

Rail Safety

Bulletin

What Every Railroad Worker Should Know

What are my legal rights if I am injured while working for the railroad?

As an employee of a railroad, you are protected by a special Federal law known as the Federal Employers' Liability Act, most commonly referred to as the FELA. This law applies to any injury or work-related condition you receive while working for the railroad. It places a legal duty on the railroad to provide you with a safe place to work, even if you are assigned to work at a location that is not on railroad property (such as switching cars at an industry that is a customer of the railroad). While you have to show that the railroad was negligent (failed to use reasonable care in providing you with a safe workplace), you are entitled to your full wage loss, pain and suffering, and other money damages once negligence is proven. It is a very strong and favorable law for injured railroad workers.

If I'm injured on the job, what should I do?

Report your injury to your supervisor and carefully fill out the accident report form required by your union agreement. Make sure you list all defective tools and equipment, unsafe conditions or work practices, and witnesses that may be involved with the injury. Remember that the accident report will be used later in your claim or lawsuit. Tell the truth. Contact an experi-

enced FELA Lawyer to discuss your case as soon as possible.

If I fill out an accident report will the railroad try to fire me?

By federal law the railroad is not allowed to fire, harass, or intimidate you in connection with reporting an injury. You should be aware of your railroad's rules which provide that you have an obligation to report all injuries promptly. The Federal Railroad Administration (FRA) has regulations which prohibit harassment and allow you to report individuals who conduct this type of harassment. These regulations also provide that the railroad adopt policies which inform all railroad workers of the law. The regulations provide that: *"Harassment or intimidation of any person that is calculated to discourage or prevent such person from receiving proper medical treatment or from reporting an accident, incident, injury, or illness will not be permitted or tolerated and will result in disciplinary action against such person committing the harassment or intimidation."*

For more information contact the FRA or go to <http://www.fra.dot.gov/>

The railroad, under the Collective Bargaining Agreement with your union, may call an investigation to determine if you violated company rules or policies. The railroad often uses these

investigations to learn about your injury claim while you are uninformed about your legal rights under the FELA. A Lawyer is not allowed to be present or represent you in this type of proceeding. Your union representative is required to present your side of the story. However, you should consult with a Lawyer before going into such a proceeding. Our law firm will work closely with you and your union representative so that your job and your legal rights to compensation are protected.

If I hire a Lawyer, will the railroad try to fire me?

No, it's against the law, and the railroads know it. In most cases when they find out you hired an attorney, the railroad is more unlikely to mistreat you than if you were pursuing your claim by yourself.

Do I have to hire a Lawyer to settle my injury claim with the railroad?

No. You do not have to hire a Lawyer for every injury. However, you should at least consult with a Lawyer about any injury before attempting to deal with the railroad on your own. A good Lawyer will advise you when you should hire him or her, or when you should attempt to settle the case directly with the Railroad Claims Department.

How much time do I have to settle with the railroad for my injury?

The law allows you three years from the date you are injured to file a lawsuit in court against the railroad. This is known as the Statute of Limitations. If you do not file the lawsuit (or settle the claim) within three years, the law will prevent you from ever recovering any money damages for the injury. If the type of injury you suffer is a cumulative traumatic injury such as a worn-out knee, back, or neck, you should consult a Lawyer *immediately* to discuss when the Statute of Limitations begins to run on your claim. The starting date of your Statute of Limitations may be difficult to determine accurately since there is no specific date of injury for a cumulative traumatic injury.

Do I have to give my supervisor or the claim representative a written or taped statement?

No. Do not provide a written or taped statement to the claims representative without speaking to a Lawyer about it first. The claims representative would like to take your statement while you are uninformed about your rights. As proof of this, see if the claims representative or railroad supervisor even mentions to you that you are protected by the FELA, or that you can get free advice from a Lawyer. The statement will be used against you later in any attempt to settle your case, and may be used against you if you hire a Lawyer and a case is brought in court. Only provide the accident report required by your union agreement.

What is light duty, and should I accept it?

Light duty is a program some railroads offer to some of its workers for a limited time when they are injured. The railroads that offer this program will provide some type of work for you to do which accommodates your physical limitations until you recover, are found to be disabled, or the time limit on the light duty (usually 30-60 days, depending on the railroad) expires.

You should discuss with a Lawyer whether or not it makes sense for you to accept the light duty position. Since the railroad is paying your wages for the light duty job, your total wage loss (and thus the value of your claim) is reduced. In some circumstances, however, it may make sense for you to accept the light duty work.

What is a medical leave of absence and why is it important?

Most railroads require that you and your doctors fill out paperwork proving that your absence from work is legitimately due to an injury or illness. Many railroads require that you renew the "medical leave of absence" forms every 30 days. Failure to do so is treated as a rules violation and results in dismissal from service. It is important to know your

railroad's rules about medical leave of absence and to comply with those rules. If the railroad fires you because you failed to comply with the rules, they will argue that you are not entitled to wage loss in the future because of your injuries since you were fired due to a rule violation. Obviously, this will seriously harm any legal claim you have for lost wages in connection with an injury.

Why does the claims representative keep calling me?

You must understand that the claims representative's job is not only to settle your case as quickly and cheaply for the railroad as possible. He or she is primarily responsible for gathering information which will help the railroad to defend against your claims for the injuries you received at work. The claims representative's interests are not the same as yours and your family's.

The claims representative is calling for several reasons: 1) to gain your trust; 2) to direct your medical care in a way that benefits the railroad; 3) to tempt you with financial arrangements (wage continuations or advances) which are probably not in your best interests; and 4) to manipulate your medical treatment so that it becomes helpful to the railroad's case and harmful to yours.

The claims representative may use many tools to convince you that it is in your best interests to work with them. They may say that all Lawyers are greedy and that you should not give Lawyers part of your settlement. They may play upon community or family connections to make you trust them more. They may play on your concerns about supporting your family financially while you are injured, or your concerns that the railroad may retaliate against you for bringing a claim or reporting the injury.

What they will NOT do is tell you about your rights under the FELA or provide you with an objective view of what your case is really worth.

Does the railroad hire surveillance teams to observe and videotape injured workers?

Absolutely. In fact, our firm's experience shows that in many cases *even while the injured worker is cooperating with the claims representative*, that same claims representative has hired private investigators to hide in bushes or other secretive locations and videotape the injured worker that they are supposedly trying to help. This is done to gather evidence against the injured worker's claim. If injured, do not do anything other than what your doctor has told you that you can safely do. If you see suspicious vehicles in your neighborhood or following you, call the appropriate law enforcement agency and have a police or sheriff's report on file about the incident.

The claims representative said I can get more money by not hiring a Lawyer who charges fees and expenses. He said I'd be crazy to do that. Why would I want to hire a Lawyer if that is true?

You only need to hire a Lawyer if you have a claim serious enough to justify it. A good, honest Lawyer will provide you with the advice you need to help you decide whether or not you need legal representation or whether you should negotiate directly with the claims representative. A good, honest Lawyer will assist you in discussing your claim with the claims representative even though he or she is not formally representing you. At the very least, the Lawyer can inform you of your legal rights and you can make the decision for yourself.

In Special Report 241, *Compensating Injured Railroad Workers Under the Federal Employers' Liability Act*, 1994, the Transportation Research Board of the National Research Council found that 70% of FELA claims are settled directly with the injured employee and without a Lawyer (page 75). Therefore, 30% of the claims are handled by Lawyers. Twenty percent of claims handled by Lawyers are filed in court. Your own experience may tell you that most injuries are minor and that it is a rare event for a major and/or career-ending injury to happen. When it does, legal representation is advisable in most instances because a serious claim is generally more compli-

cated to handle and involves more legal issues and risks for the injured worker's future.

The reasons an injured person would hire a Lawyer are to maximize monetary recovery, obtain advice on how to proceed through the claims process, and to protect them from the tactics of the railroad in trying to minimize or defeat the injury claim. In some cases, an injured person may have to fight the railroad in court to achieve just compensation.

How do I know if my claim is serious enough to justify hiring a Lawyer?

When you have a serious personal injury, have missed significant time at work, or have sustained an injury that will keep you from returning to your regular railroad job, you should consider hiring a Lawyer. Of course, every case is different. Sometimes, because of the particular facts of an injury, the personality of the claims representative, or the complexity of the situation, legal representation is the best course. Consult with an experienced FELA Lawyer about your situation.

Does it cost me anything to talk to a Lawyer?

The Law Offices of Martin E. Jackson does not charge to discuss your situation with you. We assist railroad workers with free legal advice on a daily basis.

How do you get paid for legal services?

Martin E. Jackson represents injured railroad workers on what is known as a contingency basis. In other words, the law firm is generally paid 25% of the total recovery obtained for the injured worker, plus the costs of pursuing the claim. Some non-traumatic injury claims are charged a slightly higher rate because of their complexity. In the event there is no recovery, no legal fees are owed or expected to be paid to the law firm. Our historical experience demonstrates that this is a very rare occurrence.

How can I get in touch with you?

The Law Offices of Martin E. Jackson can be contacted directly by using our nationwide toll-free number, 1-866-724-5522. If you are reading these questions and answers then you're already at the Railsafety web site. Press the button on your left to go to the contacts page and fill in the required blanks. A representative will be in touch with you shortly. You may also call 1-800-376-0538, or email us at railsafety@charter.net

These questions and Newsletter can be found on our web site at www.railsafety.com

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