



U.S. Department of Transportation
Federal Railroad Administration



U.S. Department of
Labor
Occupational Safety and Health Administration

December 20, 2024



Dear [REDACTED]:

We are writing to express the views of the Federal Railroad Administration (FRA) and Occupational Safety and Health Administration (OSHA) on the importance of ensuring that employer discipline and incentive programs are implemented in ways that avoid a chilling effect on railroad workers' ability to report workplace injuries and illnesses and to seek medical treatment without fear of retaliation. FRA and OSHA are committed to working together to ensure that railroad employees feel free to report work-related injuries or illnesses and seek medical treatment without fear of retaliation.

FRA is charged with ensuring that all railroads comply with the reporting requirements under Title 49 Code of Federal Regulations (CFR) Part 225. Part 225 requires railroad carriers to report all employee injuries that fall under the regulations to ensure FRA is provided with accurate information concerning the hazards and risks that exist on the Nation's railroads. Part 225 also requires all railroads to abide by their Internal Control Plans, including the railroad's commitment to complete and accurate reporting of all accidents, incidents, injuries, and occupational illnesses arising from the operation of the railroad. Railroads further must commit to the principle that, in absolute terms, all harassment or intimidation of any employee that is calculated to discourage or prevent the employee from receiving proper medical treatment or from reporting such accident, incident, injury or illness will not be permitted tolerated and will result in some stated disciplinary action against any employee, supervisor, manager, or officer of the railroad carrier committing such harassment or intimidation. See 49 CFR § 225.33(a)(1). The employee protections in 49 U.S.C. § 20109, enforced by OSHA, play an integral role in safeguarding the accuracy of the accident and safety incident reporting to FRA by providing protection against retaliation for employees who report work-related injuries and illnesses, accidents, safety incidents, and hazards to their railroad carrier or the government. The

protections in 49 U.S.C. § 20109 prohibit railroads from discriminating against an employee for reporting a work-related injury or illness or disciplining or threatening to discipline an employee for seeking medical treatment or following the treatment plan of a treating physician for a work-related injury, and prohibit a railroad carrier from denying, delaying, or interfering with medical or first aid treatment of an employee injured during the course of employment. Separately, OSHA enforces a provision in its recordkeeping regulations, 29 C.F.R. § 1904.35(b)(1)(iv), that prohibits employers from discharging or in any manner discriminating against employees for reporting work-related injuries or illnesses.

However, over the past several years, OSHA and FRA continue to see complaints from railroad employees stating that they have experienced retaliation, often in the form of discipline or threats of discipline, by supervisors and managers for reporting a work-related injury or illness or seeking proper medical treatment for a work-related injury. FRA and OSHA are concerned that, if employees fear discipline and do not report an injury or do not seek the proper medical treatment, we all lose the opportunity to determine the root cause and severity of the injury, and thus the ability to create federal laws and regulations that best prevent injuries and create a safer work environment. While consistent enforcement of legitimate work rules (whether or not an injury or illness is reported) can be an important part of a railroad safety program, employee discipline used disproportionately or pretextually against injured employees is not. Such discipline may reduce the number of injuries that are reported to FRA and OSHA, but it will not ultimately succeed in reducing the actual occurrence of injuries.

Additionally, FRA and OSHA continue to be concerned that railroads' use of certain types of incentive programs may have a chilling effect on employees' willingness to report work-place injuries and illnesses and obtain appropriate medical treatment. Such incentive policies are potentially harmful to complete and accurate reporting of accidents and injuries. For instance, many railroads have incentive programs that reward managers based, at least in part, on low numbers of injury reports among the employees they supervise. Railroads also have incentive programs that reward employees or groups of employees who report fewer injuries than their peers. OSHA and FRA are concerned that these incentive structures may motivate supervisors or managers to take increasingly egregious steps to ensure that an injured employee does not receive the type of medical attention that will result in an injury or illness that meets the reportable threshold, even when such medical treatment is necessary. For instance, through its relationship with OSHA, FRA has learned of circumstances such as an employee being told by a supervisor to forego days off as ordered by their doctor and/or forgo prescription medication in exchange for light duty while they recover and being threatened with disciplinary action if they did not. This is unacceptable and unlawful.

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 you to consider the powerful results that can be achieved by making specific changes to your safety culture, in particular by evaluating your incentive programs and removing any incentive programs in place that hamper the proper reporting and medical treatment of injuries and illnesses sustained by your employees. In contrast, incentive programs that reward employees for reporting near misses and safety hazards improve the overall safety and functioning of the workplace. We strongly encourage you to join FRA's Confidential Close Call Reporting System

(C³RS), which is designed for this very purpose, so that *all* of your employees can report their close calls without fear of discipline. More information on this program and the dozens of participating freight and passenger railroads is available at: <https://railroads.dot.gov/railroad-safety/divisions/safety-partnerships/c3rs/confidential-close-call-reporting-system-c3rs> OSHA has guidelines on permissible incentive programs, which are available at: <https://www.osha.gov/lawsregs/standardinterpretations/2018-10-11>.

Importantly, federal statute and regulation entitle railroad workers to these fundamental protections to better ensure their safety and assure their right to receive prompt medical treatment. Moreover, accident and incident reporting play an essential role in promoting safety within the railroad industry. Accurate recording of accidents and safety incidents provides railroads and FRA with important data to pinpoint safety problem areas within operations, making railroads safer and more efficient. By hampering such proper reporting, we cannot make the railroad industry the safest it can be.

FRA and OSHA look forward to working closely with you and your workforce to increase safety together.

Sincerely,



Amit Bose
Administrator
Federal Railroad Administration



Douglas L. Parker
Assistant Secretary
Occupational Safety and Health Administration

cc:

L. Ed Dowell, President, American Train Dispatchers Association (ATDA)
Edward A. Hall, National President, Brotherhood of Locomotive Engineers and Trainmen (BLET)
Tony D. Cardwell, National Division President, Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters (BMWED)
Michael S. Baldwin, President, Brotherhood of Railroad Signalmen (BRS)
Josh Hartford, Special Assistant to the International President, International Association of Machinists and Aerospace Workers (IAMAW)
John Mansker, Railroad Division Services, Director, International Brotherhood of Boilermakers, Iron Ship Builders, Forgers and Helpers (IBB)
Al Russo, Railroad Division, Director, International Brotherhood of Electrical Workers (IBEW)
Michael Pistone, President, National Conference of Firemen & Oilers, District of Local 32BJ/SEIU (NCFO)
Peter Kennedy, Director, International Association of Sheet Metal, Air, Rail and Transportation Workers – Railroad, Mechanical and Engineering Department (SMART-MD)
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