

Injured on the Job Your Rights under FELA

Quick Facts: What To Do If Injured

1. Consult your own doctor for treatment. Give your doctor a complete history of how your injury happened. Make sure that the Doctor knows you are covered under FELA and NOT Workers Comp!
2. DO NOT ALLOW RAILROAD MANAGEMENT IN THE EXAMINING ROOM! Remind the Doctor not to discuss your injury, without yours or your family's permission, with any Railroad Doctor, Claim Agent or other railroad official.
3. Report your injury to the Union.
4. File the required company injury report; note any defects, such as tools, equipment or unsafe work place or conditions. Describe weather, lighting, noise level, etc. List all witnesses. Keep a copy of report. DO NOT SIGN THE SECTION OF THE REPORT THAT RELEASES YOUR MEDICAL HISTORY.
5. DO NOT give the railroad any other statement about your accident or injury WITHOUT A UNION REPRESENTATIVE BEING PRESENT.
6. Contact Nolan Law Group for authoritative guidance.

Injured on the Job

Your Rights under FELA

Introduction

Railroad workers who are injured on the job are not typically covered by the worker's compensation laws that cover most American workers. In the early part of the 20th century, when the railroads were the nation's largest employer, Congress made the determination that railroad work was inherently dangerous, and railroad workers needed special rights and remedies to prompt the railroad companies to implement safe work practices. In 1908, with the support of President Theodore Roosevelt, Congress passed the **Federal Employers Liability Act (FELA)**, a law that continues to protect today's railroad workers.

In 1948, U. S. Supreme Court Justice William O. Douglas explained, in what has become a famous quotation, that FELA "was designed to put on the railroad industry some of the cost for the legs, eyes, arms, and lives which it consumed in its operations." Ten years later, the Supreme Court gave a similar explanation of FELA: "This statute... was a response to the special needs of railroad workers who are daily exposed to the risks inherent in railroad work and are helpless to provide for their own safety."

Keep in mind there are some situations where an employee of a railroad subcontractor may be covered by worker's compensation and under FELA. Check with a competent lawyer to see if this may apply to you.

Should You Get a Lawyer's Help with a FELA Claim?

If you or a loved one has been injured on the job as a railroad worker, the information in this booklet will help protect your rights, but we strongly recommend that you obtain qualified legal counsel as soon as possible after an injury. And that is not just our opinion. The United States Supreme Court said, in a 1964 case: "Injured workers or their families often fall prey... to persuasive claims adjusters eager to gain a quick and cheap settlement for their railroad employers" There is more information in this booklet that will help protect you against the railroad's "persuasive claims adjusters."

Here is more proof that you should not file a FELA claim without the help of a qualified lawyer. The federal Government Accounting Office (GAO) did a study of FELA claims and found that the average settlement paid to workers represented by attorneys was substantially higher than the average settlement paid to workers not represented by attorneys.

INJURED ON THE JOB

Average Value of FELA Compensation Claims

Year	No Lawyer	With Lawyer
1990	\$24,414	\$159,356
1991	29,163	146,369
1992	29,536	160,159
1993	32,713	166,500
1994	33,919	165,421

Source: GAO Report 8/96, citing the Association of American Railroads.

In this same report, the GAO studied the subject of legal fees in FELA cases and concluded:

Although limits on the fees received by the plaintiffs' counsel might have financial benefits to railroads and injured workers, such limits could affect the availability and/or quality of the workers' legal representation. This appears to have happened in some state workers' compensation systems.

The Workers' Compensation Research Institute reported that initial indications were that the limits placed by Texas on the fees for plaintiffs' attorneys had caused a number of attorneys who previously had practiced workers' compensation law to leave the field.

Proving Railroad Negligence

Railroad workers are covered by a different set of rules than workers who are subject to Workers' Compensation laws. The Workers' Compensation laws are basically a "no fault" system, which means an injured worker does not have to establish any fault by the employer in order to receive compensation. If they are hurt on the job, they are automatically entitled to be compensated for their injuries under a fairly well-defined system of benefits. It does not matter who was at fault. Not so with railroad workers.

if you are injured on the job, you will need to show that the railroad was "negligent" (at fault) and caused your injuries. The basic idea behind FELA is to show that the railroad in some way failed to provide you with a reasonably safe place to work, and that resulted in some injury to you.

To win a FELA claim, you need to prove that the railroad was somehow negligent, and that its negligence played some part, no matter how small, in causing your injuries. This is called your "burden of proof" and, while it sounds simple enough, it

involves a complex of factual and legal issues that can influence the outcome.

Some good news about your “burden of proof”

The amount of fault that needs to be shown in a FELA claim is less than the degree of fault that must be proven in an ordinary negligence claim, such as in a lawsuit brought for being injured in a car accident.

This lesser burden of proof gives an advantage to railroad workers seeking to recover compensation for being injured on the job. Moreover, under FELA, railroad companies have a duty to their employees to:

- » Provide a reasonably safe workplace, equipment, tools, and safety devices;
- » Inspect the workplace to ensure it is free of hazards;
- » Provide adequate training, supervision, assistance, and help to employees in their job functions;
- » Ensure workers are safe from harmful intentional acts of others; and
- » Enforce all safety rules and regulations.

If you are hurt because the railroad failed to carry out one or more of these duties, then you may have a FELA claim.

The Safety Appliance Act and Boiler Inspection Act

FELA contains other provisions that make it even easier for railroad workers to receive compensation if they are injured as the result of defects in some components of locomotive engines and railcars. In 1893, Congress passed the first of what we now call the Safety Appliance Acts, followed in 1911 by the Boiler Inspection Act (also called the Locomotive Boiler Inspection Act or the Locomotive Inspection Act, abbreviated either LIA or BIA).

Both the Safety Appliance Act and the Boiler Inspection Act impose absolute liability on the railroad. If you are injured because of a violation of either Act, you do not have to prove that the railroad was negligent in order to receive compensation. However, these Acts may not apply if you were injured while working on a locomotive or cars that were taken completely out of service for repairs; in that case, railroad negligence would have to be proven.

Compensation for Your Injuries

FELA empowers you to receive compensation for three types of losses as a result of being injured due to your employer's negligence:

- » Past and future wage loss;
- » The cost of medical treatment; and
- » Past and future pain, suffering, and emotional distress.

By comparison, the compensation under ordinary "no-fault" Workers' Compensation laws is basically limited to the cost of medical treatment and a percentage (usually two-thirds) of past and future wage loss. By comparison, the right of railroad workers to compensation for being injured on the job is far more valuable than ordinary Workers' Compensation – if, and this is a BIG IF – negligence can be proven on the part of the railroad.

If a workplace accident results in the death of a railroad worker, the worker's surviving spouse and children are entitled to compensation. If the worker has no spouse or child at the time of death, the compensation would usually go to any surviving parents or other close family members.

The Railroad's Defense: Blame the Injured Worker

The railroad's main defense in a FELA claim is a railroad worker's "comparative negligence." The railroad will try to show that the worker's injuries were partially or completely his or her own fault. It works this way: if the railroad was 75% to blame for the employee's injuries, while the employee was 25% at fault, and the employee's total damages amounted to \$100,000, the employee will receive \$75,000 from the railroad.

Blaming the employee is the primary way that the railroad can reduce the amount of damages that it must pay to an injured worker. You need to know this in order to understand that most of the railroad's post-accident activities are designed to gather evidence of the worker's fault in causing his or her injuries.

Our Top Ten Do's And Don'ts If You Are Injured on the Job

The events that occur immediately after any workplace injury are often the most critical to the rights of the injured employee. If you or a loved one have been injured while employed as a railroad worker, it is important that you take certain steps and precautions after the incident to ensure that your rights to compensation under FELA are not compromised. Here are our "Top Ten Do's And Don'ts If You Are Injured on the Job:"

1. Report the Injury. Immediately tell your supervisor that you have been injured and require medical attention.

2. Get Medical Care. Your employer should make sure that you receive immediate medical attention and treatment, especially in emergency situations. You do not have to see a company doctor, however. You can and should seek medical treatment from a doctor of your own choosing. Remember that no one from the company, your supervisor, a claim agent or anyone else, is entitled to be in the examining room or speak with your doctor without your consent. We

recommend that you seek no-cost advice from the Nolan Law Group before giving any consent.

3. Tell Your Union Representative. Contact your union representative as soon as possible, to get help protecting your rights.

4. Complete the Company's Accident Report. Your employer will require you to complete an injury report form. You do not have to fill out any forms until you are physically and mentally able to do so. **DO NOT SIGN THE SECTION OF THE REPORT THAT RELEASES YOUR MEDICAL HISTORY.**

When you are filling out the injury report form, ask yourself this question: What could the railroad have done to prevent your injury and how could your workplace have been safer? Ask your union representative for help in filling out the report, especially if you have never done it before. It is important that you be as thorough and accurate as possible in describing your injuries and all possible conditions that may have contributed to the incident.

5. Keep Names of Witnesses. Write down the names, addresses and phone numbers of anyone who saw the accident or who knows about the work conditions.

6. Keep Track Of Time Missed At Work. Keep track of all time lost on the day of the incident, plus the work time lost because you were unable to work and any time lost due to follow-up medical appointments.

7. Apply For Sickness Benefits. If you lose time from work, you are entitled to sickness benefits from the Railroad Retirement Board. You may also be entitled to supplemental benefits in addition to RRB benefits. Check with your union representative about what to do.

8. Do Not Accept Light Duty Work if your doctor told you not to work. Returning to work prematurely may aggravate your injuries and affect the safety of your co-workers. If you are on light duty and not missing work, the railroad can get around a legal requirement to report your injury to the Federal Railroad Administration (FRA). Light duty can also be used to reduce the amount of settlement money you receive.

9. Do Not Give A Statement To The Railroad. FELA does not require you to give a written or recorded statement to anyone from the railroad beyond filing the company's accident report. A

claims agent is likely to pressure you for a statement, but you are not required to do it. If you are worried about refusing to cooperate with the claims agent, contact the Nolan Law Group for assistance. We will give advice concerning the rights and liabilities of union members for on-the-job injuries, either by telephone or in person, at no cost to the union member.

10. Do Not Be Pressured into Giving Up Your Rights. You should be especially cautious of the claim agent or other company representative who tries to talk you out of filing a company injury report, saying that you will hurt your group's safety record, or that you don't need a lawyer because "the company will take care of you." You may even be offered light duty if you cooperate. Of course, by cooperating, you risk being denied your rights under FELA if your injury later develops into something serious or permanent.

Another way a claim agent may pressure you is by threatening you with discipline or termination if you file a FELA claim. The Nolan Group FELA attorneys are experienced in using the law to prevent retaliation by the railroad against an injured worker.

About the Nolan Law Group

The Nolan Law Group has been helping workers injured on the job since the firm was founded in 1981. As the son of a Local 134 member and former summer apprentice, Don Nolan understands the needs and concerns of people whose livelihood have been affected by a work-related injury. He realizes how important it is to restore a source of income for them and their families as fast as possible. And he knows how to protect the rights of injured workers and obtain for them full and complete compensation for the losses suffered as a result of injury.

The Illinois Supreme Court recently appointed Don Nolan as co-chairman of its subcommittee to develop proper jury instructions for use in all trials of construction negligence cases. Mr. Nolan is nationally recognized as an authority on civil trial issues and has lectured attorneys throughout the country. Martindale-Hubbell, the oldest and most respect attorney rating agency, has awarded Mr. Nolan the **AV rating**, which is the highest rating that can be given to a lawyer. Mr. Nolan is also listed in **Super Lawyers**, the directory of the top five percent of the legal profession.

In addition to representing injured workers in Workers' Compensation claims, the Nolan Law Group also represents the families and victims in:

- AVIATION
- MEDICAL MALPRACTICE
- RAILROAD
- TRAUMATIC BRAIN INJURIES

If you have a question regarding any of these areas, call our office for a consultation.

Injured on the Job Your Rights under FELA

By Donald J. Nolan, Esq.



NOLAN LAW GROUP

STRENGTH IN PRACTICE, GREATER RESULTS

20 N. Clark Street, 30th Floor • Chicago, IL 60602

312.630.4000

www.nolan-law.com • info@nolan-law.com