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Subject **Whistleblower information**

From: **UTU Mi Director** <utumi@comcast.net>

Sent: **Aug 8, 2009 11:36:47 AM**

To: **Undisclosed-Recipient:;@unspecified-domain**

Brothers,

Please see attached a document from UTU Legal counsel Larry Mann in regards to the OSHA whistleblower act. I have also attached an example my office used to enforce said policy. We achieved the desired effect and the company officers in question halted their harassment and intimidation actions. I have sent both in windows vista so if you are unable to open, please go to the Microsoft website and download a free conversation patch as I can not send in any other format.

For those of you not familiar with the OSHA whistleblower act the UTU Safety task force will be doing an article, with assistance from Brother Larry Mann, that explains it's value and procedures. It would be in everyone's best interests to wait until then as Larry is the utmost authority on this subject. I am simply sending the above attached information as it has been requested by so many and I did not want them to think I was not doing as promised.

If you have any further questions, please feel free to contact me or simply wait for the article to appear on the UTU website.

Fraternally

Jerry Gibson

You really have protection against harassment and intimidation

In a recent decision by an investigator of the Occupational Safety and Health Administration, in four cases a railroad was assessed punitive damages in the amount of \$300,000. This is in addition to the other damages available to the employee under the law. This shows that the new law protecting railroad workers is becoming effective. A summary of the law is set out below.

The Law and its Protections:

(a) In General.— A railroad carrier engaged in interstate or foreign commerce, a contractor or a subcontractor of such a railroad carrier, or an officer or employee of such a railroad carrier, may not discharge, demote, suspend, reprimand, or in any other way discriminate 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—

(1) to provide information, directly cause information to be provided, or otherwise directly assist in any investigation regarding any conduct which the employee reasonably believes constitutes a violation of any Federal law, rule, or regulation relating to railroad safety or security, or gross fraud, waste, or abuse of Federal grants or other public funds intended to be used for railroad safety or security, if the information or assistance is provided to or an investigation stemming from the provided information is conducted by—

(A) a Federal, State, or local regulatory or law enforcement agency (including an office of the Inspector General under the Inspector General Act of 1978.

(B) any Member of Congress, any committee of Congress, or the Government Accountability Office; or

(C) a person with supervisory authority over the employee or such other person who has the authority to investigate, discover, or terminate the misconduct;

(2) to refuse to violate or assist in the violation of any Federal law, rule, or regulation relating to railroad safety or security;

(3) to file a complaint, or directly cause to be brought a proceeding related to the enforcement of this part or, as applicable to railroad safety or security, chapter 51 or 57 of this title, or to testify in that proceeding;

(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;

(5) to cooperate with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board;

(6) to furnish information to the Secretary of Transportation, the Secretary of Homeland Security, the National Transportation Safety Board, or any Federal, State, or local regulatory or law enforcement agency as to the facts relating to any accident or incident resulting in injury or death to an individual or damage to property occurring in connection with railroad transportation;

(7) to accurately report hours on duty.

In addition,

(8) A railroad or person shall not deny, delay, or interfere with the medical or first aid treatment of an injured employee. If transportation to a hospital is requested by an injured employee, the

railroad shall promptly arrange to have the injured employee transported to the nearest medically appropriate hospital. A railroad shall not discipline, or threaten discipline to an employee seeking medical treatment, or for following orders or a treatment plan of a treating physician. Provided, however, it will not be a violation if the refusal by the railroad is pursuant to the FRA's medical standards regs. or a carrier's medical standards for fitness for duty.

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Remedies.—

(1) In general.— An employee prevailing in any action shall be entitled to all relief necessary to make the employee whole.

(2) Damages.— Relief shall include—

(A) reinstatement with the same seniority status that the employee would have had, but for the discrimination;

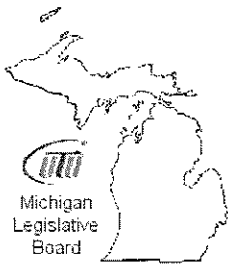
(B) any backpay, with interest; and

(C) compensatory damages, including compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

(3) Possible relief.— Relief in any action may include punitive damages in an amount not to exceed \$250,000.

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(e) Election of Remedies.— An employee may not seek protection under both this section and another provision of law for the same allegedly unlawful act of the railroad carrier.



United Transportation Union

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UTU Local 1075 Members
Flat Rock, Mi

Brothers and Sisters,

It has come to this offices attention that many of you have not received adequate opportunity to receive, read and process your required CN Operating Bulletins, Michigan division notices, DOB'S or proper job briefings. There are also reports of relentless harassment for the sake of productivity. After investigating recent reports, it would seem there is substantial evidence of transgressions. In order to file the appropriate Federal and State violations, including hours of service, harassment and intimidation I request that all of you please document the following information as soon as possible following the aforementioned event;

- Date and Time on duty, include train id
- Name of crew members involved, including witnesses and contact information if possible
- Name of employee or officer who instructed you to leave the premises prior to your crew receiving adequate time to read and process all required information, including job briefings
- Any other information you feel is needed in order to properly process alleged violation, including threats, intimidation, harassment or unsafe events directly attributed said actions

This information can be done via email or hand written letter. It is important to note that anyone who chooses to file a complaint will be protected under the Federal OSHA Whistleblower Protection Act, effective August 3, 2007, FRSA, 49 U.S.C. Section 20109. Please forward all documents to your Local Chairmen Jason Reineke, Legislative Rep. Sean Carney or to this office via the contact information found above.

Fraternally,

Jerry L Gibson
United Transportation Union
Michigan Legislative Director
Email; UTUMi@Comcast.net