

NTSSA Fact Sheet
Prepared for ATU Local 689
2010-10-22

Congress passed the National Transit Systems Security Act of 2007 as part of the law that enacted the recommendations of the 9/11 Commission. Congress recognized that our national security depends on having safe public transportation. “If employees are coerced and intimidated into remaining silent when they should speak out, the result can be catastrophic.” *Rose v. Secretary of Department of Labor*, 800 F.2d 563, 565 (6th Cir. 1986).

Employees who suffer retaliation have 180 days to file a written complaint with the Occupational Safety and Health Administration (OSHA). The written complaints are simple and intended just to get the investigation started.

If OSHA determines that there was illegal retaliation, OSHA can issue an order for immediate reinstatement and award back-pay, compensatory damages, expungement of discipline, attorneys fees, punitive damages and other remedies. Punitive damages are limited to \$250,000. 6 USC §1142(d)(3). If the employer appeals, it must reinstate the employee during the appeal.

If OSHA dismissed the complaint, the employee has a right to request a hearing before an Administrative Law Judge (ALJ). The ALJ can issue the same relief as OSHA. Either side can appeal to the Department of Labor's Administrative Review Board (ARB) which issues the final decision for the Department of Labor.

Sources of the Law

National Transit Systems Security Act of 2007, 6 USC §1142
Federal Rail Safety Act (FRSA), 49 U.S.C. § 20109

Regulations

29 CFR Part 1982

Who is protected?

All employees of a “public transportation agency, a contractor or a subcontractor of such agency, or an officer or employee of such agency.”

What activities are protected?

From 6 USC §1142(a):

“[T]he 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 public transportation safety or security, or fraud, waste, or abuse of Federal grants** or other public funds intended to be used for public transportation 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
 - (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 public transportation safety or security;
 3. to file a complaint or directly cause to be brought a proceeding related to the enforcement of this section or to testify in that proceeding;
 4. to cooperate with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board
 5. 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 public transportation.

From 6 USC §1142(b):

1. A public transportation agency, or a contractor or a subcontractor of such agency, or an officer or employee of such agency, shall not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee for—
 - (A) reporting a hazardous safety or security condition;
 - (B) refusing to work when confronted by a hazardous safety or security condition related to the performance of the employee's duties, if the conditions described in paragraph (2) exist; or
 - (C) refusing to authorize the use of any safety- or security-related equipment, track, or structures, if the employee is responsible for the inspection or repair of the equipment, track, or structures, when the employee believes that the equipment, track, or structures are in a hazardous safety or security condition, if the conditions described in paragraph (2) of this subsection exist.

“Protected activity” can include any activity that assists law enforcement, raises a safety concern, or identifies you as a possible witness for enforcement action.

Going to the media can be protected activity. *Pickering v. Board of Educ.*, 391 U.S. 563.

568 (1968); *Phillips v. Interior Bd. of Mine Operations Appeals*, 500 F.2d 772 (D.C. Cir. 1974); *Donovan v. R.D. Andersen Construction Company, Inc.*, 552 F. Supp. 249, 253 (D. Kan. 1982); *Wrighten v. Metropolitan Hosp., Inc.*, 726 F.2d 1346, 1355 (9th Cir. 1984); *O'Day v. McDonnell Douglas Helicopter Co.*, 79 F.3d 756 (9th Cir. 1996) *Gutierrez v. Regents of the University of California*, ARB No. 99-116, ALJ No. 1998-ERA-019, slip op. at 6 (ARB Nov. 13, 2002). In *Phillips v. Stanley Smith Security, Inc.*, ARB No. 98-020, ALJ No. 1996-ERA-30 (ARB Jan. 31, 2001), p. 14, the ARB noted that under the ERA disclosures to the media may be protected activity, even if they violate company policies regarding providing information to unauthorized persons, so long that the whistleblower made the disclosure in a good-faith effort to report security-related concerns.

Raising concerns with a union safety committee or labor-management committee should also be protected.

How can I make a complaint of retaliation?

Within 180 days of any act of retaliation, the employee can make a written complaint to OSHA. No particular form is required, but the complaint must be in writing. See a sample complaint form at:

<http://www.taterenner.com/sampcomp.php>

OSHA wants to see

- (1) clear identification of the employee, the employer, and any other respondent who engaged in the retaliation, including addresses and telephone numbers;
- (2) a statement of the protected activity; what did the employee do that provoked the retaliation?
- (3) A statement of the adverse actions; How did the employer retaliate? Was the employee fired? Disciplined? Denied promotion? Harassed?
- (4) A signature. The signature can be that of the employee, or anyone acting on behalf of the employee, such as a union steward or attorney.

OSHA must receive the complaint. It can be faxed to OSHA at: (215) 861-4904.

What is “election of remedies”?

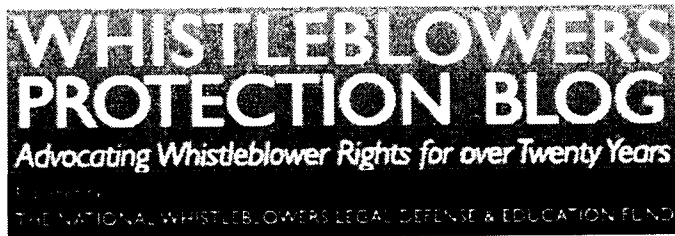
The NTSSA has a unique provision that prohibits employees from using the NTSSA and any other federal law to seek remedies for the same adverse action. “An employee may not seek protection under both this section and another provision of law for the same allegedly unlawful act of the public transportation agency.” 6 USC §1142(e). This is an unusual provision for whistleblower protection laws. It cannot prevent employees from seeking relief under other laws as 6 USC §1142(f) states as follows: “Nothing in this section preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law.” However, if an employee filed a complaint under another law, such as the Civil Rights Act, and also filed an NTSSA complaint, the election of remedies provision may be a basis for the

Department of Labor to dismiss the NTSSA claim. NTSSA specifically permits employees to pursue NTSSA remedies even if they have rights under a collective bargaining agreement. 6 USC §1142(g) (“Nothing in this section shall be construed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.”)

Richard R. Renner
Legal Director
National Whistleblowers Center
3233 P St. NW
Washington, DC 20007
(202) 342-6980, Ext. 112
(202) 342-6984 fax
rr@whistleblowers.org

Whistleblower Links

1. National Whistleblower Center (NWC):
<http://www.whistleblowers.org/>
Sign up for NWC action alerts by choosing Take Action | Join Us!
2. NWC Blog: <http://www.whistleblowersblog.org/>
3. Sample complaint form: <http://www.taterenner.com/sampcomp.php>
4. Narrative article on Federal Environmental Whistleblowers:
<http://www.taterenner.com/whistleblowers.htm>
5. Detailed outline of whistleblower law and procedure at the Department of Labor:
<http://www.taterenner.com/dol-intro.htm>
6. Department of Labor, Office of Administrative Law Judges, including whistleblower library: <http://www.oalj.dol.gov>
7. Workplace Fairness Job Rights Q & A's
<http://www.workplacefairness.org/whistleblowing>
8. *Concepts and Procedures in Whistleblower Law* by Stephen M. Kohn. It is available from the National Whistleblower Center for \$102.50, 3238 P St., NW, P.O. Box 3768, Washington, DC 20027
9. National Employment Lawyers Association , <http://www.nela.org/>
10. Employee Rights Advocacy Institute for Law and Policy
<http://www.employeeightsadvocacy.org/>
11. Make It Safe Campaign: <http://www.makeitsafecampaign.org/>
12. FRSA Library: <http://www.trainlaw.com/FRSA-library/>



Whistleblower Protection Blog

Posted at 11:48 AM on March 12, 2010 by Richard Renner

Metro report finds "shoot the messenger" phenomenon; I know a fix

Today's *Washington Post* (Metro page B-1) reports on "a blunt assessment" of Washington DC's Metro transit administration. Retired Metro manager David L. Gunn wrote the report. Among other problems, it finds a "shoot the messenger" phenomenon "that discourages employees from raising safety concerns." The report is particularly sobering in light of last year's collision that killed nine people. Metro has had other fatal accidents since then.

I know a fix for the "shoot the messenger" phenomenon. Any Metro manager, union official, or journalist could help. One change could assure that safety issues are raised and addressed in the warm glow of public attention. Every Metro train operator, bus driver, maintenance worker and manager needs to know that a recent federal law now protects them from retaliation when they raise safety concerns.

Last October, I wrote here about how the *Washington Post* could report on the National Transit Systems Security Act of 2007 (NTSSA). NTSSA has given every transit system employee the right to put safety first, to bypass the chain of command, and to disobey unsafe or illegal orders. Under NTSSA, every Metro employee has legal protection if they choose to speak to a newspaper about safety concerns. They would be protected if they follow safety rules and run "late" as a result. Victims of retaliation need to know that they have only 180 days to file a complaint (some laws allow only 30 days).

I would be happy to speak to any group of Metro employees about their rights under NTSSA and how to enforce them. Just call me, 202-342-6980, Ext. 112.

Comments (0) Read through and enter the discussion with the form at the end
National Whistleblower Legal Defense & Education Fund
3238 P Street, NW
| Washington, DC 20007 |
Phone:
202-342-1903

The Washington Post

Survey finds Metro workers fear retaliation for reporting safety problems

By Katherine Shaver
Washington Post Staff Writer
Thursday, September 30, 2010; 7:32 PM

A recent survey to assess Metro's "safety culture" found that 60 percent of the agency's employees witnessed a safety concern or violation in the past year but that 30 percent of them did not report it, often because they feared repercussions, Metro's interim general manager told the agency's board of directors Thursday.

Many who said they didn't report problems said they feared doing so would make it difficult to continue working with their peers and that the transit agency would not fix the safety problem or protect them from retaliation.

The most common concern was "unsafe working conditions," interim General Manager Richard Sarles told the board during its monthly meeting.

Mid-level managers were the most positive about the agency's safety focus, he said.

"There will not be a one-size-fits-all solution or approach to solving issues with our safety culture," Sarles said.

Metro's safety culture was a major target of the National Transportation Safety Board in its investigation of the fatal June 2009 Red Line crash. The board found that Metro's attention to safety was lax throughout all levels of the agency. The specific cause of the crash, it said, was a failure of the automatic train-control system, which did not detect one train, causing another to travel toward it at full speed.

Sarles said he would release the survey's full results this month. He said that Metro managers have been trying to encourage employees to speak up about safety problems and that the agency is working with union leaders to develop ways for employees to report "near misses" without facing punishment.

To fulfill another NTSB recommendation, the board established a committee to enhance its oversight of safety and security issues and voted unanimously to add safety to the agency's mission statement. Until Thursday, the mission statement said Metro provides "the nation's best transit service." It now reads: "Metro operates and maintains a safe, reliable and effective transit system that enhances mobility, improves the quality of life and stimulates economic development in the Washington Metropolitan area."

Including safety in the mission statement will "clarify that safety is a top priority for the agency," board member Christopher Zimmerman said.

Metro passengers have said that their safety and health are most often compromised by broken escalators and elevators that require crowds of people to face lengthy climbs.

A recent independent analysis of Metro's maintenance program found that the agency needed more effective training to ensure that workers follow the agency's maintenance standards, Sarles said.

Problems the analysis found included "basic housekeeping" issues, he said, such as workers lubricating oily, gritty chains without first cleaning them.

"Of course, this type of shortcut catches up with us later," Sarles said.

In other news, board members said they were discussing how the agency will transition to technology that would allow passengers to pay rail and bus fares with a credit or debit card. That would be allowed through an upgrade of the SmarTrip system, which uses proprietary technology that is no longer manufactured. Metro has enough computer chips to issue new SmarTrip cards for two more years, officials said.

The new system would accommodate SmarTrip cards, officials said.

"It's going to be a long transition, and our SmarTrip cards will be around for quite a while," Board Chairman Peter Benjamin said.

The board also voted to solicit proposals for a \$250,000 contract for a suicide prevention program that would train bus drivers, train operators and supervisors in how to spot suicidal people and intervene before they act. The one-year contract also would include a program to educate passengers about the problem.

The number of people committing suicide in the Metro system, mainly by jumping in front of trains, has risen in recent years, according to Metro, to 11 last year. There have been four this year.

Board members said Metro's safety issues hit close to home Thursday when an alternate board member, Alexandria Mayor William D. Euille, fell at the Braddock Road station while boarding a Yellow Line train on his way to the meeting.

Euille said he slipped on wet platform tiles, injuring his kneecap and damaging a ligament. He said doctors told him he might need surgery.

Euille said he thinks it's "worth exploring" whether Metro should change the "slick tiles" at station platforms to a rougher surface that would provide more traction.

[View all comments](#) that have been posted about this article.

Post a Comment

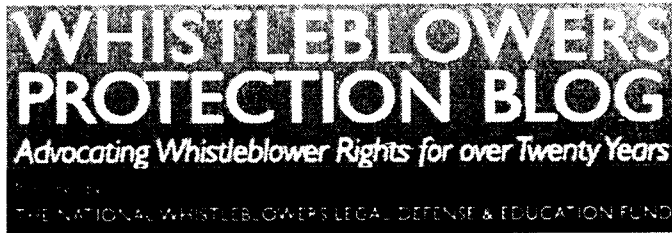
[View all comments](#) that have been posted about this article.

You must be logged in to leave a comment. [Login](#) | [Register](#)

Submit

Comments that include profanity or personal attacks or other inappropriate comments or material will be removed from the site. Additionally, entries that are unsigned or contain "signatures" by someone other than the actual author will be removed. Finally, we will take steps to block users who violate any of our posting standards, terms of use or privacy policies or any other policies governing this site. Please review the [full rules](#) governing commentaries and discussions. You are fully responsible for the content that you post.

© 2010 The Washington Post Company



Whistleblower Protection Blog

Posted at 12:43 PM on October 1, 2010 by Richard Renner

Metro report finds employees afraid to raise safety concerns

In June 2009, a Metrorail accident near Ft. Totten in Washington, DC, killed nine people. The National Transportation Safety Board (NTSB) issued a report this summer that found Metro lacked a "safety culture." Now an internal Metro report finds the same problem. Katherine Shaver wrote about the report for the *Washington Post*. While 60 percent of Metro employees witnessed a safety concern, 30 percent of them did not report it. Shaver says that fear of retaliation is cited as a reason. Her article fails to mention the two federal laws that grant public transit employees legal protection when they raise safety concerns. These laws are the Federal Rail Safety Act (FRSA), 49 U.S.C. § 20109, and the National Transit System Security Act (NTSSA). Both are part of Public Law 110-53, the 9/11 Commission Act passed in 2007. See § 1413 (NTSSA) and § 1521 (FRSA). I have written about these laws before [here](#), [here](#), [here](#) and [here](#). Later this month, I have an appointment to speak to officers of Local 689 of the Amalgamated Transit Union (ATU) about these legal protections. I feel like Glinda, the Good Witch of the North (from the Wizard of Oz), telling transit workers that they have had these legal protections for years. They just need someone to tell them about these protections so they can feel more confident that they are protected from retaliation. If it won't be the Metro Board, Metro management, or the *Washington Post*, then it will be me.



Comments (0) Read through and enter the discussion with the form at the end

National Whistleblower Legal Defense & Education Fund

3238 P Street, NW

1 Washington, DC 20007 1

Phone:

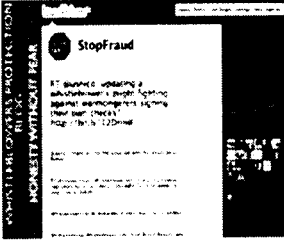
202-342-1903

Stay Connected to the National Whistleblowers Center through Social Media



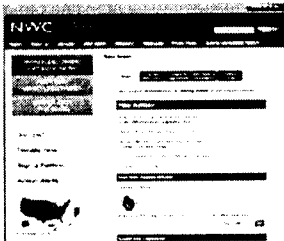
Facebook

Become a Fan to the National Whistleblowers Center Facebook page.
(<http://bit.ly/9fpTcU>)



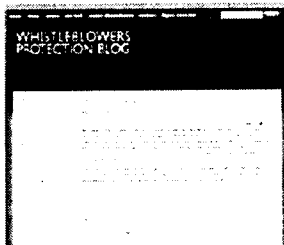
Twitter

Follow the National Whistleblower Legal Defense and Education Fund on Twitter. (<http://twitter.com/StopFraud>)



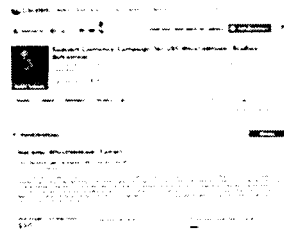
Action Network

Subscribe to National Whistleblowers Center's **Action Alert Network** and receive periodic updates on the emerging issues in whistleblower protection law and other events to your email-account.
(<http://capwiz.com/whistleblowers/home/>)



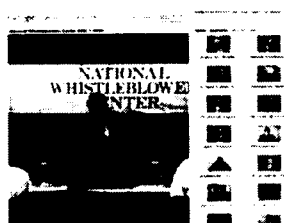
Blog

Engage in discussions about whistleblower issues on the Whistleblower Protection Blog, (www.whistleblowersblog.org), or subscribe to the Whistleblower Protection Blog's RSS feed and get the latest news to your RSS reader (<http://feeds.lexblog.com/WhistleblowerProtectionBlog>)



Facebook Causes

Join our Cause pages to **Support Whistleblower Protections for Federal Workers Like Bunny Greenhouse** (<http://www.causes.com/causes/214354>), and to **Support Clemency Campaign for UBS Whistleblower Bradley Birkenfeld** (<http://www.causes.com/causes/448284>)



Google Video/Youtube

View the National Whistleblowers Center videos on Google Video and Youtube (<http://bit.ly/cxYN4w>).