard through regulatory channels such as calling OSHA. For details, see [www.osha.gov/as/opa/worker/refuse.html](http://www.osha.gov/as/opa/worker/refuse.html). OSHA cannot enforce union contracts or state laws that give employees the right to refuse to work.

#### ***Whistleblower Protections in the Transportation Industry***

Employees whose jobs directly affect commercial motor vehicle safety or security are protected from retaliation by their employers for, among other things, reporting violations of federal or state commercial motor carrier safety or security regulations, or refusing to operate a vehicle because of violations of federal commercial motor vehicle safety or security regulations or because they have a reasonable apprehension of death or serious injury to themselves or the public and they have sought from the employer and been unable to obtain correction of the hazardous condition.

Similarly, employees of air carriers, their contractors or subcontractors who raise safety concerns or report violations of FAA rules and regulations are protected from retaliation, as are employees of owners and operators of pipelines, their contractors and subcontractors who report violations of pipeline safety rules and regulations. Employees involved in international shipping who report unsafe shipping containers are also protected. In addition, employees of railroad carriers or public transportation agencies, their contractors or subcontractors who report safety or security conditions or violations of federal rules and regulations relating to railroad or public transportation safety or security are protected from retaliation.

#### ***Whistleblower Protections for Voicing Environmental Concerns***

A number of laws protect employees from retaliation because they report violations of environmental laws related to drinking water and water pollution, toxic substances, solid waste disposal, air quality and air pollution, asbestos in schools, and hazardous waste disposal sites. The *Energy Reorganization Act* protects employees

from retaliation for raising safety concerns in the nuclear power industry and in nuclear medicine.

#### ***Whistleblower Protections When Reporting Corporate Fraud***

Employees who work for publicly traded companies or companies required to file certain reports with the Securities and Exchange Commission are protected from retaliation for reporting alleged mail, wire, bank or securities fraud; violations of SEC rules or regulations of the SEC; or violations of federal laws relating to fraud against shareholders.

#### ***Whistleblower Protections for Voicing Consumer Product Concerns***

Employees of consumer product manufacturers, importers, distributors, retailers, and private labelers are protected from retaliation for reporting reasonably perceived violations of any statute or regulation within the jurisdiction of the Consumer Safety Product Safety Commission.

#### **More Information**

To obtain more information on whistleblower laws, go to [www.whistleblowers.gov](http://www.whistleblowers.gov).

**This is one of 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 and regulations, refer to Title 29 of the Code of Federal Regulations. Because some of these whistleblower laws have only recently been enacted, the final regulations implementing them may not yet be available in the Code of Federal Regulations but the laws are still being enforced by OSHA. This information will be made available to sensory-impaired individuals upon request. Voice phone number: (202) 693-1999; teletypewriter (TTY) number: (877) 889-5627.**

**For assistance, contact us. We can help. It's confidential.**



U.S. Department of Labor  
[www.osha.gov](http://www.osha.gov) (800) 321-OSHA (6742)