

# About the Federal Employers' Liability Act

**GENERAL** —Injured railroad workers are covered by the Federal Employers' Liability Act (FELA) which was enacted in 1908. The United States Congress passed the FELA to reduce the appalling accident rate in the industry and promote uniformity in railroad equipment and practices.

Basically, the Acts applies to railroads and their employees. The Act was passed because the railroads failed to develop safety measures to protect their employees. Essentially, the FELA provides:

"Every common carrier by railroad while engaging in commerce...shall be liable in damage to any person suffering injury while he is employed by such carrier in such commerce, or, in case of death of such employee,...for such injury or death resulting in whole or part from the negligence of any of the officers, agents or employees of such carrier, or by reason of any defect or insufficiently, due to its negligence, in its cars, engines, appliances, machinery, track roadbed...or other equipment."

The FELA is the exclusive remedy for most claims an employee may have against his employer. A FELA case may be brought in either federal or state court.

**LIABILITY** — FELA is not a workers' compensation act. Under FELA you are entitled to collect a claim **if** there is evidence that the injury was caused, in whole or part, by fault or negligence on the part of the railroad, including the failure of the railroad to provide a reasonable safe place to work. The FELA claimant **must** prove fault on the part of the employer.

If the railroad did nothing wrong, you are responsible for your injury.

**NEGLIGENCE** — To prove fault by the railroad, you must show that the railroad was negligent. The most important concept of negligence is that there is a duty to furnish the employee a reasonably safe place to work. This duty of the railroad may not be transferred in any manner. It does not matter that the employee is at an industry or another railroad when injured. A showing of negligence requires proof that:

- the railroad has been guilty of a lack of due care under the circumstance, or
- has failed to do what a reasonable and prudent person would ordinarily have done under the circumstances, or
- has done what a person under the existing circumstance would not have done.

Exceptions to the requirement of proof of negligence are the existence of a violation of the Federal Safety Appliance Act or the Boiler Inspection Act, which involve the failure of the railroad to provide certain very specific safety equipment. Most of these violations involve equipment used by operating craft employees.

**EMPLOYERS' DUTIES** — Employers covered by the FELA have the general duty to provide a reasonably **safe** work environment. This duty is absolute, continuous and nondelegable. The definition of what constitutes "reasonably safe" may need to be decided by a jury. The mere fact that an accident occurs does not mean that the railroad failed to provide a

reasonably safe place to work. This is why it is important for any employee who is involved in an accident, to report the accident immediately and to identify negligence and/or defective equipment causing accident and/or injury.

**STATUTE OF LIMITATIONS** — The statute of limitations for a FELA action is three years from the day the cause of action occurred. For occupational diseases, when there is an uncertain date of injury, the statute may begin running when the effect of the disease is discovered.

**DAMAGES** — Workers have a choice to go to court and have a jury decide whether they are entitled to compensation and how much. A FELA plaintiff can recover special damages, such as:

- the nature and extent of the injury
- past and future pain, suffering and loss of enjoyment of life
- for past and future loss of earnings
- past and future medical expenses

Mental injuries are recoverable including emotional distress, if the employee can show that he or she was in the zone of danger of physical impact with imminent apprehension of physical harm.

For injuries resulting in death, the survivors may be entitled to compensation for their financial loss and any pain and suffering of the deceased.

Damages are reduced if a worker is determined to have been proportionally at fault or negligent.

**DESIGNATED COUNSEL** — Designated counsel are lawyers chosen by your union who are specialists in handling FELA claims and are fully experienced in dealing with the railroad claim agents and railroad lawyers. They are experienced to ensure to the injured employee and their family get the benefits they are entitled. They are also familiar with the railroad industry. Proper evaluation of your claim requires a complete investigation under the direction of an experienced FELA lawyer with knowledge of railroad operations and the railroad law. A non-designated lawyer does not have any obligation to your union and is not answerable to the union. Great care should be exercised in the selection of your attorney.

Our competent and caring attorneys want to see that the injured employee and his family obtain the best medical care available so that, if possible, the employee can resume his or her place in the work force as a functioning and capable individual. We want you and your family to receive the fair compensation due to you from the railroad.

**PROTECTING YOUR RIGHTS** — Any worker who is involved in an accident or injury should immediately report your injury. In filling out accident reports, care must be taken to be as accurate as possible. It may be well for the injured employee to have the local or general chairman of the union present when such forms are filled out and signed. The injured worker should never allow the railroad claim agent or superiors by promise or pressure, to write anything in the report that is not accurate or true and correct. The injured worker should identify negligence and/or defective equipment causing injury.

The injured worker should not give any statements other than the information in the personal injury report. A claim agent representing the railroad will attempt to obtain a written statement concerning the accident and injury involved. Claims

agents' basic job is to save the railroad money and keep settlements for injuries as low as possible. When a claims agent tells an injured employee not to rush into anything since he has three years to file a claim, this agent is simply buying time to build a defense.

An injured worker who needs medical attention should see their own doctor. Often the railroads will take a position that it is not responsible for any injury unless the injured worker goes to a company doctor or company hospital. This is not true. If a worker does not have a family doctor, it is preferable that he or she sees a doctor who is not associated with and paid by the railroad.

An injured worker should call his local or general chairman as soon as possible regarding any accident or injury on the job.

An injured worker has an absolute right to pursue an action against the railroad for injuries sustained under FELA and to obtain the services of competent, caring attorneys. The right counsel will be able to assist the injured worker and his family in receiving their maximum benefits during the time that employee cannot work.

**REMEMBER — *Help is only a telephone call away.***