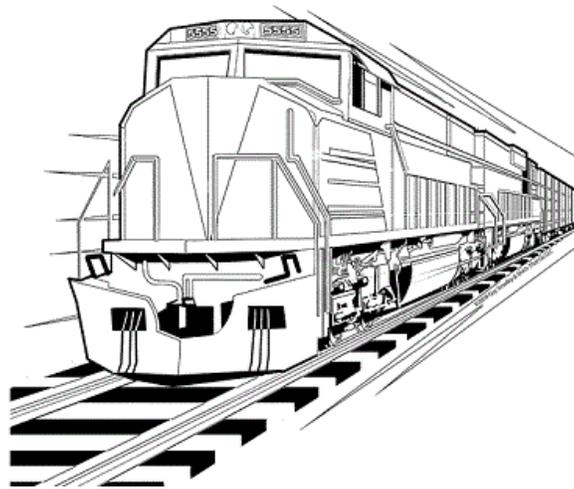


FELA Railroad Injuries



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FELA and the Legal Rights of Injured Railroad Workers

If you (or someone you love) are employed by a railroad company such as BNSF, Union Pacific or Amtrak and was injured while on the job, then you may have a legal right to claim compensation against your employer. Unlike most workplace injury claims, as an injured railroad employee you will not make a conventional workers comp claim. Instead, you are most likely entitled to make a claim for damages under the Federal Employer's Liability Act of 1908. This is known as making a FELA claim.

FELA was originally introduced because of the high rate of serious injuries and even death among railroad workers throughout the United States. It covers all railroad employees who have suffered an injury while at work, where their employer is engaged in interstate commerce, and where the railroad company's negligence was to some degree responsible for the accident or incident which resulted in the employee's injuries.

Under Federal law, an injured railroad worker can expect to recover monetary damages related to all past, present and probable future harm attributable to their injuries sustained at work. This includes all accident-related medical care (ER visit, surgery, physical therapy, rehabilitation, etc.), any lost wages already incurred as well as any future lost earning capacity, compensation for the physical pain and mental anguish you have experienced, impairment, disfigurement, etc.

However, your employer will not pay you the maximum compensation available willingly. You must hire a competent Dallas-Fort Worth FELA lawyer in order to have the best possible chance of making a full and fair recovery which can ensure true justice and financial stability for you and your family.

Cases Eligible Under FELA

There are two crucial factors which must be proven in order to establish your right to make a FELA injury claim in Texas:

- Your employer must be engaged in interstate commerce; and
- Your injuries were experienced within the course and scope of your employment

Definition of “Interstate Commerce”

Since FELA is a Federal law, it only applies to railroad workers who have been injured while working for a company which operates across state borders. Generally, this is very easy to establish since most major freight and passenger railroad companies (such as BNSF or Union Pacific) operate their trains not just in Fort Worth and Texas - but throughout the US.

To better clarify whether or not your accident can be considered to fit within this definition, consider the example of a yard brakeman who is injured on an intrastate car while building an interstate train. Because he is building an interstate train, his activities are considered to be under the scope of interstate commerce, which means he would qualify to make a claim under FELA.

The following examples are all also examples of interstate commerce:

- all movements of interstate cars, including a switching movement within one yard, form a part of the entire interstate transportation
- because an interstate train in a switching yard retains its interstate character, a switchman injured in the process of adding cars to that train is covered by FELA
- where an interstate train picks up or sets out cars at a rail yard, such action is incident to interstate transportation, whether the individual cars are interstate or local in character

Definition of “Within the Course and Scope of Employment”

This can be phrased in one of several ways, but essentially means that you were injured while on the job, performing some duty or task which in some way benefitted your employer. However,

this employment requirement has typically been interpreted broadly by both Texas and Federal juries.

One such court defined the “scope of employment” as encompassing “acts incidental to the employment as well as the actual work.” This means that acts such as eating lunch on company property, sleeping in accommodations provided by the employer during a layover necessitated by railroad work, or riding in a vehicle (other than commuting to or from work) when doing so is a necessary incident of the day's work. Each of these acts can reasonably be considered within the course and scope of your employment, and to your employer's benefit.

The Railroad Company's Liability

Contributory Negligence and Assumption of Risk

Although it might be accepted that working on the railroad or with trains in general is potentially hazardous work, it is against the terms of FELA to argue that an employee knew and assumed the risks of their work when it comes to claiming compensation. Even if you were partially negligent for your railroad workplace injury, it does not necessarily bar you from making a claim. Under FELA, the fact that the injured employee may have been guilty of contributory negligence does not bar them from making a recovery against their employer. In fact, under FELA, an injured railroad worker can recover compensation from the railroad even if he is 99 percent at fault, and the railroad company is only 1 percent at fault.

All railroad workers that are injured in the course of their work for an interstate railroad company are entitled to make a claim for compensation under FELA – so long as the employer (the railroad company) was at least in some part negligent or to blame for the injury-causing incident to occur.

Normal "affirmative defenses" (legal speak for "excuses") which the railroad company might try to make are barred under FELA. This means that they cannot argue that you assumed the risk of being injured since you knew that railroad work is dangerous. It also means that they cannot reduce the amount of damages for which they are liable by arguing that one of your coworkers was negligent (this is known as the fellow servant doctrine defense). FELA also prohibits employers from arguing that the compensation owed to you should be reduced because of a non-railroad cause.

Strict Liability

In many cases where a train or railroad employee has been injured while on the job, it is not even necessary to prove specific negligence, as many situations involve circumstances where strict liability can be imposed, thereby establishing the responsibility of the railroad company regardless.

For example, there are many railroad regulations which serve to provide additional protection for railroad workers. Under such industry regulations, the railroad company is considered responsible for providing a safe working environment for their employees – including safe locomotives, trains and cars. Specifically, the Locomotive Inspection Act (LIA) imposes on the railroad company the absolute duty to maintain its locomotives.

If your attorney is able to demonstrate that your employer violated the LIA then it is not necessary to prove negligence, as violation of the LIA establishes strict liability under FELA. Likewise, the Safety Appliance Act makes air brakes and automatic couplers mandatory on trains among other features which improve both safety and security. Violations of this act will similarly result in strict liability being established, thereby negating the need to actively prove negligence.

Dealing With Your Employer After a Railroad Accident Injury

Despite the fact that you are a loyal railroad employee and that you get along well with your supervisor, make no mistake that once you have suffered an injury while at work, you will be considered a liability by your employer. Railroad and train companies understand FELA and the implications of such a claim being made against them - in short, that it could cost them a lot of money.

When you are injured on the job, a claim agent working for your employer will be assigned to your case. Many times, they will reach out to you before you have had an opportunity to speak with an attorney. You must understand that this claim agent is employed by the railroad and it is their job to minimize the amount of compensation paid to you – regardless of how insufficient that might be for you and your family.

Never give the claim agent a written or recorded statement of any kind. If they require you to fill out an incident report, you should be as thorough as possible and list out all injuries that you are aware of at that time, regardless of how minor or inconsequential you might believe them to be. You should also clearly explain what the railroad did wrong to cause your injuries. Make sure that you get an accurate copy of this accident report if you do complete one.

We also recommend that you let your coworkers know that you have been injured, and gather names, phone numbers and addresses of all witnesses. If you have a phone with a camera, take pictures of the site where the accident occurred – or get someone else to take photos for you.

Legal Rights of Non-Employees

In certain circumstances, Federal law actually allows you to make a claim for compensation against a negligent railroad company if you were injured while working on the railroad or with trains – even if you weren't directly employed by the railroad company in question. Courts have honored the terms of FELA when contractors have been injured while on the job at rail yards or performing other work on behalf of an intrastate railroad.

Generally, there are three ways in which your attorney can argue that you were in fact working under the employment of the railroad company – even if you are not formally considered an employee:

1. The injured worker was serving as the “borrowed servant” of the railroad at the time of his injury;
2. The injured worker was deemed to be acting for two masters simultaneously; and
3. The injured worker was a subservant of a company which was in turn a servant of the railroad

Seeing a Doctor: Medical Care and Your Legal Rights

It is your right to obtain unbiased and impartial medical treatment after a railroad injury. Although your employer might want you to see their company doctor, you have no obligation to do so. The company doctor is paid to either get you back to work as soon as possible or to play down the severity of your injuries. Another benefit to seeing a doctor who is not employed by your negligent employer is that the full extent of your injuries can be properly and thoroughly documented.

You have a legal right to seek care from the doctor of your choosing. However, it is critical that you seek medical treatment as soon as needed. Failure to do so could hurt your chances of recovering fair compensation later on, as a gap in treatment implies that your injuries were not as serious as you claim. If you do not have health insurance or are having our problems in obtaining medical care, a personal injury attorney may be able to help you to find a doctor who is willing to treat you on a payment-deferred basis until your claim is successfully resolved.

Do I Need to Hire a Union-Approved FELA Injury Attorney?

In order to find the best attorney to help them win full and fair compensation, most injured railroad workers will turn to their union for a reference. However, you do not have to hire a union lawyer to represent you. You are completely free to choose for yourself the law firm that you think is most qualified to help you.

If you have been injured while working for Burlington Northern Santa Fe or Union Pacific in Dallas-Fort Worth, then it makes sense for you to hire a local attorney. There are very few FELA injury lawyers located in the Dallas-Fort Worth metroplex. The Anderson Law Firm has several offices throughout the DFW area which makes it convenient for you. Our main office is in Fort Worth – close to BNSF's rail yard – and we also have offices in Dallas, North-East Tarrant County (Keller) and Arlington.

Free Consultation

Call the Anderson Law Firm today for a free, no obligation consultation with a board certified personal injury trial lawyer.

Call toll free at 800-354-6275 or locally in Fort Worth, TX at 817-294-1900.

