



# Workplace Whistleblower

*Perspectives on whistleblower situations that employers frequently face*

## Railroad Ordered to Pay \$225,000 in Whistleblower Action Where Employee Allegedly Lied About Prior Injuries

*By Ada W. Dolph and Craig B. Simonsen*

A railroad's decision to terminate an apprentice electrician whose OSHA injury report revealed he had not been truthful in his employment record about other prior workplace injuries was unlawful retaliation under the whistleblower provision of the *Federal Railroad Safety Act*, 49 U.S.C. § 20109 (FRSA), OSHA has ordered. The railroad was ordered to pay \$50,000 in compensatory damages, \$150,000 in punitive damages, more than \$22,000 in back wages and interest, and reasonable attorney's fees.

After the employee was seriously injured at work, the injury was reported to OSHA and included information regarding prior unrelated workplace injuries. The company investigated the injury, reviewed the information reported to OSHA, and concluded that the employee had been dishonest with the company about his prior workplace injury record. As a result, the company terminated the employee's employment. The employee filed a whistleblower complaint under FRSA asserting that his employment had been terminated in retaliation for reporting workplace injuries. OSHA agreed, leveling this significant damages award against the company.

This decision demonstrates how broadly OSHA will interpret employee whistleblower protections. Employers should tread lightly when taking disciplinary action that is the fruit of any aspect of employee activity that is permitted under the whistleblower provisions of FRSA or any of the 21 other statutes that OSHA is charged with enforcing.

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