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KNOW HOW TO PROTECT YOURSELF FROM HARASSMENT

On January 1, 1997, FRA amendments to the railroad accident reporting requirements went into effect. These new regulations now require railroads to adopt and comply with written “internal control plans” or be subject to potential civil monetary penalties. The “internal control plans” must minimally contain ten components. The essential components include a policy statement, complaint procedures, disciplinary action and detailed descriptions of the railroad organization itself and the internal procedures it uses to report, process and gather accident and injury information.

As part of the internal control plan, the regulations require railroads to adopt an anti-intimidation or harassment policy. Specifically, each railroad must affirm that intimidation or harassment by any officer, manager, supervisor or employee of the railroad aimed at discouraging or preventing a person from receiving proper medical treatment or reporting an accident, injury or illness will not be tolerated or permitted. Further, the railroad may take disciplinary action against any person committing such an act of intimidation or harassment.

These changes were spurred by a 1989 General Accounting Office (GAO) study that raised important concerns about the quality of railroad compliance with the FRA’s accident reporting regulations. These regulations require railroads to report accident and injury statistics to the Federal Railroad Administration, which uses this information to report on the safety of the railroad industry to Congress and the public at-large. Despite these regulatory requirements, the GAO discovered substantial under-reporting and inaccurate reporting of injury and accident data by the railroad industry. Hence, safety standards for the railroad industry were being based on inaccurate and incomplete information.

In response, these new regulations seek to compel and ensure that the railroad industry provides and maintains a practice of complete and accurate reporting without harassment or intimidation. The following is a summary of the new FRA rule requirements:

I. Policy Statement

Railroad policy statements must have the following three declarations:

- To provide complete and accurate reporting of all accidents, incidents, injuries and occupational illnesses arising from the operation of the railroad;
- To fully comply with the FRA’s accident reporting regulations; and
- To affirm that intimidation or harassment by any officer, manager, supervisor, or employee of the railroad that aims to discourage or prevent a person from receiving proper medical treatment or from reporting such accident, injury or illness will neither be tolerated nor permitted and that appropriately prescribed disciplinary action may be taken by the railroad against such person committing the harassment or intimidation.

Each railroad is required to send copies of the policy statement to all employees and supervisors and to all levels of railroad management.

II. Complaint Procedures and Disciplinary Action

The FRA regulations require railroads to establish procedures to process complaints arising out of the railroad’s policy statement violations, such as harassment or intimidation. Again, these procedures shall be distributed to all employees and management or supervisory personnel.

III. “Whistle Blower”

Protection

Railroads shall provide “whistle blower” protection to any person subject to this policy, and such policy must be disclosed to all railroad employees, supervisors and management.

IV. Description of Internal Procedures & Railroad Organizational Information

As part of their internal control plan, each railroad is required to provide descriptions and organizational information of the following:

Internal forms and/or internal computer system;

Internal procedures to process forms and/or computerized data concerning accident and injury information;

Internal review procedures to collect accident and incident information and prepare reports by the railroad's safety, claims, medical and/or other departments;

Internal procedures for collecting cost data and compiling costs with respect to accident and incident information;

Internal procedures which ensure adequate communication between the railroad department or any other department responsible for submitting accident and incident reports to the FRA;

Procedures used to update accident and incident information prior to reporting to FRA, as well as amend accident and incident information;

Name and title of railroad officer responsible for auditing the performance of the reporting, frequency of such audits, and identification of the most recent audit report that may be found for inspection and photocopying; and

Description of railroad organization, identification of components with possession of pertinent information used to prepare reports, title of each railroad reporting offi-

cer, managers or officers in charge of such components, and a current organization chart.

V. Penalties for Non-compliance or Willful Violation

If a railroad fails to adopt an internal control plan, then a \$2,500 civil monetary penalty will be assessable. If the failure is willful, then the civil monetary penalty increases to \$5,000. In addition, each reporting error or omission due to noncompliance with their internal control plan will subject that railroad to the \$2,500 civil monetary penalty, or \$5,000 if willful.

If a reporting violation is found, then the railroad may be fined for both the reporting violation and any departure from the internal control plan which resulted in the reporting violation. However, if there is a reporting violation, but the Federal Railroad Administration determines that the internal control plan was in fact followed by the railroad, then just one violation may be written. Additionally, FRA may assess a civil monetary penalty against any railroad employee, manager, or supervisor who willfully causes a violation of any requirement of § 225.33 such as the railroad's intimidation and harassment policy.

Section 225.33 and 225, Appendix A, involving "internal control plans" and civil monetary penalties, will hopefully achieve a number of objectives. First, the availability of multiple penalties and complaint processing procedures will compel railroads to seriously draft and comply with their internal control plans to ensure complete and accurate reporting. Complete and accurate accident and injury information is essential to the promulgation of proper safety

standards for the railroad industry. Moreover, the anti-intimidation or harassment and "whistle blower" provisions provide further incentive to injured workers and fellow employees to come forward and report accidents, injuries and illnesses with out fear of retaliatory action by the railroad. In addition, the regulations will facilitate and expedite discovery because the internal control plans provide a thorough description of the railroads internal procedures with respect to processing and investigating their worker's injuries, accidents and illnesses.

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