

F. E. L. A.

**INJURED RAILROAD WORKERS
PROTECT YOURSELF**

{UNDER THE FEDERAL EMPLOYERS' LIABILITY ACT}

YOUR RIGHTS UNDER THE F.E.L.A.

The FELA is designed to protect railroad employees and their families in cases of injury or death arising out of employment. The duty of the Railroad under the FELA is to furnish its employees with a reasonably safe place to work.

The Railroad is responsible at all times to furnish a safe work place to its employees and cannot delegate that responsibility to any other person or company. Even when the railroad worker is injured or killed while on the premises of some other person or company, so long as he or she is working within the course and scope of his or her employment as a railroad employee.

RAILROAD'S ABSOLUTE

SAFETY APPLIANCE ACTS (SAA): Absolute liability is imposed on Railroads, regardless of any negligence, where an employee is injured or killed through a defect or insufficiency in a railroad car's brake system, couplers, handholds, sill steps, grab irons, ladders or running boards.

BOILER INSPECTION ACT (BIA): Absolute liability is imposed on Railroads, regardless of any negligence, when a locomotive engine that is in service and on line is not in proper condition and not safe to operate and that as a result thereof, an employee is injured or killed.

ELEMENTS OF DAMAGES IN A F.E.L.A. SUIT

- 1. PERSONAL INJURY: An injured employee can claim monetary (\$\$\$) damages as a result of injuries sustained due to the Railroad's negligence or violation of the SAA or BIA. These damages include reasonable compensation for:
 - Medical expenses incurred, past and future;
 - Wages lost, past and future;
 - Loss of future wage earning capacity;
 - Loss of past and future fringe benefits;
 - Pain and suffering;
 - Mental anguish, embarrassment and humiliation;
 - Loss of ability to enjoy a normal life.

- 2. WRONGFUL DEATH:
- Under the FELA, the personal representative of a deceased railroad worker whose death resulted from the Railroad's negligence may bring a wrongful death action. The damages recoverable are those which will justly compensate the relatives of the deceased for the pecuniary loss suffered by them as a result of the death. The typical elements of damage include:
 - Loss of support claimed by a spouse or child;
 - Loss of services claimed by a spouse;
 - Loss of nurture and guidance claimed by a child.

WHERE TO FILE YOUR F.E.L.A.

- Under the FELA, the injured railroad worker is entitled to bring a claim against the Railroad either in state court or in federal court, whichever better suits the employee's convenience or purpose. Normally, the claim is filed in the court where :
 - (1) the accident occurred,
 - (2) the Railroad is found doing business, or
 - (3) the Railroad has its principal place of business.

CAN THE RAILROAD FIRE YOU FOR EXERCISING YOUR RIGHTS UNDER THE F.E.L.A.

- THE ANSWER IS NO.
- Some railroad workers hesitate to consult a lawyer about their claim. They have been led to believe that the Railroad can put them out of service or discriminate against them in other ways because they have exercised their right to consult and engage a lawyer to pursue their FELA claim.
- The fact is that the FELA FORBIDS the Railroads from engaging in such practices. The FELA is very clear on this point. In fact, the FELA spells out the legal right of the injured railroad worker to get the advice of a lawyer.

CAN THE RAILROAD FORCE YOU TO FORFEIT YOUR F.E.L.A.

- THE ANSWER IS DEFINITELY NO.
- The Railroad is prohibited from using any device or scheme to exempt itself from liability (responsibility) under the FEHA. Thus the Railroad cannot force an employee to forfeit his or her rights under the FEHA by the use of some work rule, regulation, or contract.

GETTING STARTED

(PROTECT YOURSELF EARLY)

COLLECT AND PRESERVE

Although you have three (3) years from the time of an injury or death in which to file a FELA claim in court, waiting too long to either investigate the claim or to actually initiate the claim can be detrimental to your rights as an injured railroad worker.

- REMEMBER, while you are seeking medical care and treatment and wondering how your family is going to financially survive during the period of your injury, the sophisticated team of Railroad company investigators and claim agents will be hard at work speaking with witnesses, collecting physical evidence, and taking photographs all for the purpose of aggressively defending the Railroad's interests (financial of course) against any claim you might bring. SO START AS EARLY AS POSSIBLE IN COLLECTING AND PRESERVING YOUR OWN EVIDENCE.

RAILROAD ACCIDENT

- If you are injured during work, your company rules will require you to fill out an accident report.
- Failure to file such a report or, worse yet, fill it out incorrectly and your potential FELA claim will be in jeopardy before you even file it.
- Check with your Union Representative if at all possible before filling out this form.

PI – 1A FRA Report

- **Some guidelines to consider when filling out the Railroad's accident report:**
 1. if physically and mentally able, file the accident report as soon as possible following an accident and submit it to your supervisor (make sure you request a copy);
 2. examine each section of the report carefully and give some thought to each question asked before writing in your answer

3. if possible, have your union representative with you when filling out the report.
4. if your accident was caused by an unsafe work place, or if the tools and/or equipment provided to you were defective or insufficient, or **if a co-worker was careless in causing you injury**, if the ground conditions were dangerous, if job assignment was unreasonably dangerous, or if you had insufficient help with which to perform your assigned duties.
5. avoid having other co-workers, including supervisors, fill out YOUR accident report.

INTERVIEW WITH A SUPERVISOR OR CLAIM AGENT

- Many times, injured railroad workers are asked to provide a written or recorded statement concerning their accident .
- This is not something you should do voluntarily and by all means avoid it if possible.
- If it becomes necessary, it is best to make such a statement at a time when you feel physically and mentally capable.

- Always consult your union representative before making the statement and, if possible, consult your experienced FELA attorney for suggestions and recommendations. Make sure you request a copy of the statement.
- REMEMBER, the Claim Agent is trained to ask you questions about your accident in a manner that may catch you off guard. It only takes one slip of the tongue to damage your legal rights under the FELA. ALSO REMEMBER, the statement that you give the Claim Agent can and will be used against you in your FELA lawsuit. BE CAREFUL!

THE RAILROAD

- Under the Railway Labor Act (RLA), the Railroad has the right to conduct a formal investigation to determine whether disciplinary charges should be brought against an employee for a violation of the company rules or regulations.
- In more recent times, the use of the formal investigation is to discipline an injured railroad worker for getting hurt. (Nothing like kicking a worker when he or she is down.)

- Formal investigations are conducted by the Railroad who, under the RLA, gets to act as judge, prosecutor and, at times, executioner. Thus the phrase “KANGAROO COURT.” If you are charged by the Railroad for rules violations and then asked to attend a formal investigation, you should immediately consult your union representative as well as your experienced FEHA attorney. At the investigation you will be interrogated by a railroad supervisor. As in the case of the statement to the Claim Agent, you should seek a postponement of the formal investigation until you are physically and mentally able to participate.

Medical Treatment

- 1. If you feel you need Medical Treatment ask for it before you fill out ANY PAPERWORK.
- 2. You have the right to go to the Local Hospital of your choice if you are able.
- 3. Railroad Supervision DOES NOT have the right to be in the Treatment Room with you!

- One of the most important issues confronting a railroad worker concerns the medical treatment he or she receives for their work related injury. In times past, the employee had a great deal of flexibility as to who he or she saw for such treatment. Today, with managed health care and HMOs, the flexibility has been somewhat limited. As early as possible following the injury, you should seek treatment from a medical provider with whom you are familiar with either directly, by referral or by reputation. It is also important to be treated by a doctor who is equipped to handle your type of injury and with whom you can develop a good professional relationship.

THE RAILROAD TEAM

YOUR NOT ON IT !!!

1. No matter how satisfied you have been with the Railroad and your job, the second you are injured your interests and those of the Railroad company become opposed to each other. Your interests as an injured worker is to protect your rights under the FELA and to collect fair and adequate compensation for your injuries.
2. The interest of the Railroad is to oppose your FELA claim and to make sure that you collect not one dollar more than is necessary.

THE QUESTION IS,

- HOW CAN YOU BEST PROTECT YOURSELF SO THAT THE RAILROAD TEAM OF SKILLED EXPERTS DO NOT TAKE ADVANTAGE OF YOU IN AN AREA OF THE LAW FOR WHICH YOU HAVE NEITHER ANY EXPERIENCE NOR TRAINING?
- ANSWER:
- CONTACT YOUR UNION REPRESENTATIVE AND AN EXPERIENCED FELA ATTORNEY WHO CAN EXPLAIN YOUR RIGHTS UNDER THE LAW AND HOW TO PROTECT THEM FOR YOUR BENEFIT AND FOR THE BENEFIT OF YOUR FAMILY.