U.S. Department of Labor

Occupational Safety and Health Administration
450 Main Street, Room 613
Hartford, CT 06103
Telephone (860) 240-3154
Fax (860) 240-3155

August 5, 2011

Sofia Hubscher, Esq.
Deputy General Counsel
Metro-North Commuter Railroad Company
347 Madison Avenue, 19th Floor
New York, NY 10017-3739

Via UPS #1ZX104980195941216

RE: Metro-North Commuter Railroad Company/Ordner/1-0080-09-001

Dear Ms. Hubscher:

This is to advise you that we have completed our investigation of the above-referenced complaint filed by William Ordner (Complainant) against Metro-North Commuter Railroad Company (Respondent) on October 16, 2008, under the employee protection provisions of the Federal Railroad Safety Act (FRSA), 49 U.S.C. §20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. Law No. 110-53. In brief, Complainant alleged that after he reported a work-related personal injury on July 3, 2008, Respondent retaliated against him by coding his injury as non-occupational even though the injury occurred in the performance of Complainant's work duties.

Following an investigation by a duly authorized investigator, the Secretary of Labor, acting through her agent, the Regional Administrator for the Occupational Safety and Health Administration, Region I, finds that there is reasonable cause to believe that Respondent violated FRSA and issues the following findings:

Secretary's Findings

Respondent is a suburban commuter rail service that is a subsidiary of the Metropolitan Transportation Authority, a public benefit corporation. Respondent runs service to New York City's northern suburbs in New York and Connecticut, as well as to other regions, including, in conjunction with New Jersey Transit, to parts of New Jersey. Respondent operates 120 stations. Respondent is a railroad carrier within the meaning of 49 U.S.C. § 20109 and § 20102. Complainant began working for Respondent as an ironworker in May 2005. Complainant is a member of the International Brotherhood of Teamsters and is covered by a collective bargaining agreement. Complainant is an employee within the meaning of 49 U.S.C. § 20109.

Complainant suffered a work-related injury on July 3, 2008. Complainant immediately notified Respondent of his injury and then sought medical treatment at Milford Hospital. On or about July 10, 2008, Respondent notified Complainant and his treating physician that his injury was deemed non-

occupational. On October 16, 2008, Complainant filed his FRSA complaint with the Secretary of Labor, alleging that the classification of his July 3, 2008 injury as non-occupational was a violation of Section 20109(a)(4) and that he incurred out of pocket medical expenses as a result. As the complaint was filed within 180 days of the adverse action, it is deemed timely filed.

On Thursday, July 3, 2008, Complainant was working at the Woodmont Tower performing fence work. Complainant and his crew took their usual lunch break. They ate lunch in a truck, then Complainant exited the truck and went to sit in the shade by the Tower House, on the stairs. When Complainant stood up from the steps, he heard and felt a loud pop in his left knee. He engaged in protected activity when he reported the injury to his foreman, Ken McClullen, who then drove Complainant to Milford Hospital. McClullen called Anthony Caruso, the assistant supervisor, on the way to the hospital and reported the injury. Respondent thus knew of Complainant's protected activity.

Complainant was diagnosed with a complex medial meniscus tear of the left knee. As required, Complainant followed up by going to Respondent's Occupational Health Services (OHS) on July 5, 2008. OHS is operated by a contractor of Respondent. At the time relevant to this complaint, the contractor was CHD Meridian and its medical director was Dr. Lynne Hildebrand. Complainant was seen and evaluated by Jeffrey Reyes, PA. PA Reyes initially classified the injury as "pending review and determination," did not state a diagnosis, and did not qualify Complainant for any duty. A follow up visit was scheduled for July 15, 2008.

Complainant suffered an adverse action when, on July 10, 2008, PA Reyes officially classified Complainant's left knee meniscal tear as non-occupational. He stated in his medical notes, and again during his OSHA interview, that his determination was based upon the fact that although Complainant sustained his injury while at work, he was not performing his duties or any specific job task, and there was no intervening work event.

The railroads do not have a traditional worker's compensation program.[1] Instead, when an employee suffers an on the job injury or illness, Respondent pays ordinary and customary medical expenses for treatment of those injuries without any out of pocket expenses for the injured employee. If the injury is classified as non-occupational, the employee is forced to process the claims through his or her private insurance carrier. On the job injuries which cause lost work time and/or require medical care are FRA reportable injuries.

The change in classification of Complainant's injury from "pending review and determination" to "non-occupational" rendered his medical expenses no longer covered by Respondent, which left Complainant to pay any out-of-pocket medical expenses for his treatment. In sum, Respondent violated FRSA, 49 U.S.C. § 20109(a)(4), and its regulations by treating Complainant's July 3, 2008 as non-occupational.

The classification of Complainant's injury as non-occupational was not correct. The pertinent Federal Railroad Administration rule, 49 CFR 225.5 defines "work-related" as "related to any incident, activity, exposure, or the like occurring within the work environment," which is defined as "the physical location, equipment, materials processed or used, and activities of a railroad employee associated with his or her work, whether on or off the railroad's property." According to the FRA Guide to Preparing Accident/Incident Reports, work-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception specifically applies. The

[1] The Federal Employees Liability Act (FELA) provides an injured railroad worker a cause of action to recover for on the job injuries caused in whole or in part by the railroad's negligence.

circumstances of the injury do not fall under any exception. Complainant's knee injury should have been treated as work-related. In fact, Respondent reported Complainant's injury to the FRA as a work-related injury sometime between September 11, 2009 and January 7, 2011 – at least a full year after the July 3, 2008 injury.[2]

On July 23, 2008, Complainant's knee was surgically repaired. He was cleared for light duty on September 2, 2008 and returned to full duty on November 24, 2008.

Respondent also discriminated against Complainant when, on November 7, 2008, it notified Complainant that he had not been selected for a Locomotive Engineer position for which he had applied. He had taken the initial test for the position on January 23, 2008, and was informed via email on February 3, 2008 that he had passed the test and would next have to pass a background investigation. This investigation, according to the announcement for the position, would include an evaluation of the applicant's safety and discipline records, performance assessments, and time and attendance records (including early quits and late starts) for the preceding 30 months. Complainant was interviewed for the position on October 27, 2008, while he was out from work due to his injury.

Complainant's safety file contains a document entitled "Employee Injury History." This document lists four work-related injuries suffered by Complainant[3] and a corresponding "Injury Frequency Index" of 0.91.[4]

According to Mark Campbell, Respondent's Chief Safety and Security Officer,[5] who reviews all applications for craft transfers and promotions, Respondent considers an employee's discipline record and safety history when considering the employee for job transfer and/or promotion. Campbell considers the Injury Frequency Index No.,[6] how the employee's injury record compares to the records of his/her peers, whether the injury was preventable, the severity of the injury, and the elapsed time from date of injury(s) to the date of application.[7] Campbell reviews a summary of the injuries as reported through the IR1 and IR2,[8] based upon which he assigns each applicant to a category: "good," "concern" or "serious

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[2] In the course of other cases under investigation by OSHA, we ran the injury reports from the FRA database on January 22, 2009 and again on September 11, 2009. This injury was not reported to the FRA (either as an employee on duty, or an employee off duty) on either occasion. At some point, it appears that Respondent changed its mind: On January 7, 2011 OSHA again ran the same FRA report and noted that Respondent reported Complainant's July 3, 2008 injury as an employee on duty injury.

[3] The injury on July 18, 2006 corresponds to FRA injury report #20060194. The injury on November 22, 2006 corresponds to FRA injury report #20060324. The injury on March 13, 2007 was apparently not reported to the FRA. The injury on July 3, 2008 corresponds to FRA injury report #20080140.

[4] This was apparently calculated between Complainant's date of hire on May 23, 2005 and the date of the report (which was October 9, 2009).

[5] Campbell testified in a deposition in prior FRSA cases, in 2009 (2009-FRS-00010, 00011, 00012 and 00013) as well as an OSHA investigative interview. Respondent has refused to provide any records relating to its denial of Complainant's application for promotion to a Locomotive Engineer position, despite OSHA's repeated requests for such records.

[6] The Injury Frequency Index No. is an index developed by Respondent that relates an employee's number of injuries to the number of years in service. The higher the index number, the greater number of injuries an employee suffered.

[7] Although Complainant's July 3, 2008 injury occurred after his application for promotion, documents provided by Respondent in another case demonstrate that this injury was contained in Respondent's internal accident reports prepared in July 2008. Presumably, Respondent made its decision to deny Complainant the promotion sometime after its October 27, 2008 interview of him. Therefore, it appears that Complainant's July 3, 2008 injury would have been considered by Respondent in the promotion decision. Because Respondent refused to supply documentation on why it denied Complainant's promotion, OSHA is drawing the adverse inference that Respondent followed its own policies and procedures and considered the July 3, 2008 injury in its decision not to promote complainant.

[8] The IR1 (Initial Report of Incident) and IR2 (Incident Investigation Report) are the incident reports used by Respondent to document injuries.

concern." According to Campbell, the categories of concern and serious concern are red flags to the Human Resources Department when determining an applicant's eligibility and worthiness for the job for which they are applying.

In addition, according to Linda Kenwood, Respondent's Senior Employee Abilities Specialist,[9] absences are coded in employee records. An absence associated with an injury is coded differently from an absence due to illness, and under Respondent's policies, work-related absences are not supposed to count against an employee in assessing discipline or evaluating requests for promotions or craft transfers.

In light of the testimony of Respondent's senior employees and Complainant's "Employee Injury History", as documented by Respondent, we conclude that Complainant's reports of injuries as well as his injuries and related absences were a contributing factor in Respondent's decision not to promote Complainant to the Locomotive Engineer position for which he had applied, in further violation of FRSA, 49 U.S.C. § 20109(a)(4). It was Respondent's practice, when evaluating requests for promotion, to not take into consideration work-related absences. However, because Complainant's absences as a result of his July 3, 2008 injury were wrongfully coded as non-occupational, they would have been considered by Respondent when evaluating his application for promotion to the Locomotive Engineer position. Additionally, it was Respondent's practice, through the Injury Frequency Index No., to take into consideration an employee's injury history and reporting of injuries when evaluating the employee for a promotion. Given that Complainant passed the initial test for the Locomotive Engineer position and was denied the position during the background check phase, given that Respondent's practice was to consider an employee's injury history, and given Complainant's Injury Frequency Index No. as documented by Respondent, we conclude that Complainant was denied the promotion at least in part because of the injuries he reported (which reports are protected by FRSA). Two other factors lead OSHA to this conclusion. First, the promotion denial occurred while Complainant was out of work due to a work-related injury. Second, in response to OSHA's repeated requests to Respondent for records relating to its denial of Complainant's application for promotion, Respondent refused to provide any information as to why Complainant was denied the promotion (as detailed below). Accordingly, OSHA has drawn a negative inference against Respondent as a result of its lack of cooperation on this point.[10]

During the course of this investigation, OSHA requested documents relating to the denial of Complainant's application for promotion in order to determine if Complainant's absence from work as a result of the injury he reported on July 3, 2008 (given that his absence resulting from the injury was coded as non-occupational) played any part in the denial. Respondent was first made aware of OSHA's intent to investigate the denial of promotion on December 15, 2009 by e-mail to Respondent's counsel. In that same email, OSHA requested information. Respondent did not provide the requested information. OSHA again requested the information on August 13, 2010 and August 18, 2010. In its August 18 e-mail, OSHA explained that it "wants to see why [Complainant] was not promoted and if his attendance record, including his absence from work as a result of the injury he reported on July 3, 2008, played any part in the denial of that promotion." Respondent again refused to provide the documents stating in an August 20 e-mail that: "As respects your request for documents concerning [Complainant's] application for a promotion in 2007, would you please let us know the basis of OSHA's jurisdiction to obtain this information? [Complainant] did not make a complaint about it as required by the FRSA and it is now

[9] Kenwood testified in a prior investigation, in 2009 and provided a notarized affidavit. As mentioned above, Respondent has refused to provide any records relating to its denial of Complainant's application for promotion to a Locomotive Engineer position, despite OSHA's repeated requests for such records.

[10] In a December 2, 2010 letter to Respondent's counsel, OSHA warned Respondent that a possible consequence of its failure to provide the requested information to OSHA regarding its denial of Complainant's application for promotion would be an adverse inference against it.

barred by the statute of limitations." OSHA requested the documents one more time on August 23, but was informed by Respondent's counsel on August 30 that: "[S]ince we are unaware of a timely claim under the statute by [Complainant] concerning an application for promotion, we will not be producing documentation concerning such a claim."

Respondent's view of the scope of this investigation, which it used to explain why it would not produce certain information requested by OSHA, is too narrow. Complainant's complaint alleges that Complainant engaged in protected activity when he reported the July 3, 2008 and that Respondent retaliated against him, in violation of FRSA, when it coded his injury as not work-related. One consequence of that alleged unlawful retaliation was that he had to pay out-of-pocket certain medical expenses. During the course of its investigation, OSHA discovered another consequence of the miscoding of Complainant's injury – the denial of promotion to the Locomotive Engineer position, and that second consequence flows from the alleged FRSA violation and is reasonably related to the allegations in Complainant's complaint. Moreover, as detailed above, OSHA gave Respondent notice of its intent to investigate the denial of promotion (in a December 15, 2009 e-mail to Respondent's counsel) and gave Respondent multiple opportunities to provide information and respond.

In addition, Respondent's disregard for the rights of its employees and refusal to cooperate with OSHA in its investigation warrant punitive damages. Respondent's injury frequency index policy violates the Act, 49 U.S.C. 20109(a), which prohibits a railroad from discharging, demoting, suspending, reprimanding, or "in any other way" discriminating "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-- . . . (4) to notify, or attempt to notify, the railroad carrier or the Secretary of Transportation of a work-related personal injury or work-related illness of an employee." Pursuant to this policy, Respondent automatically assigns points to an employee's personnel record, thereby subjecting the employee to other adverse consequences such as disqualification for promotion or craft transfer, solely for lawfully reporting a work-related injury. Respondent's enforcement of this policy, to the extent that it punishes employees for reporting work-related injuries, on its face violates FRSA. Such practices produce a chilling effect on reporting injuries in the workplace, jeopardizing employee safety. Furthermore, Respondent's refusal to provide OSHA with certain documents requested during this investigation is consistent with its conduct in past investigations. Respondent's pattern of refusal to provide OSHA with requested information during FRSA investigations demonstrates willful disregard for the law and the rights of its employees.[11]

OSHA finds that there is reasonable cause to believe that Respondent violated FRSA. OSHA hereby orders the following to remedy the violation:

Order

Respondent shall amend all employee records to reflect Complainant's July 3, 2008 injury and subsequent care as an occupational injury.

Respondent shall reimburse Complainant for all out of pocket medical expenses due to the change in classification from occupational to non-occupational in the amount of $2,210.20.

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[11] In several other FRSA cases, OSHA made information requests. Metro-North refused to provide the requested information stating in a February 18, 2009 letter: "we have concluded that OSHA lacks authority to require the production of specific documents and/or the compilation of information."

Respondent shall promote Complainant to the position of Locomotive Engineer, effective November 24, 2008

Respondent shall pay Complainant back pay equaling the difference between his current rate of pay and that of Locomotive Engineer, with interest, from November 24, 2009 to the present.[12]

Respondent shall pay Complainant's reasonable attorney's fees in the amount of $9,441.

Respondent shall pay Complainant compensatory damages in the amount of $5,000 for the inconvenience of and the mental anguish arising from Respondent's misclassification of Complainant's work related injury and the resulting failure to promote Complainant.

Respondent shall pay Complainant punitive damages in the amount of $125,000.

Respondent shall post the Notice to Employees included with this Order in all of its 120 stations in areas where employee notices are customarily posted, as well as on any electronic forum for employees, such as an intranet web site.

Respondent shall provide to all employees a copy of the FRSA Fact Sheet and the Frequently Asked Questions on Employee Protections for Reporting Work-Related Injuries and Illnesses in the Railroad Industry included with the Order.

Respondent shall within 30 days inform the Occupational Safety and Health Administration in writing of the steps it has taken to comply with the above order.

Respondent and Complainant have 30 days from the receipt of these Findings to file objections and request a hearing before an Administrative Law Judge (ALJ). If no objections are filed, these Findings will become final and not subject to court review. Objections must be filed in writing with:

Chief Administrative Law Judge
U.S. Department of Labor
Suite 400N, Techworld Building
800 K Street NW
Washington, D.C. 20001-8002
(202)693-7542, Facsimile (202)693-7365

With copies to:

All Parties to this Case

Marthe B. Kent
Regional Administrator
U.S. Department of Labor, OSHA
JFK Federal Building, Room E-340
Boston, MA 02203

[12] Interest rate paid on tax overpayments determined under section 6621 of the Internal Revenue Code.

Michael Mabee
Supervisory Investigator
U.S. Department of Labor, OSHA
450 Main Street, Room 613
Hartford, Connecticut 06103

Department of Labor, Associate Solicitor
Division of Fair Labor Standards
200 Constitution Avenue, NW, N2716
Washington, D.C. 20210

In addition, please be advised that the U.S. Department of Labor generally does not represent any party in the hearing; rather, each party presents his or her own case. The hearing is an adversarial proceeding before an ALJ in which the parties are allowed an opportunity to present their evidence *de novo* for the record. The ALJ who conducts the hearing will issue a decision based on the evidence, arguments, and testimony presented by the parties. Review of the ALJ's decision may be sought from the Administrative Review Board, to which the Secretary of Labor has delegated responsibility for issuing final agency decisions under FRSA. A copy of this letter has been sent to the Chief Administrative Law Judge along with a copy of your complaint.

Complaints under Federal Rail Safety Act are handled in accordance with Title 29, Code of Federal Regulations Part 1982, a copy of which may be obtained at http://www.whistleblowers.gov.

Sincerely,

Michael Mabee
Supervisory Investigator

cc: Charles C. Goetsch, Esq. (Via UPS #1ZX104980198970822)
USDOL/OALJ-Chief Administrative Law Judge
USDOL/SOL-FLS
US DOL/SOL-Regional Solicitor, Region I
Federal Railroad Administration

NOTICE TO EMPLOYEES

PURSUANT TO AN ORDER BY THE U.S. DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION:

METRO-NORTH COMMUTER RAILROAD COMPANY (METRO-NORTH) has been ordered to make whole an employee who was found to have been retaliated against for exercising his rights under the Federal Rail Safety Act (FRSA). Metro-North has also been ordered to take affirmative action to ensure the rights of its employees under employee whistleblower protection statutes including the FRSA.

PURSUANT TO THAT ORDER, METRO-NORTH AGREES THAT IT WILL NOT:

1. Discharge or in any manner discriminate against any employee because such employee has engaged in any activity, filed any complaint or instituted or caused to be instituted any proceeding under or related to the employee protection provisions of the Federal Rail Safety Act (FRSA), 49 U.S.C. §20109, or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself/herself or others of any right afforded by the FRSA.

2. Discharge, demote, suspend, threaten, harass, intimidate or in any other manner discriminate against an employee because such employee has notified, or attempted to notify, the railroad carrier or the Secretary of Transportation of a work-related personal injury or work-related illness of an employee.

3. Discharge, demote, suspend, threaten, harass, intimidate or in any other manner discriminate against an employee because such employee has filed a complaint, or directly caused to be brought a proceeding related to the enforcement of FRSA or to testify in that proceeding.

_____

Metro-North Commuter Railroad Company Date

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE. THIS NOTICE MUST REMAIN POSTED AND MUST BE NOT ALTERED, DEFACED, OR COVERED BY OTHER MATERIAL.

OSHA Occupational Safety and Health Administration
www.osha.gov

Frequently Asked Questions on Employee Protections for Reporting Work-Related Injuries and Illnesses in the Railroad Industry

Employees working for railroad carriers who notify, or attempt to notify, a railroad carrier, the Secretary of Transportation, or any Federal, State, or local regulatory or law enforcement agency, of a work-related personal injury or work-related illness are protected from retaliation under the Federal Rail Safety Act (FRSA), 49 U.S.C. 20109. Below are some answers to frequently asked questions about these employee whistleblower protections. The specific facts of every FRSA case will be different, so the information below may not apply in every instance.

Q: Who is protected under FRSA for reporting a work-related injury or illness?

A: The Federal Rail Safety Act protects public and private sector employees of railroad carriers, as well as employees of contractors and subcontractors of railroad carriers who report a work-related personal injury or work-related illness.

Q: Can a railroad carrier discipline an employee for reporting a work-related personal injury or work-related illness?

A: No. Reporting a work-related personal injury or work-related illness is specifically protected under FRSA.

Q: Can a railroad discipline an employee for violating safety rules which caused a work-related injury?

A: Yes. An employee can be disciplined for violating safety rules, but not for reporting the injury.

Q: Is it a violation of FRSA for a railroad to harass or intimidate an employee into not reporting an injury, or to report it as non-work related?

A: Yes. This violates FRSA.

Q: Is it a violation of FRSA for a railroad to classify an employee's work-related injury as not work-related?

A: Yes. If the railroad classifies a work-related injury as not work-related in an effort to avoid having the injury be "reportable" then this practice would violate FRSA.

Q: Is it a violation of FRSA for a railroad to force an employee to work against medical advice?

A: Yes. FRSA prohibits a railroad from requiring an employee to work against the orders of a treating physician. FRSA does not prohibit a railroad from requiring that an employee perform alternate duties that would be permitted under a treating physician's treatment plan.

Q: Is it a violation of FRSA for a railroad to discipline anyone who is injured on the job?

A: Yes. Except to the extent that a railroad may discipline an injured employee for violating work safety rules, a railroad may not discipline employees who get injured on the job. A policy or practice that disciplines employees who receive on-the-job injuries would violate FRSA.

OSHA® FactSheet

Whistleblower Protection for Railroad Workers

Individuals working for railroad carriers are protected from retaliation for reporting potential safety or security violations to their employers or to the government.

On August 3, 2007, the *Federal Railroad Safety Act* (FRSA), 49 U.S.C. §20109, was amended by *The Implementing Recommendations of the 9/11 Commission Act* (Public Law 110-53) to transfer authority for railroad carrier worker whistleblower protections to OSHA and to include new rights, remedies and procedures. On October 16, 2008, the *Rail Safety Improvement Act* (Public Law 110-432) again amended FRSA, to specifically prohibit discipline of employees for requesting medical treatment or for following medical treatment orders.

Covered Employees

Under FRSA, an employee of a railroad carrier or a contractor or subcontractor is protected from retaliation for reporting certain safety and security violations.

Protected Activity

If your employer is covered under FRSA, it may not discharge you or in any other manner retaliate against you because you provided information to, caused information to be provided to, or assisted in an investigation by a federal regulatory or law enforcement agency, a member or committee of Congress, or your company about an alleged violation of federal laws and regulations related to railroad safety and security, or about gross fraud, waste or abuse of funds intended for railroad safety or security. Your employer may not discharge or in any other manner retaliate against you because you filed, caused to be filed, participated in, or assisted in a proceeding under one of these laws or regulations. In addition, you are protected from retaliation for reporting hazardous safety or security conditions, reporting a work-related injury or illness, refusing to work under certain conditions, or refusing to authorize the use of any safety- or security-related equipment, track or structures. You may also be covered if you were perceived as having engaged in the activities described above.

In addition, you are also protected from retaliation (including being brought up on charges in a disciplinary proceeding) or threatened retaliation for requesting medical or first-aid treatment, or for following orders or a treatment plan of a treating physician.

Adverse Actions

Your employer may be found to have violated FRSA if your protected activity was a contributing factor in its decision to take adverse action against you. Such actions may include:

- Firing or laying off
- Blacklisting
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire
- Intimidation
- Making threats
- Reassignment affecting promotion prospects
- Reducing pay or hours
- Disciplining an employee for requesting medical or first-aid treatment
- Disciplining an employee for following orders or a treatment plan of a treating physician
- Forcing an employee to work against medical advice

Deadline for Filing a Complaint

Complaints must be filed within 180 days after the alleged adverse action occurred.

How to File a Complaint

A worker, or his or her representative, who believes that he or she has been retaliated against in violation of this statute may file a complaint with OSHA. The complaint should be filed with the OSHA office responsible for enforcement activities in the geographic area where the worker lives or was employed, but may be filed with any OSHA officer or employee. For more information, call your nearest OSHA Regional Office:

- *Boston* *(617) 565-9860*
- *New York* *(212) 337-2378*
- *Philadelphia* *(215) 861-4900*
- *Atlanta* *(404) 562-2300*
- *Chicago* *(312) 353-2220*
- *Dallas* *(972) 850-4145*
- *Kansas City* *(816) 283-8745*
- *Denver* *(720) 264-6550*
- *San Francisco* *(415) 625-2547*
- *Seattle* *(206) 553-5930*

Addresses, fax numbers and other contact information for these offices can be found on the Whistleblower Protection Program's website, www.whistleblowers.gov, and in local directories. Complaints may be filed orally or in writing, by mail (we recommend certified mail), e-mail, fax, or hand-delivery during business hours. The date of postmark, delivery to a third party carrier, fax, e-mail, phone call, or hand-delivery is considered the date filed. If the worker or his or her representative is unable to file the complaint in English, OSHA will accept the complaint in any language.

Results of the Investigation

If the evidence supports your claim of retaliation and a settlement cannot be reached, OSHA will issue a preliminary order requiring the appropriate relief to make you whole. Ordered relief may include:

- Reinstatement with the same seniority and benefits.
- Payment of backpay with interest.
- Compensatory damages, including compensation for special damages, expert witness fees and reasonable attorney's fees.
- Punitive damages of up to $250,000.

OSHA's findings and preliminary order become a final order of the Secretary of Labor, unless a party objects within 30 days.

Hearings and Review

After OSHA issues its findings and preliminary order, either party may request a hearing before an administrative law judge of the U.S. Department of Labor. A party may seek review of the administrative law judge's decision and order before the Department's Administrative Review Board. Under FRSA, if there is no final order issued by the Secretary of Labor within 210 days after the filing of the complaint, then you may be able to file a civil action in the appropriate U.S. district court.

To Get Further Information

For a copy of the statutes, the regulations and other whistleblower information, go to www.whistleblowers.gov. For information on the Office of Administrative Law Judges procedures, decisions and research materials, go to www.oalj.dol.gov and click on the link for "Whistleblower."

This is one in 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 or regulations, refer to Title 29 of the Code of Federal Regulations. This information will be made available to sensory impaired individuals upon request. The voice phone is (202) 693-1999; teletypewriter (TTY) number: (877) 889-5627.

For more complete information:

OSHA® Occupational Safety and Health Administration

U.S. Department of Labor

www.osha.gov

(800) 321-OSHA

DEP 8/2010