FRSA Complaint form for filing with OSHA Whistleblower Office

Below is a form to assist in the drafting of FRSA complaints. FRSA Complaints can be telephoned, faxed, or mailed. It is not necessary for the complaint to be signed by the employee complainant. The complaint should be filed with the OSHA Whistleblower office responsible for enforcement activities in the geographical area where the employee resides or was employed, but may be filed with any OSHA officer or employee. Written complaints should be filed by mail, fax, or hand delivery during business hours. The date postmarked, faxed, or hand-delivered is considered the date filed.

[HEADING]

[insert date]

By Fax and Mail

[insert: name and address of OSHA Regional Office Administrator, or

name of the Region's OSHA Whistleblower Supervisory Investigator]

[BODY OF COMPLAINT]

Dear \_\_\_\_\_\_\_\_\_\_:

 My name is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_and I live at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. I am employed as a \_\_\_\_\_\_\_\_by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. My phone numbers are \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

[REPORTING INJURY]

 On \_\_\_\_\_\_\_\_\_\_ I was injured on the job while \_\_\_\_\_\_\_\_\_\_\_\_\_\_ [give brief details of what happened] [also consider briefly explaining why the injury was not solely the employee's fault and that responsibility for the dangerous condition lies with co workers, supervisors, or management who were not injured and are not being disciplined or discriminated against]

 On \_\_\_\_\_\_\_\_\_\_\_\_\_ at \_\_\_\_\_\_\_\_\_\_ I reported to [RR] that I had incurred a work related injury. As a result of my reporting that work related injury, on \_\_\_\_\_\_\_\_\_\_ the RR notified me of its intent to discipline me. Exhibit 1 [attach initial notice of disciplinary proceeding] [if possible, show discrimination by briefly explaining how other employees who do the same practice or procedure in same manner but are not injured are not brought up on disciplinary charges]

[MEDICAL TREATMENT]

[FRSA prohibits a RR or its contractor from denying, delaying, or interfering with an injured employee's medical treatment, and prohibits a railroad from interfering with the medical care or treatment plan of a treating doctor during the course of treatment and recovery from a work injury]

[a RR "denies, delays, or interferes with" an on the job injured employee's medical treatment by:

--refusing or delaying immediate medical treatment

--threatening discipline or disciplining the employee for not reporting to the medical dept against his treating doctor's orders

--refusing to honor the medical treatment plan of the treating doctor

--declaring a work related injury "non-occupational" and failing to pay for the injury's medical expenses, causing delay in treatment or employee to pay out of pocket

--forcing an employee onto light duty or back to work contrary to his treating doctor's orders or recommendation]

 On \_\_\_\_\_\_\_\_\_\_\_, the [RR] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [briefly describe what RR did to deny, delay, or interfere with medical treatment or treating doctor's medical treatment plan] This has denied, delayed, or interfered with my medical treatment, in violation of the Federal Railroad Safety Act, 49 USC Section 20109(c). It also is a form of discrimination and retaliation for my reporting an on-the-job injury, in violation of the Federal Railroad Safety Act, 49 USC Section 20109(a)(4).

[SAFETY OR SECURITY CONDITION OR GROSS FRAUD]

[under the FRSA railroad employees also are protected from any discipline or discrimination for:

refusing "to violate or assist in violating of any Federal law, rule, or regulation relating to railroad safety or security" 49 USC 20109(a)(2)

reporting "a hazardous safety or security condition" 49 USC 20109(b)(1)(A)

"refusing to work when confronted by a hazardous safety or security condition" 49 USC 20109(b)(1)(B) or "refusing to authorize use of any safety-related equipment, track, or structures in a hazardous safety or security condition" 49 USC 20109(b)(1)(C)]

reporting "gross fraud, waste, or abuse of Federal or other public funds intended to be used for railroad safety or security" 49 USC 20109(a)(1) ]

 On \_\_\_\_\_\_\_\_\_\_\_, I reported \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [briefly state what protected activity the employee engage in, such as reporting a safety condition or violation or fraud] to the [RR] On \_\_\_\_\_\_\_\_\_\_\_\_\_\_, the [RR] \_\_\_\_\_\_\_\_\_ [briefly describe what disciplinary or retaliatory or discriminatory action the RR did in response]

[CLOSING]

 [The RR's] conduct is intended to intimidate me and my fellow workers from notifying the Railroad of injuries [or safety concerns, fraud, etc] and as such has an improper chilling effect on the reporting of such injuries [or safety concerns, etc]. The [RR's] charging me with disciplinary offenses [and forcing me to sign a waiver, or disciplining me] is a form of discrimination and retaliation in response to my good faith notification to the Railroad of my work-related personal injury [or reporting of safety concerns, etc].

[regarding reporting injuries]

[The RR's] conduct is in violation of my rights under the Federal Railroad Safety Act, 49 USC Section 20109(a)(4) and also is in violation of [the RR's] own Internal Control Plan, 49 CFR Part 225.

[regarding interference with medical treatment],

[The RR's] conduct is in violation of my rights under the Federal Railroad Safety Act, 49 USC 20109(c).

[regarding safety and security concerns, etc]

[The RR's] conduct is in violation of my rights under the Federal Railroad Safety Act, 49 USC 20109(b)(1). [see also 49 USC 20109(a)(2)]

[regarding reporting of gross fraud or waste]

[The RR's] conduct is in violation of my rights under the Federal Railroad Safety Act, 49 USC 20109(a)(1).

This type of conduct by the Railroad is system-wide, and accordingly I am filing this Complaint under the provisions and protections of the FRSA so your office can conduct a thorough investigation of [RR's] conduct in this and all similar cases. Under the Federal Railroad Safety Act, 49 USC Section 20109(d)(4), OSHA has the power to investigate the Railroad in order to impose punitive damages to address its conduct. The purpose of filing this Complaint is not only to make me whole and to protect me from any future retaliation, but more important to have OSHA conduct such an investigation and to order punitive damages that will discourage [the RR] from continuing its retaliatory course of conduct against employees who report personal injuries [or seek medical treatment, etc].

[insert the name of the employee]

[insert date faxed]

[it is not necessary to have the employee actually sign the Complaint; it is sufficient to just fax it in to OSHA office within the 180 day window from the railroad’s adverse action]