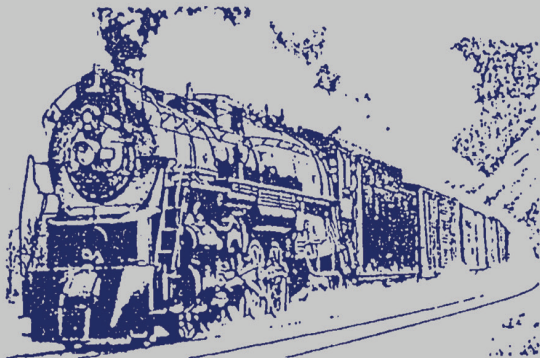


**DON'T BE RAILROADED
PROTECT YOURSELF WHEN
HURT ON THE JOB**



KNOW YOUR RIGHTS
under the
**FEDERAL EMPLOYERS' (Railroad)
LIABILITY ACT**

KAPLAN LAW CORPORATION

1901 Avenue of the Stars, 19th Floor
Century City, California 90067
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WHAT TO DO WHEN INJURED ON THE JOB

1. Note names of all possible witnesses.
2. Note any defects and dangers in the equipment or work area.
3. Fill out an accident report for the company when you are physically and mentally able to do so.
4. Do not give any other written or recorded statements to claims agents.
5. Give your doctor a complete history of how and when your injury occurred.

KNOW YOUR RIGHTS

When any railroad employee is hurt on the job, he or she has the protection of a special Federal law which applies only to railroad employees and their families. It is called the Federal Employers' Liability Act (FELA) and is one of the most protective personal injury laws in the United States, far superior to Worker's Compensation or automobile collision laws.

WHAT YOU MAY RECOVER

Under the provisions of the FELA, there are no limited payments for certain specific injuries as there are unfortunately under worker's compensation laws, which are woefully inadequate. Railroad employees may have the mistaken notion that the railroad's liability under the Act is limited to lost wages only. There is no limitation as to what an injured employee, or the spouse of a deceased employee, may recover. For an injured person, it depends upon many factors, such as the seriousness of the injuries, the extent of future disability, pain and suffering to date as well as in the future, loss of wages to date and in the future as well as how the accident occurred. In a Wrongful Death action, for the surviving spouse and family, it depends on the decedents age at the time of death, the amount of wages devoted to the spouse and family (pecuniary loss), the life expectancy as of the date of death, as well as how the tragic accident occurred.

YOUR RIGHT TO RECOVER

Whereas it is true that potentially the damages and amount of recovery are substantially greater in a FELA case than a Worker's Compensation case, it is first necessary to establish some degree of fault or negligence on behalf of the railroad company. Anything contributing to the injury, for example, a mistake or carelessness on the part of a fellow co-worker and or supervisor, unsafe working conditions, lack of proper tools, equipment or machinery, hurry-up orders whereby the supervisor or some other railroad official rushes the employees to the extent that an injury occurs, failure to warn of potentially dangerous and hazardous conditions, failure to properly instruct, train and supervise their employees all exemplify instances of negligence and liability on the part of the railroad. Further, the United States Supreme Court has ruled that the railroads are responsible for injuries if the railroads negligence played any part, no matter how slight in causing the injury.

Even if the injured or deceased employee were partly at fault, the injured person or the personal representative can still recover against the railroad company, if the company was even partly at fault. Ultimately, it would be up to a jury to decide the percentage of responsibility for the accident on the part of the employee and the company and adjust the damages accordingly.

The Federal Safety Appliance Act and the Locomotive Inspection Act are considered to be a part of the FELA and contain many provisions for the protection of railroad workers primarily in the operating department. For example, if it can be established that a coupler, grab irons or a locomotive seat were not functioning properly and were “in use” at the time of the accident and the employee was injured, then the railroad could be held to be in violation of these Acts without proof of negligence. If there is a violation of either of these Acts, then damages are not reduced at all even if the person injured or killed was partly at fault.

REPORT AND STATEMENT

Under the FELA no injured railroad employee or surviving relatives of one killed on the job is required to provide and sign a narrative statement for the railroad claims agent or any other representative of the company. An employee is required, however, to give notice of the accident on the accident report form furnished by the company when they are physically and mentally capable of doing so, as well as not being under the effects of strong medication. Before signing an accident report, the employees should read the questions very carefully and give serious consideration to their answers. Employees witnessing the accident may be required to give statements to the company if requested to do so but may not be retaliated against for doing so under the Whistleblower Statute if the statement is adverse to the railroads interests.

LEGAL ADVICE

Some railroad employees hesitate to consult a lawyer about their claims. This is because they have been mistakenly led to believe the company can pull them out of service or discriminate against them in other ways if they choose to exercise their rights to consult and hire an attorney to advocate their claims. *This is false.* Your union and your union collective bargaining agreement stand behind you in protecting your employment rights with the company, if you sustain an on duty injury and choose to hire a lawyer.

The Act further protects employees and co-workers in that it provides specifically that: “Whoever, by threat, intimidation, order, rule, contract, regulation or device whatsoever, shall attempt to prevent any person from furnishing such information to a person in interest, or whoever discharges or otherwise disciplines or attempts to discipline any employee for furnishing such information to a person in interest, shall, upon conviction thereof, be punished, by a fine of not more than \$1,000 or imprisonment, for not more than one year, or by both such fine and imprisonment, for each offense.”

More importantly, in 2007 the U.S. Congress passed critical legislation to protect persons working in the Railroad industry, by making it illegal for the railroads to take retaliatory measures against a railroad employee for reporting what the employee reasonably believes to be a violation by the railroad of any Federal Safety Statute, law and/or regulation. If the railroad does in fact retaliate against the employee, the employee is entitled to file a complaint with OSHA and seek damages. The complaint must be filed within 180 days of the retaliatory act.

Advice and counsel of an attorney who specializes in FELA cases are the railroad worker’s best guarantee that their claim will be properly evaluated, handled and presented on their behalf.

An injured employee should contact a FELA attorney who specializes in handling FELA cases as soon as possible to seek advice without obligation to ensure that their rights are protected.

Unfortunately, in many instances the railroad claims agents investigate an injury accident immediately after it happens and conduct their investigation and statement taking as they see fit deciding who and who not to interview and what and what not to ask. It is critically important for the injured employee to have an attorney that only has their rights in mind and not that of the railroad claims agent, who is trying to save the company as much money as possible. A competent FELA attorney who is working for you will contact witnesses and gather evidence on your behalf so that you will be successful in obtaining just compensation for your injuries and damages.

TIME LIMITATION

An injured railroad employee, or in the case of a Wrongful Death action, the personal representative must file a lawsuit within three years from the date of the accident if the matter cannot be fairly resolved by settlement. Many claims agents will misleadingly tell the injured employee that they should not talk to an attorney because they will receive more if they settle directly with the company since they will not have to pay attorney fees. In many instances the agent will go on to say something to the effect that if the railroad doesn't deal fairly with you, you can always hire a lawyer later. The problem is that during the time that they drag things out with you, witnesses retire, are laid off, forget what happened, or the evidence is no longer available so that if they do not deal fairly with you, the opportunity to acquire this evidence might be lost or severely compromised. Additionally, there have been many horror stories where other defendants were at fault and there were different statute of limitations time periods that applied such as 180 days on a government claim or two years on a State claim against a third party defendant, and therefore the time to bring a claim was missed and not protected by filing a lawsuit on time. Consequently, the railroad said they wouldn't offer anything, because the injured railroad worker should have sued the other person or entity. Lastly, there are also different time limitations involving asbestos, toxic tort and cumulative trauma claims to be aware of because the railroads do not inform their employees of them and they too may be missed.

RELEASES

Often employees go back to work and sign a release settling their claim in full, thinking that they are completely well and can perform their job as they did before the accident. You do not have to sign a release when you return to work, and you should not settle your claim until you are medically permanent and stationary. An experienced FELA attorney can recommend independent doctors not connected to the railroad, who can perform examinations and tests to determine if you can expect to develop further medical issues and costs from your injury in the future. It is very important to not allow claims agents or inexperienced attorneys to get you to Quick Settle your case.

CONSULTATIONS

Please feel free to contact our office toll free and seek a free consultation with no obligation. If you do decide to hire our firm, we work on a contingency basis. We only get paid if we recover for you. We advance all costs. Please do not jeopardize your potential recovery without first knowing your rights regarding just compensation for your injuries and damages, **Don't Be Railroaded**.

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