

A blue ribbon banner with a 3D effect, featuring two cylindrical shapes at the top that look like the ends of the ribbon.

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AM I A

WHISTLEBLOWER?

THE RAILROAD WORKER'S STEP-BY-STEP GUIDE TO DETERMINING IF YOU ARE A
WHISTLEBLOWER AND HOW TO PURSUE A SUCCESSFUL CLAIM



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CHAPTER ONE

WHAT IS A WHISTLEBLOWER?

Protected/Prohibited

Whistleblower claims boil down to these two words.

Whistleblower activity is determined by amendments to the Federal Railroad Safety Act. A railroad worker can be a whistleblower if he or she has done something **protected** by the law and what has happened to him or her is **prohibited**.

There are four basic qualifiers to any whistleblower claim:

- ☐ First, did you engage in protected activity?
- ☐ Second, did the railroad take adverse action against you?
- ☐ Third, did your protected activity contribute, even in the slightest, to the adverse action taken against you?
- ☐ Fourth, would the railroad have taken the same action against you without the protected activity?

In the next chapter I'll explain in detail, protected and prohibited activity and what they mean to your case.



[Photo by Flynn & Wietzke](#)



**Have you held back reporting an injury because it was after the end of your shift? This is why this statue exists.
– Marc Wietzke**





CHAPTER TWO

WHAT IS A PROTECTED ACTIVITY?



Protected Activity

The law dictates four kinds of protected activities.

- 1. Reporting work related injury/illness.** If you tell the railroad that you have a work-related injury, even if you are bringing it up for the first time two weeks after it happened, you are protected.

Ask yourself:

- ☐ Have you previously avoided reporting an incident that you thought could turn into an injury because you were afraid of “getting in trouble”, either from your boss or because of a potential absence?

- 2. Reporting a hazardous safety or security condition.** This can be something as basic as complaining about a washed-out area, debris in the yard, lack of lighting, a failure to shovel or put down ice melt.
 - ☐ Maybe it is a lack of tools or good air quality. Maybe it is unsanitary sleeping accommodations.



[Photo by Flynn & Wietzke](#)

- 3. Refusing to work when confronted by hazardous conditions.** Many of you have received training about Road Worker Protection, and as a result learned about making a “good faith challenge”. Under the Whistleblower amendments to the FRSA, there is a similar right, but the details of how it works are different.

- ☐ Essentially, before you outright refuse to work, you should consider whether there is a way to make it reasonably safe. *But if you are unsure, reasonably, or there is no effort by the carrier to fix the problem, you have engaged in Protected Activity.*



4. Providing information to persons with authority regarding violation of any:

- Federal law, rule, regulation related to railroad safety or security
- Fraud
- Waste
- Abuse of Funds

- ☐ Is your carrier dumping illegally?
- ☐ Is a boss allowing someone to pad the payroll? Is there personal work being done on company time?
- ☐ Is the carrier ordering you to work in violation of RWP rules, with or without you making a good faith challenge?



If you are being targeted for telling a supervisor or government investigator about any of these, you have engaged in protected activity.

- Marc Wietzke





[Photo by Flynn & Wietzke](#)



As it was in one of my federal court trials, protected activity can be the lack of lighting on a work train. The point is, if it is a safety-related concern that is raised, you have engaged in Protected Activity.
– Marc Wietzke





CHAPTER THREE

WHAT ABOUT MY MEDICAL CARE?



Your Health First

Medical care is a special category under the whistleblower amendments.

Essentially, the law was intended, and the decisions have confirmed, that you are **not supposed to put anything but your health first**. In other words, if you aren't up to doing the job because you need treatment or because a doctor says you need to not work, then you aren't up to doing the job safely. The idea is that by forcing someone to put their health second, they are putting safety second. So, the law says:

1. **Railroad cannot** deny, delay or interfere with medical care for on the job injuries.
 2. **Railroad cannot** engage in prohibited actions for requesting medical care or following treating doctor's orders, regardless of whether the care is related to an on the job injury.
- ☐ Be ready to prove the railroad knew you were following doctor's orders before the discrimination.



[Photo by Flynn & Wietzke](#)



**If you are out of work for illness,
get a doctor's note even if
company policy does not require
it.**

– Marc Wietzke



CHAPTER FOUR

What CAN'T the Railroad Do?



No. They Can't.

The railroad cannot take any adverse action.

What's adverse action? A few examples:

- ☐ Overt threats to abolish a job.
- ☐ Assigning you double the number of cars.
- ☐ Giving you a task in the dark, in the middle of the night, every time.
- ☐ Cutting your overtime.

The law also specifically states that the railroad can't:

- Discharge
- Demote
- Suspend
- Reprimand
- Discriminate in anyway, ***including issuing a charge letter.***



[Photo by Flynn & Wietzke](#)



Adverse action is a fancy way of saying the railroad can't do anything a reasonable person would take as negatively affecting the job.
– Marc Wietzke





CHAPTER FIVE

**What should I do if I think
I'm a whistleblower?**



The Timing is Absolute.

Know Your Rights and Don't Wait.

This is where a number of people miss out on perfectly good claims because they think things will get better or [don't know their rights in the first place](#), hence this guide.

Here are a few things to know and remember if you have a whistleblower claim:

- ✓ The law requires that you file your complaint within **180 days** with Department of Labor. **You miss the deadline, you are forever barred from making a claim.**
- ✓ Each violation that stems from basic incident – the charge letter, the hearing, the discipline – are each separate violations and trigger separate time clocks. **The best course is to file in time to catch all of them under the earliest deadline.**
- ✓ 210 days after filing Complaint, **if the issues are not resolved, you have the right to sue in Federal Court.**



[Photo by Flynn & Wietzke](#)



While lawyers will disagree on this, I personally feel suing in federal court is typically more advantageous than going through the administrative process in the Department of Labor. You'll get a federal judge and subpoena power, as well as a jury who will understand that their safety is actually at risk if the railroad puts your safety in the backseat to profits.
– Marc Wietzke





CHAPTER SIX

What Can I Get for My Whistleblower Case?



What Can I Get?

The law says, railroad has to make you whole.

That means whatever it takes to fix, can be done.

The whistleblower amendments allow you to get discipline wiped clean from your company file, something the union often can't accomplish under the Railway Labor Act.

Here are some examples of “make whole” whistleblower remedies successful clients have received:

- ☐ Worker put back on job at full seniority with back pay, with interest.
- ☐ Railroad ordered to pay credit card interest.
- ☐ Railroad ordered to pay the value of a house lost in foreclosure after the employee was wrongly fired.
- ☐ Compensatory damages for having to endure the legal process.
- ☐ Costs in pursuing your claim
- ☐ Punitive damages (designed to punish the railroad) up to \$250,000

[Click here for more on the railroad paying you.](#)

AND

- ☐ **ALL the worker's attorney fees**



[Photo by Flynn & Wietzke](#)



The point is, whatever you are subjected to is supposed to be paid for. – Marc Wietzke



CHAPTER SEVEN

What Do I Do Now?



Don't Go it Alone.

**Consult an attorney
with whistleblower experience.**

Where OSHA falls short, whistleblower lawyers take over.

If you have tried to pursue one of these claims on your own already, you may have found that some of the OSHA investigators are not as gung-ho as I am about the statute. This is in part because it is so new, and also in part due to the statute being a little different and the industry being so new to the investigator.

There are not many reported decisions under this statute and explaining all of the permutations of it takes time, which an overworked, underpaid investigator handling claims under 35 different whistleblower statutes, doesn't always have time to learn. OSHA has traditionally never been permitted onto the railroad property, only the FRA.

A seasoned railroad attorney with whistleblower experience knows, not only how the railroad works, but what laws can be used to your benefit.

Go for Experience.

**If you've got a good FELA attorney,
double check that he or she has
whistleblower experience.**

Why whistleblower experience specifically?

Railroad Whistleblowers need an experienced railroad attorney who understands how railroad retaliation really works, like when you get hit with:

- **Outright discipline**
- **Uneven assignment of grunt work**
- **Water cooler badmouthing**
- **Manipulation of overtime**
- **Denial of equipment**

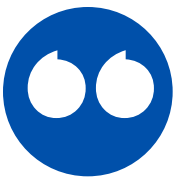
FELA lawyers are railroad attorneys, first and foremost. BUT many FELA attorneys do not actually understand whistleblower. I have colleagues around the country that are FELA lawyers, but who refer their whistleblower cases to me for that reason.

If you need to consult with an attorney about a FELA claim, I've written some articles on how to hire the right one for you.

- ✓ [**Need to Hire a Railroad Attorney? Your 7 Point Checklist**](#)
- ✓ [**Four Types of Railroad Attorneys to Watch Out For**](#)



[Photo by Flynn & Wietzke](#)



OSHA investigators take the railroad at their word. An experienced FELA attorney does not. – Marc Wietzke





LEARN MORE WITH OUR CASE STUDY

I hope this is a helpful primer on the whistleblower amendments. No doubt, you'll have questions specific to your case and craft.

[You can always drop me an email](#) or call (516) 877-1234. I'd be happy to answer your questions and point you in the right direction.

CLICK HERE
To read our
groundbreaking
whistleblower
case study