

U.S. Department of Labor

Occupational Safety and Health Administration  
230 South Dearborn Street, Room 3244  
Chicago, Illinois 60604  
(312) 353-2220



August 16, 2013

John P. Kujawski  
Kujawski & Associates, P.C.  
1331 Park Plaza Drive, Suite 2  
O' Fallon, Illinois 62269

Re: Illinois Central Railroad Company et al<sup>1</sup>/Thomas M. McKinley/5-2962-11-050

Dear Mr. Kujawski:

Attached is the Secretary's Finding. These findings were sent to the Respondent, Illinois Central Railroad Company. Respondent has 30 days to file an appeal with the Administrative Law Judge. They are to also notify your company of the appeal if they do so. In the event Illinois Central Railroad Company takes no appeal action in the allotted time; the notice of determination becomes the Final Order of the Secretary of Labor.

If at any time you have any questions or require any information regarding the employee protection provisions of Federal Rail Safety Act (FRSA), 49 U.S.C. Section 20109, please feel free to contact this office by mail or telephone.

  
Tim Crouse  
for Regional Supervisory Investigator

cc: Chief Administrative Law Judge  
FRA  
Complainant

---

<sup>1</sup> Canadian National Railway, Joshua Sheehan, Jeff Castellari, Keith Branson, John Black Jr., Tom Evans, and Kyle Hopper

**U.S. Department of Labor**

**Occupational Safety & Health Administration  
230 S. Dearborn St., Room 3244  
Chicago, IL 60604  
(312) 353-2220**



**AUG 16 2013**

Noah G. Lipschultz  
Littler Mendelson, P.C.  
80 South 8<sup>th</sup> Street, Suite 1300  
Minneapolis, MN 55402

Re: Illinois Central Railroad Company et al<sup>1</sup>/Thomas M. McKinley/5-2962-11-050

Dear Mr. Lipschultz:

This is to advise you that we have completed our investigation of the above referenced complaint filed by Thomas McKinley (Complainant) against Illinois Central Railroad (Respondent) on August 23, 2011, under the Federal Railroad Safety Act (FRSA), 49 U.S.C. §20109. In brief, Complainant alleges that Respondent issued him a 20-day deferred suspension in reprisal for reporting a work injury.

Following an investigation of this matter by a duly authorized investigator, the Secretary of Labor, acting through his agent, the Regional Administrator for the Occupational Safety and Health Administration (OSHA), Region V, finds that there is reasonable cause to believe that Respondent violated the Federal Railroad Safety Act and issues the following Findings:

#### **Secretary's Findings**

Respondent Illinois Central Railroad Company is a subsidiary of Canadian National Railway, which provides rail service throughout Wisconsin, Illinois, Minnesota, and Canada. The business location relevant to this case is the Urbana Yard located in Urbana, Illinois. Respondent transports goods using the general railroad system. Respondent is a class 1 railroad carrier within the meaning of 49 U.S.C. §§ 20109 and 20102.

Respondents Tom Evans, Superintendent, and Joshua Sheehan, Division Trainmaster, are "persons" covered within the meaning of 49 U.S.C. §20109(a) in that they are officers of Illinois Central Railroad, or a covered subsidiary. Additionally, the evidence supports that Evans and Sheehan were decision makers in the suspension, reprimand, or any other retaliatory action suffered by Complainant due, in whole or in part, to Complainant's protected activity.

---

<sup>1</sup> Canadian National Railway, Joshua Sheehan, Jeff Castellari, Keith Branson, John Black Jr., Tom Evans, and Kyle Hopper

Respondents Jeffrey Castellari, Assistant Trainmaster; Keith Branson, Mechanical Supervisor; John Black Jr., Trainmaster; and Kyle Hopper, Division Trainmaster; are employees and officers of Respondent, but not covered “persons” under the Act because the evidence does not support that they were decision makers in the suspension, reprimand, or any other retaliatory action suffered by Complainant due, in whole or in part, to Complainant’s protected activity.

Complainant worked full-time for Respondent. Complainant is an employee within the meaning of 49 U.S.C. §20109.

Complainant suffered adverse actions on March 31, 2011 (receipt of notice to attend an investigative hearing) and April 26, 2011 (receipt of a 20-day deferred suspension). On August 23, 2011, Complainant filed a complaint with the Secretary of Labor alleging that Respondent retaliated against him in violation of the FRSA. As Complainant filed his complaint within 180 days of both his receipt of a notice of investigative hearing and his 20-day deferred suspension disciplinary action, it is timely.

Respondent hired Complainant in 1976. He is an Engineer at Respondent’s Urbana Yard located in Urbana, Illinois. Complainant’s work history reveals three disciplinary actions prior to reporting his work injury on March 28, 2011: one in 1978, one in 1979, and one in 2003.

On March 28, 2011, Complainant suffered a work-related injury when he strained his lower back while securing a hand brake on a locomotive. Complainant felt a “twinge” in his lower back as he was turning a “stiffer than normal hand brake” at approximately 7:00 A.M. After securing the hand brake, Complainant met his brakeman and waited three hours to get the clearance to make their next movement. While Complainant sat in the locomotive, his back began to stiffen, until it reached a point that he knew he needed to report it. At approximately 10:00 A.M., Complainant went into the office of Assistant Superintendent Jeffery Castellari and reported his injury. Mr. Castellari asked Complainant if he could finish working the rest of the day. Complainant informed Mr. Castellari that he could and the two of them completed an injury report form. Complainant went to the First Aid cabinet, took some ibuprofen and completed his day.

Immediately following the report of Complainant’s injury, the Respondent sent a crew of employees to test and check the hand brake for any defects. Respondent found the hand brake to be in good working order and free of any defects.

On March 29, 2011, Complainant woke in the morning and felt continued back pain. Complainant went to work and met with the on-duty Trainmaster, John Black, and informed him that he needed to seek medical treatment for the injury that occurred the day before.

On March 31, 2011, Respondent notified Complainant that he was required to attend an investigative hearing scheduled for April 6, 2011. Respondent stated that the investigation was being held to develop the facts and to determine whether Complainant violated any company rules, regulations, and/or policies in connection with the incident that occurred when he set the hand brake on Locomotive CN 2510 at approximately 7:00 A.M. on March 28, 2011. The incident occurred in Champaign, Illinois and resulted in Complainant’s alleged injury while he

was working as an Engineer on job R90291-28. The investigative hearing was postponed and eventually held on April 18, 2011.

At the hearing, the following people testified or provided evidence: Jeffrey Castellari, John Black and Keith Branson. Joshua Sheehan was the hearing officer.

On April 26, 2011, Respondent notified Complainant by letter that the testimony and evidence presented during the hearing on April 18, 2011 proved that he violated the following safety rules:

#### U.S Operating Rules

- General Rule A – Safety and a commitment to obey the rules are the most important elements in performing duties. If in doubt, the safe course must be taken.
- General Rule C – Employees must be alert and attentive when performing their duties, taking care to prevent injury to themselves or others.
- General Rule D – Employees must report promptly to the proper authority any injury sustained on duty or on company property. Notification of the injury must be made prior to the end of the employee’s tour of duty and before leaving company property... Threatening conditions including, but not limited to, mechanical failures, defects in track, bridges, or signals, must be reported.

Further, Respondent’s letter stated in part...“consideration of the incident, the proven rule violations, and your past discipline record, you are hereby assessed the following discipline: 20 Days Deferred Suspension (April 26, 2011 through April 25, 2012).” Respondent provided no explanation of what testimony or evidence was used in supporting its determination, in particular what evidence proved Complainant to be guilty of the safety rules.

The evidence however, does not support Respondent’s charge that Complainant violated Respondent’s safety rules. The Hearing Officer, Joshua Sheehan, asserted that Complainant did not take care to prevent his injury to himself and others and that the safe course was not taken. Mr. Sheehan continued to assert that if Complainant had followed the safety rules, his injury and any possible mechanical defects would have been reported immediately, not three hours later; and if the brake had been defective, another employee could have sustained an accident or injury at a later time. Mr. Sheehan thought that Complainant should have stopped setting the hand brake when he felt that it did not function as intended. However, the testimony provided at the hearing failed to establish that Complainant violated any of Respondent’s alleged work rules.

Complainant suffered two adverse actions. The first took place on March 31, 2011, when Respondent issued a notice to attend an investigative hearing without reasonable suspicion that Complainant violated any rules or that he caused his injury, and the second when Respondent disciplined him for alleged violation of the charged rules. The evidence presented during the investigative hearing and gathered during the OSHA investigation is not persuasive that Complainant violated any safety rules.

A preponderance of the evidence indicates that Complainant's protected activity was a contributing factor in the adverse actions. There is close proximity between the protected activity and the adverse actions. Complainant reported his work injury on March 28, 2011, and three days later, Respondent issued Complainant a Notice of Investigation Hearing letter. Complainant was then disciplined 12 days after the Investigative Hearing.

There is also evidence of animus on the part of Respondent toward Complainant's protected activity. For example, Respondent conducted a re-enactment of Complainant's injury using only information from the injury report and other company documents indicating that the hand brake was not defective. Respondent determined that the hand brake that caused the Complainant's injury was not defective and yet still conducted a hearing and charged the Complainant in violation of General Rule D – Reporting Injuries and Defects. Respondent also charged Complainant with failure to report an injury promptly, even though Complainant reported his injury within three hours of receiving it and met the requirement of reporting an injury prior to the end of his tour of duty and before leaving company property. Although Complainant did not report the alleged defect, he did state that the hand brake can gather debris, which can cause it to stiffen, and that when used, the debris will fall out. Therefore, Complainant did not believe the hand brake was defective and he was the only employee operating the hand brake that day. If the hand brake continued to have problems, he would have reported it.

Respondent's behavior and disregard for the rights of its employees warrant punitive damages. Complainant is a 37-year employee whose employment record shows little to no discipline prior to reporting his injury, and, in fact, the last recorded disciplinary action was eight years prior. Nonetheless, Respondent issued Complainant a 20-day deferred suspension contrary to the evidence supporting that Complainant did not violate any of Respondent's rules. On two previous occasions, OSHA found that Respondent violated the whistleblower protection provisions of FRSA when it brought disciplinary charges against employees who reported workplace injuries, charged those employees with rules violations, and terminated their employment.<sup>2</sup>

Compensatory damages are warranted. This situation has caused Complainant mental pain and emotional distress due to the humiliation and annoyance associated with the discipline.

OSHA finds that there is reasonable cause to believe that Respondent violated FRSA and issues the following Order:

#### **Order**

1. Respondent shall expunge Complainant's personal file of the disciplinary action taken against him on April 26, 2011.
2. Respondent shall pay Complainant compensatory damages of \$5,000.00 for mental pain and emotional distress due to the humiliation and annoyance associated with the discipline.

---

<sup>2</sup> Illinois Central Railroad, complaint #5-1260-09-001 on 7/8/2012 and Illinois Central Railroad, complaint #5-1260-10-005 on 7/18/2012.

3. Respondent shall pay Complainant punitive damages in the amount of \$100,000.00.
4. Respondent shall pay Complainant's reasonable attorney fees.
5. Respondent shall provide to all employees at the Urbana Yard a copy of the FRSA Fact Sheet included with this Order.
6. Respondent shall post for 60 consecutive days the Notice to Employees included with this Order in all areas where employee notices are customarily posted at the Urbana Yard.
7. Respondent shall remove from Complainant's employment records any reference to the exercise of his rights under the FRSA.

Respondent and Complainant have 30 days from the receipt of these Findings to file objections and to 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  
Office of Administrative Law Judges  
U. S. Department of Labor  
800 K Street NW, Suite 400 North  
Washington, D.C. 20001-8002  
PH: (202) 693-7300; Facsimile: (202) 693-7365

With copies to:

John P. Kujawski  
Kujawski & Associates, P.C.  
1331 Park Plaza Drive, Suite 2  
O' Fallon, Illinois 62269

Nick A. Walters  
Regional Administrator  
U.S. Department of Labor, OSHA  
230 S. Dearborn, Rm. 3244  
Chicago, IL 60604

Mary Ann Howe, CFE  
Assistant Regional Administrator  
Whistleblower Protection Program  
U.S. Department of Labor, OSHA  
365 Smoke Tree Plaza  
North Aurora, IL 60542

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 Administrative Law Judge (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 the FRSA. A copy of this letter has been sent to the Chief Administrative Law Judge along with a copy of the complaint.

Sincerely,



Nick A. Walters  
Regional Administrator

Enclosure: Notice to Employees  
FRSA Fact Sheet

cc: John P. Kujawski, Complainant's attorney  
Chief Administrative Law Judge, USDOL  
Federal Railroad Administration



# NOTICE TO EMPLOYEES

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

Illinois Central Railroad has been ordered to make whole an employee who was found to have been retaliated against for exercising rights under the Federal Rail Safety Act (FRSA). Illinois Central Railroad has also taken affirmative action to ensure the rights of its employees under employee whistleblower protection statutes including the FRSA.

## PURSUANT TO THAT ORDER, ILLINOIS CENTRAL RAILROAD 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, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. Law No. 110-53., 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 reported a workplace injury or illness.
3. Deny, delay, or interfere with the medical or first aid treatment of an employee who is injured during the course of employment. If transportation to a hospital is requested by an employee who is injured during the course of employment, the railroad shall promptly arrange to have the injured employee transported to the nearest hospital where the employee can receive safe and appropriate medical care.
4. Discipline, or threaten discipline to, an employee for requesting medical or first aid treatment, or for following orders or a treatment plan of a treating physician.

---

Illinois Central Railroad

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<sup>®</sup> 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](http://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](http://www.whistleblowers.gov). For information on the Office of Administrative Law Judges procedures, decisions and research materials, go to [www.oalj.dol.gov](http://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:



U.S. Department of Labor  
[www.osha.gov](http://www.osha.gov)  
 (800) 321-OSHA

# Hoja de Datos

## Protección a los denunciantes internos para los trabajadores ferroviarios

**Los trabajadores de las transportistas ferroviarias están protegidos de represalias por denunciar ante sus empleadores o el gobierno de posibles contravenciones a la seguridad.**

El 3 de agosto de 2007, se enmendó la *Ley Federal de Seguridad Ferroviaria* (FRSA), sección 20109 del título 49 del Código Federal, con la *Ley para la Aplicación de las Recomendaciones de la Comisión del 11 de septiembre* (ley pública 110-53) a fin de transferir la autoridad para las protecciones a los denunciantes internos del sector de los trabajadores ferroviarios a la OSHA e incluir nuevos derechos, recursos y procedimientos. El 16 de octubre de 2008, la *Ley para el Mejoramiento de la Seguridad Ferroviaria* (ley pública 110-432) enmendó FRSA una vez más a fin de prohibir específicamente la imposición de medidas disciplinarias a los empleados por solicitar tratamiento médico o seguir las órdenes del tratamiento médico.

### Empleados cubiertos

Conforme a la FRSA, el empleado de una transportista ferroviaria, contratista o subcontratista está protegido de represalias por notificar ciertas violaciones de la seguridad.

### Actividad protegida

Si su empleador está cubierto por la FRSA, no puede despedirlo ni tomar ningún tipo de represalia en su contra porque usted haya brindado información, haya hecho que se brindara información o haya colaborado en una investigación de un organismo regulador o de las fuerzas del orden federal, un miembro o comité del Congreso o su empresa sobre una presunta violación de las leyes y los reglamentos federales que rigen la seguridad ferroviaria o en relación con fraude flagrante, derroche o abuso de fondos destinados a la seguridad ferroviaria. Su empleador no puede despedirlo ni tomar ningún tipo de represalia en su contra porque usted haya presentado, haya hecho que se presentara, haya participado o colaborado en un proceso regido por una de estas leyes o reglamentos. Por otra parte, usted está protegido de represalias por haber notificado condiciones peligrosas, lesiones o enfermedades ocupacionales, rehusarse a prestar servicio en ciertas condiciones o a autorizar el uso de algún equipo de seguridad, vías o estructuras. También puede estar protegido si se percibió que participó en las actividades descritas anteriormente.

Además, también está protegido de actos de represalia (en forma de cargos en un proceso disciplinario) o de amenaza de represalia por haber solicitado tratamiento médico o de primeros auxilios o por haber acatado las órdenes o seguido el plan de tratamiento indicado por el médico a cargo.

### Acciones adversas

Se puede concluir que su empleador contravino la FRSA si su actividad protegida contribuyó a la decisión de su empleador de tomar una medida adversa en su contra. Estas medidas pueden incluir:

- el despido o la cesantía
- la inclusión en una lista negra
- el descenso de categoría
- la denegación de horas extras o el ascensos
- la imposición de medidas disciplinarias
- la denegación de beneficios
- la no contratación o reinstauración en el cargo
- la intimidación
- la formulación de amenazas
- la reasignación con consecuencias para las perspectivas de ascenso
- la reducción de la compensación o las horas de trabajo
- la imposición de medidas disciplinarias a un empleado por solicitar tratamiento médico o de primeros auxilios
- la imposición de medidas disciplinarias a un empleado por acatar las órdenes o seguir el plan de tratamiento indicado por el médico a cargo
- obligar a un empleado a trabajar en conraindicación médica

### Plazo para la presentación de una reclamación

Las reclamaciones deben presentarse en el lapso de 180 días posteriores a la materialización de la presunta acción adversa.

### Cómo presentar una reclamación

El trabajador o su representante, que considere que fue objeto de represalia en violación de la presente

norma, pueden presentar una reclamación ante la OSHA. La reclamación debe tramitarse ante la oficina de la OSHA a cargo de las actividades de cumplimiento en la zona geográfica en la que reside o trabajaba el empleado, pero puede tramitarse ante cualquier funcionario o empleado de la OSHA. Si desea más información sírvase llamar a la Oficina Regional de la OSHA más cercana:

- *Boston* (617) 565-9860
- *Nueva York* (212) 337-2378
- *Filadelfia* (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

Las direcciones, los números de fax y otra información de contacto para estas oficinas se pueden encontrar en el sitio web del Programa de protección a denunciantes internos, [www.whistleblowers.gov](http://www.whistleblowers.gov), y en los directorios locales. Las reclamaciones pueden presentarse de manera oral o por escrito, por correspondencia (sugerimos franqueo certificado), correo electrónico, fax o entregarse personalmente durante el horario de atención. La fecha de franqueo, entrega a un correo de terceros, fax, correo electrónico, llamada telefónica o entrega personal se considera la fecha de presentación. Si el trabajador o su representante no pueden presentar la reclamación en inglés, la OSHA aceptará la reclamación en cualquier otro idioma.

### Resultados de la investigación

Si las pruebas respaldan su reclamación de represalia y no puede llegarse a una solución, la OSHA

emitirá una decisión preliminar en la que se solicite la reparación adecuada para su resarcimiento. La reparación ordenada puede ser:

- reinstauración con el mismo nivel de antigüedad y beneficios
- pago retroactivo con intereses
- daños y perjuicios, como compensación por daños cuantificables, honorarios de peritos y honorarios razonables de abogado
- daños punitivos por un máximo de \$250.000.

Los resultados y la decisión preliminar de la OSHA se tornan una decisión inapelable de la Secretaría de Trabajo, a menos que una parte presente una objeción en el lapso de 30 días.

### Audiencias y revisión

Al cabo de la publicación de las conclusiones y la decisión preliminar de la OSHA, cualquiera de las partes puede solicitar una audiencia ante un juez de un tribunal administrativo del Departamento de Trabajo de los Estados Unidos. Una parte puede solicitar la revisión del fallo y la orden judicial del juez del tribunal administrativo ante la Junta de Revisión Administrativa del Departamento. Conforme a la FRSA, si la Secretaría de Trabajo no emite un fallo definitivo en el lapso de 210 días de la fecha de presentada la reclamación, usted puede presentar una demanda civil ante el tribunal federal correspondiente.

### Información adicional

En [www.whistleblowers.gov](http://www.whistleblowers.gov) se puede obtener una copia de las normas, los reglamentos y otra información sobre los denunciantes internos. En [www.oalj.dol.gov](http://www.oalj.dol.gov), haga clic en el enlace para "denunciantes internos", donde encontrará información sobre procedimientos, fallos y materiales de investigación de la Oficina de Jueces del Tribunal Administrativo.

El presente forma parte de una serie de folletos informativos en los que se destacan programas, políticas o normas de la OSHA. No se impone ningún requisito nuevo de cumplimiento. Consúltese el título 29 del Código de Reglamentos Federales para obtener una lista completa de los requisitos de cumplimiento de las normas o los reglamentos de la OSHA. Esta información se pondrá a disposición de individuos con dificultades sensoriales a solicitud de la parte. Número telefónico: (202) 693-1999. Número del teleimpresor (TTY): (877) 889-5627.

Para información más completa:

 **Administración de Seguridad y Salud Ocupacional**  
Departamento del Trabajo de los EE.UU.  
[www.osha.gov](http://www.osha.gov) (800) 321-OSHA