

Whistleblower Protection for Railroad Workers

By John R. Suermann, Jr., Counsel

For those who keep the trains running, from engineers to maintenance crews, speaking up about safety concerns should not come with the fear of losing their livelihood. Thanks to federal protections, railroaders can stand firm in their commitment to safety, knowing the law guards their efforts.

The Federal Railroad Safety Act (FRSA) serves as a powerful shield for railroad workers, including those employed by contractors and subcontractors. The FRSA ensures that those on the front lines of rail safety can report violations, refuse unsafe work, and prioritize their health without fear of retaliation.

But what does this protection look like in practice? Imagine you are a track-maintenance worker or a conductor who notices a dangerous defect in a section of rail, or unsafe footing. In the past, you might have hesitated to report it, worried about potential backlash. But under the FRSA, you can confidently report this hazard, knowing that your job is protected. Indeed, protections under the FRSA extend to a wide range of actions, including reporting violations of federal safety laws, refusing to violate safety regulations, and even to seeking medical treatment for work-related injuries.

Despite these broad protections, however, retaliation can occur. Unlawful retaliation might take the form of a sudden demotion, a reduction in hours, or even termination. The key is recognizing these actions for what they are—potential violations of your rights—and knowing how to respond.

If you find yourself facing what you believe to be retaliation, time is of the essence. The law provides a 180-day window from the retaliatory action to file a complaint. This process is managed by the Occupational Safety and Health Administration (OSHA). Whether you choose to visit your local OSHA office, send a written complaint, or file a complaint online, the important thing is to act promptly and provide as much detail as possible about the retaliatory action and its connection to your protected activity.

After filing your complaint, OSHA will review your complaint to ensure it meets basic requirements, and, if it does, then it will launch an investigation. This process is designed to uncover the truth of the situation. If the evidence supports your claim, OSHA has the power to issue orders for relief, which could include reinstatement, back pay, or other remedies to make you whole.

But what if you are not satisfied with OSHA's decision? The process does not end there. You have the right to request a hearing before an administrative law judge, providing another opportunity to present your case. If you are still not satisfied, you can appeal to the Department of Labor's Administrative Review Board. And if no final decision is reached within 210 days, you have the option to file a complaint in court, ensuring that your case will be heard.

This approach to protecting railroaders' rights reflects the critical importance of railway safety. By empowering workers to speak up without fear, these protections do not just safeguard individual jobs—they contribute to the safety of the entire rail system and the public.

As a railroader, understanding these rights is your first line of defense in ensuring a safe work environment. It is about more than just protecting your job; it is about fostering a culture of safety that benefits everyone. Whether you are a veteran railroader or new to the railroad industry, take the time to familiarize yourself with these protections at www.whistleblowers.gov. And if you have questions, including believing that you have been wrongfully retaliated against, you can contact Schlichter Bogard directly to talk with an experienced lawyer who fully understands the rail industry.

Statute of Limitations (Don't Miss Your Chance to File)

By Jon Jones, Associate

Did you know that every legal claim has an expiration date? There is a time limit set by the law, called a “statute of limitations,” that specifies how long you have to file a lawsuit after an injury incident or other event giving rise to a claim, like a wrongful termination. If you wait too long, you lose the right to file a lawsuit and, with it, any hope of receiving compensation.

Different types of legal claims have different time limits set by their corresponding statutes of limitations. Here are a few examples of the time limits for legal claims that are common for railroaders:

- 1) Personal injury claims against a railroad under the Federal Employers’ Liability Act (FELA). You must file a lawsuit within three years of the date of injury.
- 2) Whistleblower retaliation claims against a railroad under the Federal Railroad Safety Act (FRSA). You must file a complaint with OSHA within 180 days of the retaliation.
- 3) Disability discrimination under the Americans with Disabilities Act (ADA). You must file a complaint with the EEOC within 180 days of the discrimination, which could be extended in some cases to 300 days depending upon applicable local and state law.
- 4) Personal injury claims against non-railroads, such as industry customers, crew transport companies, away-from-home hotels, and negligent drivers. The time limit for filing a lawsuit for these claims varies depending on which state your injury occurred in. In Missouri, for example, the time limit is 5 years after the date of injury, while in Arkansas that time limit is 3 years, compared to just 2 years in Kansas.

As you can see, your time limit for filing a lawsuit can vary significantly depending on the type of legal claim you have.

Additionally, when the time limit for a lawsuit “begins” is not always straightforward. For example, if a railroader is exposed to repetitive trauma over a long period, such as that caused by rough track or poor walking conditions, they may develop worsening spine or knee pain but not realize for several years that they are “injured” or that their injury was caused by work. Or a railroader could be exposed to a hazardous substance and then, many years later, develop an illness as a result. In these circumstances, you may still have the right to file a lawsuit, even if more than three years has passed since your first exposure to the unsafe conditions that caused the injury. These examples illustrate how the unique facts of a case can affect the time limit for filing a lawsuit.