



**Occupational Safety
and Health Administration**



*U.S. Department
of Transportation*

**Federal Railroad
Administration**

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Mr. Edward Hamberger
President and Chief Executive Officer
Association of American Railroads
425 Third Street, SW
Washington, DC 20024

Mr. Richard Timmons
President and Treasurer
American Short Line and Regional Railroad Association
50 F Street, NW, Suite 7020
Washington, DC 20001

Mr. Michael Melaniphy
President and Chief Executive Officer
American Public Transportation Association
1666 K St., NW, Suite 1100
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Dear Mr. Hamberger, Mr. Timmons, and Mr. Melaniphy:

Accident and incident reporting play an essential role in promoting safety within the railroad industry. The accident and injury reports submitted by railroads to the Federal Railroad Administration (FRA) form a principal basis for FRA's safety program by helping to establish inspection strategies and determine trends in railroad safety, as well as providing a way to gauge whether regulations are effectively addressing the safety needs of the industry. Additionally, accurate recording of accidents and incidents provides railroads with important data to help pinpoint safety problem areas within their own operations, making railroads safer and more efficient. FRA is charged with implementing accurate accident and incident reporting through its railroad safety program. The employee protections in 49 U.S.C. 20109, enforced by the Occupational Safety and Health Administration (OSHA), play an integral role in safeguarding the accuracy of accident and incident reports to the FRA by providing protection against retaliation for employees who report accidents, incidents, and hazards to their railroad carrier or the government. FRA and OSHA are committed to working together to ensure that reporting is as accurate and consistent as possible and that employees feel free to report accidents, incidents, and hazards without fear of retaliation. We are writing to highlight a troubling railroad accident/incident reporting trend and to provide concrete ways your member organizations can improve the safety of their workplaces and improve their compliance with Federal regulations.

The FRA enforces Title 49 Code of Federal Regulations (CFR) Part 225, which requires railroads to report all employee injuries above a certain reporting threshold. OSHA enforces 49 U.S.C. 20109, which protects railroad employees from retaliation for reporting unsafe conditions, safety violations or on-the-job injuries, as well as for refusing to work under certain unsafe conditions or participating in a safety investigation. Section 20109 also prohibits railroads from disciplining or threatening to discipline an employee who requests medical treatment or has followed the treatment plan of a treating physician. Between August 3, 2007, and March 31, 2012, OSHA received 910 whistleblower complaints under § 20109. Approximately 63 percent of these complaints involve an allegation that a worker has been retaliated against for reporting an on-the-job injury. FRA and OSHA are very concerned about the high number of complaints, and that the number of whistleblower complaints is escalating.

We recognize that because railroading involves geographically dispersed employees that work largely autonomously, an exceptional emphasis on adhering to rules is essential to guarantee the safety of employees. When there is a rule infraction, the disciplinary system is a vital tool to ensure that safety rules are followed and that employees are protected from harm. To be effective, however, discipline needs to be assessed evenly and the punishment must fit the infraction. That is, for a given rule violation, similar punishment should be given to an employee who violated the rule without being injured as that given to one who was injured, and it must be appropriate punishment. The perception that injured employees are being singled out for discipline, while non-injured employees who violate the same rules are not disciplined, leads to the development of an organizational safety culture that may inadvertently suppress accurate reporting.

OSHA and FRA are also troubled by the number of whistleblower allegations involving discipline of employees for allegedly falsifying or making false, misleading or conflicting statements about their injuries. In several cases, OSHA's investigation found reasonable cause to believe that the employee did not provide false or misleading information and that the railroad's internal investigation did not support the charge. Discipline based expressly on an employee's injury report has a high potential to chill workplace injury reporting because it may lead employees to believe that anything they say about a workplace injury will be used against them.

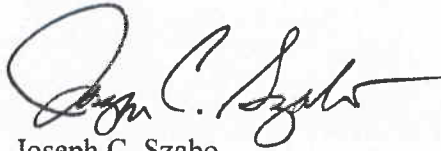
We believe that the use of employee discipline as part of a railroad safety program may result in reducing the number of injuries reported by employees, but it will not ultimately succeed in reducing the actual occurrence of injuries. FRA and OSHA are concerned that if employees fear discipline and do not report an injury that has occurred, we all lose the opportunity to determine the root cause of the injury and focus on prevention.

In addition, FRA and OSHA have found other practices by railroads to be potentially harmful to complete and accurate reporting of accidents and injuries. Such practices include employer policies that assign points or demerits against an employee or subject an employee to increased scrutiny for having an on-the-job injury regardless of the injury's cause. They also include incentive programs that reward employees or groups of employees who report fewer injuries than their peers.

The FRA and OSHA are committed to enforcing the statutes and regulations that protect the safety of all railroad employees. Along with railroad operating rules, the federal laws and regulations provide an important set of tools to reduce injuries. However, we strongly encourage your member railroads to consider the powerful results that can be achieved by making specific changes to their respective safety cultures. Amtrak has recently made significant improvements in this area, and we have attached some information about those changes for your members to consider. See "Attachment 1." Additionally, while not applicable to all of your member railroads, attached are some suggestions on ways railroads can start today to increase the accuracy of accident reporting and improve safety. See "Attachment 2."

Thank you for your consideration. FRA and OSHA look forward to working closely with you to increase worker safety together. If you have any questions, please contact Michael Lestingi, (202) 493-6215 at FRA and Sandra Dillon, (202) 693-2531 at OSHA.

Sincerely,



Joseph C. Szabo
Administrator
Federal Railroad Administration



David Michaels
Assistant Secretary
Occupational Safety and Health Administration

Attachments

ATTACHMENT 1

AMTRAK

Recent changes to Amtrak policies in the area of accident and incident reporting provide empirical evidence of the degree to which a safety culture that is seen to be punitive can affect the number of injuries reported and retaliation complaints. In an effort to improve its organizational safety culture, Amtrak sought to eliminate policies that created an environment that motivated managers to discourage their employees from reporting on-the-job injuries, and motivated employees not to report their injuries because of the threat of discipline. Amtrak took the following actions:

- Assured that all injuries are reported to FRA by transferring the FRA reportability decision from local managers to headquarters and requiring that local managers report every injury to Amtrak headquarters.
- Revised manager performance appraisals to remove all references to the number of personal injuries.
- Adopted a policy that focuses on investigating the root cause of employee injuries to prevent reoccurrence, rather than focusing on formal hearings when such incidents occur.
- Amended its policies to allow any injured employee to remain a member of Amtrak's company-provided health benefit program, even if the employee is not working for an extended period of time.
- Committed to periodic reviews of its policies to ensure any policy that could be considered an adverse action and/or would discourage an employee from reporting an injury is eliminated.

Following the implementation of these measures, while FRA-reportable injuries increased from 441 in 2009 to 647 in 2010, FRA audits revealed that Amtrak's accuracy in injury reporting also increased. Interviews with managers, employees, and labor leaders confirmed that the increase was not due to an increased number of injuries, but rather to improved injury reporting. In other words, because Amtrak removed barriers to reporting, Amtrak gained a more accurate understanding of what was causing accidents and injuries on its property. With the additional data generated by the increased injury reporting, Amtrak management has been better able to address the origins of injuries and prevent future injuries.

During the same time period, new OSHA whistleblower complaints from Amtrak employees dropped from 17 nationwide to 9 nationwide. FRA and OSHA believe that improvements to Amtrak's safety culture have enabled employees to feel that they can properly report their injuries without fear of retribution.

ATTACHMENT 2

WAYS TO INCREASE THE ACCURACY OF ACCIDENT REPORTING AND IMPROVE SAFETY

1. Investigate all employee injuries with an absolute objective to determine the root cause of the incident. Develop and implement appropriate remedial actions with a goal of preventing future injuries, rather than a goal of blaming and disciplining the employee for being injured or reporting an injury.
2. Appraise managers of the safety-related duties including their responsibility to conduct an in-depth investigation for injury causes, and evaluate their success implementing remedial action developed to prevent subsequent injuries, rather than the raw number of injuries to employees they supervise.
3. Discontinue any practices that place injured employees under increased scrutiny and/or place them into special categories that screen out employees from promotions and transfers based on how their injury history compares with the injury history of their peers, based solely the occurrence of the event of an injury, rather than the circumstances surrounding the root cause of the injury.
4. Participate fully in collaborative, non-punitive safety data collection systems such as the Confidential Close Call Reporting System (C3RS). C3RS provides a safe means for employees to share important information about safety problems without fear of discipline, and in locations where it has been piloted, its implementation has both improved the local safety culture and increased productivity.
5. Collaborate with labor organizations to develop and implement safety-oriented peer-to-peer observation and coaching programs that identify and reward positive safety behavior while at the same time seek to understand the root causes of unsafe actions.
6. Conduct periodic reviews of personnel policies to ensure that any policy that would discourage an employee from reporting a work-place injury is eliminated.
7. Provide training to managers regarding the types of conduct that may be found to be retaliation for reporting an injury. Educate employees by posting notices in the workplace or through other means that explain employees' right to report workplace injuries without fear of retaliation.
8. Ensure that any employee incentive programs are designed to reward safety awareness and participation in safety-related activities rather than rewarding employees or groups of employees based on the number of injuries reported.