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RAILROAD WORKERS – KNOW YOUR RIGHTS!



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RAILROAD WORKERS - KNOW YOUR RIGHTS!

INTRODUCTION: As a proud railroad union member, your work can provide you and your family with a good income and solid benefits during your employment. However, there are a number of ways your job can be placed in jeopardy despite your best efforts to follow supervisor's instructions and work by the rules. The purpose of this multi-page paper booklet is to provide you (or your significant other) with legal and practical information that can help you and your family when an unexpected on-the-job injury occurs that threatens your ability to earn a paycheck. This booklet is also designed to provide you with background information concerning your legal rights should you become a victim of retaliatory discrimination in violation of the Federal Whistleblower provisions of the Federal Railroad Safety Act (FRSA).

There is an old saying that KNOWLEDGE equals POWER. The purpose of this pamphlet is to provide the railroad worker with the basic knowledge necessary to safeguard his or her rights when injured on the job. Although it is impossible in the space provided to tell you what the law is as applied to the facts of a particular case, the authors are pleased to provide you with the following fundamental information that you, as a railroad worker, will find useful if injured during the performance of your job.

The United States Congress many years ago enacted a law for the benefit of railroad workers who are hurt or killed on the job. The law is known as the FEDERAL EMPLOYERS' LIABILITY ACT, also referred to as the FELA. Under the FELA, a railroad worker has a right to bring a lawsuit against his or her employer for money damages for injuries or death resulting from the Railroad's negligent failure to provide the worker, with a reasonably safe place to work.

We know that the FELA is an extremely important legal safeguard for railroad workers otherwise why would the railroad industry work so hard year after year to convince Congress to abolish this law? This pamphlet is designed to acquaint you with your rights given to you by Congress and safeguarded by the court system throughout the U.S. We hope it will be of benefit to you, your family and fellow railroad workers.

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A. YOUR RIGHTS UNDER THE FELA

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. If a railroad employee's job related injury or death results in whole or in part, **even in the slightest**, from the negligence of any of the Railroad's officers, agents, or employees, or by reason of any defect, due to the Railroad's negligence, in its cars, engines, machinery, track, roadbed or other equipment, the Railroad shall be liable (responsible) to the employee (or his family in case of death) for damages resulting from such injury or death.

The legal duty on the part of the Railroad is said to be continuous and non-delegable. That is, 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, the Railroad Employer may not escape responsibility for such injury or death resulting from the negligence of such other person or company.

IMPORTANT: A claim against the Railroad for damages under the FELA must either be settled or filed in court within three (3) years from the date of injury or death. Failure to either settle or file your FELA claim in a timely manner will result in the dismissal of your FELA claim and you or your family will be left without a legal remedy (no compensation). Thus, if you have been injured, you should consult an experienced FELA attorney as soon as possible.

B. FEDERAL EMPLOYERS' LIABILITY ACT (FELA):

Railroad workers whose employer is a common carrier by rail and engaged in interstate commerce are protected under the FELA when injured during the course and scope of their employment.

The FELA is a federal law that is uniform throughout the nation and has been in place since 1908. Its purpose is to provide railroad workers, who work in a dangerous industry, with a compensation system when injured on the job.

It is imperative to note that railroad workers injured on the job are not covered by state worker's compensation laws. The FELA provides injured railroad workers with the sole source of compensation when injured on the job.

The FELA (unlike worker's compensation) is a fault-based system. This means that in order to recover monetary damages for injuries suffered on the job under the FELA, the employee must show that his/her employer is guilty of negligence which caused or contributed to cause the employee's injury.

Because the United States Congress intended that the FELA be interpreted liberally for the benefit of the injured employee (or the deceased employee), it wrote the FELA in such a way so as to provide the railroad employee with an easier task for establishing negligence against his/her employer. Thus, where an injured railroad employee is able to show that his/her injury was caused, **“in whole or in part, even in the slightest,”** by negligence of the railroad he/she is entitled to recover monetary damages under the FELA.

Under the FELA, the railroad employer has a continuing, non-delegable, duty to provide its employees with a **“reasonably safe place to work.”** This means that wherever the employee is assigned to work (railroad property or third-party premises), the railroad employer, including its managers, foremen, and supervisors, are obligated to provide employees with a reasonably safe place to work which includes, but is not limited to, the following:

- ◆ Duty to furnish employees with reasonably safe tools and equipment with which to perform their assigned tasks;
- ◆ Duty to provide reasonably sufficient manpower with which to undertake assignments;
- ◆ Duty to furnish reasonably competent supervision;
- ◆ Duty to provide reasonably safe walkways and surfaces on which to walk and to work;
- ◆ Duty to enforce company practices, procedures, safety and operating rules;
- ◆ Duty to furnish employees with adequate instructions and training; and
- ◆ Duty to undertake reasonably safe inspections, maintenance and repairs of tools, equipment, ground surfaces, ladders, scaffolding, etc.
- ◆ A claim arising under the FELA must be filed in court (State or Federal Court) within three (3) years from the date of injury or, in the case of an occupational disease caused by the railroad (i.e., carpal tunnel syndrome; different types of cancer; etc.), within three (3) years from the date the employee first knew or, in the exercise of reasonable care, should have known that he/she has suffered an injury or condition and that it was caused by his/her railroad employment. This is known as the Statute of Limitations and failure to comply with the three-year rule will likely result in the dismissal of the employee's case.

C. The FELA is supported by two other important Federal laws:

1. **SAFETY APPLIANCE ACT (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.
2. **LOCOMOTIVE INSPECTION ACT (LIA):** 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.

SAA:

Safety Appliances include certain components of a railcar including couplers, handbrake, cut levers, grab irons, ladders, and platforms. If a railroad employee suffers injury due to a railcar being equipped with an inefficient, broken or defective safety appliance, the employee can bring a claim against his employer under the FELA and if successful in proving a violation of the SAA he or she will be entitled to a finding of strict or absolute liability against the railroad without having to prove that the railroad was on notice as to such a violation. Also, if the employee is successful in establishing a violation of the SAA, he/she cannot be found to be guilty of comparative negligence.

LIA:

The Locomotive Inspection Act prohibits a railroad from using on its line a locomotive engine, including any of its parts or appurtenances, which are not in proper condition and safe to operate without unnecessary danger of personal injury. Like in the case of a violation of the SAA, a railroad's violation of the LIA results in the imposition of strict or absolute liability and the employee cannot be found to be guilty of comparative negligence.

Remember that the United States Federal Railroad Administration (FRA) is authorized by Congress to enact regulations mandating that railroads provide its employees with safe work place rules, and safe railcars, locomotives, tracks, signals, radio communications, operating rules, and training. If a railroad worker suffers injury as a result of his/her employer's violation of an FRA regulation, like in the case of a violation of the SAA and LIA a railroad's violation of a FRA regulation results in the imposition of strict or absolute liability and the employee cannot be found to be guilty of comparative negligence.

IMPORTANT: In order to preserve a claim under the SAA or LIA, it is extremely important for you or a co-worker to write down the number of the defective car or locomotive and to have the car or engine inspected as soon after an accident as possible. In this way, notice of the defective condition will be preserved. Your local union representative or safety committee can assist in preserving such important information.

D. ELEMENTS OF DAMAGES IN A FELA CLAIM:

Under the FELA, an employee is entitled to file a claim in order to recover monetary compensation for the following elements of damage:

1. Past wage loss from the date of injury up through the date of trial;
2. Future loss of earning capacity from the date of trial through the date of expected retirement.
3. Medical expenses, past and future.
4. Pain, suffering, mental anguish and loss of enjoyment of life, past and future over life expectancy.
5. Claims asserted by an employee under the FELA can, of course, be resolved either by a settlement with the railroad employer or tried before a jury in court. Any monetary recovery either by settlement or by jury trial is tax free to the employee.

Union appointed Designated Legal Counsel (DLC) are highly experienced attorneys who are trained to understand and enforce the legal rights of the injured employee under the FELA. As DLC we are available to answer your questions and guide you without charge.

IMPORTANT: The value of a claim is dependent upon facts and circumstances unique to that particular claim. An experienced FELA attorney can and should provide you with the necessary assistance in helping you understand the potential value of your claim.

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

IMPORTANT: The wrongful death action is brought for the benefit of:

- (1) the employee's surviving spouse and children, if any, and, if none:
- (2) the employee's parents, and, if none:
- (3) the next of kin who is dependent upon the decedent.

E. WHERE TO FILE YOUR FELA CLAIM:

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. The decision as to where you should file your FELA claim is best left up to you and your experienced FELA attorney.

F. CAN THE RAILROAD FIRE YOU FOR EXERCISING YOUR RIGHTS UNDER FELA?

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.

The FELA provides specifically that:

[W]hoever, by threat, intimidation, order, rule, contract, regulation, or device whatsoever, shall attempt to prevent a person from furnishing voluntarily such information to a person in interest, or whoever discharges or otherwise disciplines or attempts to discipline any employee for furnishing voluntarily such information to a person in interest, shall, upon conviction thereof, be punished by a fine of not more than \$1,000 or imprisoned for not more than one year, or by both such fine and imprisonment, for each offense. ("Person in interest," as used above, refers to your lawyer)

Advice and guidance of a lawyer are the railroad worker's best guarantee that his or her claim will be properly evaluated, handled and presented in court.

G. CAN THE RAILROAD FORCE YOU TO FORFEIT YOUR FELA RIGHTS?

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

GETTING STARTED (PROTECT YOURSELF EARLY)

A. COLLECT AND PRESERVE IMPORTANT EVIDENCE:

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.**

IMPORTANT; Under the law, an injured railroad employee and his legal representative have a federally protected right to conduct an informal investigation and gather information concerning the employee's FELA claim, generally without interference by the Railroad. The earlier you and your attorney begin this important process, the easier opportunity you will have to pin down evidence in your favor and to preserve significant evidence before it disappears.

B. RAILROAD ACCIDENT REPORT:

If you are injured during work, your company rules will require you to fill out an accident report. The importance of this document to your FELA case cannot be overstated. Fail 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. The authors of this pamphlet have routinely appeared at union meetings for the purpose of instructing railroad workers on the proper way to fill out an accident report. In this regard, an ounce of prevention is truly worth a pound of cure.

Some guidelines to consider when filling out the Railroad's accident report:

- 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);
- examine each section of the report carefully and give some thought to each question asked before writing in your answer;

- if possible, have your union representative with you when filling out the report;
- 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, or if the ground conditions were dangerous, or if job assignment was unreasonably dangerous, or if you had insufficient help with which to perform your assigned duties, MAKE SURE THAT YOU INDICATE THIS ON THE ACCIDENT REPORT;
- avoid having other co-workers, including supervisors, fill out YOUR accident report.

C. THE INTERVIEW WITH THE CLAIM AGENT:

Many times, injured railroad workers are asked to provide a written or recorded statement concerning their accident to the Railroad Claim Agent. 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!

D. THE FORMAL RAILROAD INVESTIGATION:

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.

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 FELA 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. REMEMBER, any statement that you make in an investigation can and (if harmful) will be used against you during your FELA claim.

E. MEDICAL TREATMENT:

One of the most important issues confronting a railroad worker concerns the medical treatment he or she receives for their work-related injury. As early as possible following the injury, you should seek treatment from a medical provider with whom you are familiar 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. **REMEMBER, the treating doctor is often called upon to testify in your FELA case and to fill out important health insurance, disability, and sickness benefits forms.**

F. SHOULD YOU SEEK AN ATTORNEY?

It is fair to assume that your relationship with the Railroad company for which you have worked is a good one, that you have liked your work, and have given the Railroad a day's work for a day's pay.

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. 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.

To protect its interests, the Railroad relies upon a sophisticated team of claim agents, investigators and lawyers who are expertly trained to gather evidence and to defend against FELA claims brought by injured workers. Their task is to discover weaknesses in your claim and then to pay you as little money as possible, if any at all. While the task of the Railroad team of experts is seemingly antagonistic toward the injured worker, in reality they are only doing their jobs.

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 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. **REMEMBER, FORE-WARNED IS FORE-ARMED. G. ADVICE ABOUT ATTORNEYS:**

G. ADVICE ABOUT ATTORNEYS

Chances are you have never needed the services of a lawyer before. It is quite likely, therefore, that you do not know who to turn to for legal advice concerning your potential FELA claim. While the hiring of a lawyer is not an easy decision to make, there are a few simple rules to keep in mind:

1. Today, many lawyers specialize in a particular field of law just like doctors who specialize in a particular area of medicine. Therefore, if you want to have a Will drawn, or if you need help with your Tax Return, you would naturally turn to one type of lawyer and not another. Likewise, if you are hurt on the job and want to know about your rights under the FELA, you should naturally turn to a lawyer or firm who knows and has worked with this law. Thus, the first thing to do, if you decide to speak with a lawyer, is to find out for yourself who the lawyers are who are experienced and who specialize in cases arising under the FELA.
2. Your union representative or knowledgeable fellow worker can provide you with helpful information concerning legal assistance.
3. Attorneys who are Union Designated, such as the authors of this pamphlet, are willing to answer questions regarding your FELA claim without charge, and have agreed to charge reasonable fees for the handling of a claim.
4. Perhaps you know a co-worker who has had experience with his own case under

H. WHETHER TO SETTLE YOUR FELA CLAIM:

Experience shows that the vast majority of FELA claims are settled before they actually go to trial. Some of these cases are settled directly between the injured worker and the Railroad without the use of a lawyer. Others are settled by the injured worker through the advice and guidance of his or her lawyer. The question often asked is, when is the best time to settle and whether the case should be settled at all? Here are some guidelines:

1. If the injury is very minor and the worker is back to work without missing any time from work, the claim, if any, can and perhaps should be handled directly between the employee and the Railroad (usually the Claim Agent).
2. If the injury requires medical attention and results in time lost from work, consult an experienced FELA lawyer and be prepared to have the lawyer advise you on the best course of action.
3. On a serious claim (lost time from work; medical treatment; possible surgery), the worker's FELA claim should not be settled while the worker is still receiving active medical treatment for injuries sustained while at work. It is always preferable, in most cases, to wait until the employee has reached maximum medical improvement before settlement.

4. Once the case has been filed in court, settlement should not be discussed until the injured worker's lawyer has had an opportunity to collect material evidence in support of the claim, including witness statements, photographs, accident report, any statements of the injured worker, investigation or board of inquiry transcript, the Railroad's safety and operating rules and all special bulletins and work instructions pertaining to the job on which the employee was working at the time of his or her injury, the worker's complete medical and personnel file as maintained by the Railroad, and the worker's complete medical records, including records that exist prior to the job related accident. Only after collecting this information {and much more depending upon the nature of the case), can the lawyer be in a position to adequately understand the value of the claim.
5. The Railroad will, at some time during litigation, make an offer of settlement. In Florida, this will generally occur during Court Ordered Mediation. The decision to accept or reject the offer is best left up to the injured worker in consultation with his lawyer. **REMEMBER, a typical settlement is one where the Railroad pays out more than it wanted to and the injured worker accepts something less than he or she had originally anticipated.** Nonetheless, the settlement should be satisfactory to the injured worker and his or her attorney, otherwise it should be rejected and the case should proceed to trial.

I. PRACTICAL POINTS FOR RAILROAD UNION WORKERS:

A. If injured on the job:

- ◆ Report your accident as soon as practicable and, if possible, before leaving the property. If for some reason you are physically and/or mentally unable to fill out an accident report, you should so advise your supervisor;
- ◆ Make sure you know the names of your immediate supervisor and other employees who were eye-witnesses to your injury;
- ◆ If an injury involves a locomotive or railcar, make sure you save the number of same;
- ◆ Always a good idea to have a photo or two of the object, place or things that caused your injury.
- ◆ If injured or in pain, request medical attention or, at least, do not deny such medical attention if offered by railroad foreman/supervisor;
- ◆ When filling out the prescribed accident report be sure to fill it out only when mentally alert and, whenever possible, after you have spoken with your union representative. On the report itself keep your description of the incident brief and to the point. If you do not believe you are at fault for your injury do not let others intimidate you into believing it is your fault. Never allow railroad management to force you into describing

your accident in a manner that is contrary to your own beliefs. When describing the negligence of the railroad either on the prescribed form or in the handwritten statement write plainly and with sufficient information. Remember, if there is no negligence on the part of either the railroad or its supervisors, managers, servants or employees you will not be entitled to recover monetary damages under the FELA;

- ◆ Never give a recorded statement to the railroad's claim agent. The claim agent is well trained to get you to say things that you will surely regret later on in your case;
- ◆ Always insist on seeking treatment from your own doctor and not from the medical provider that the railroad arranges for you to see;
- ◆ If your injury seems serious insist that the railroad takes you to the nearest hospital by ambulance;
- ◆ When in the medical treatment room be sure to notify the attending nurse that no one is allowed in the room with you and your doctor unless you otherwise give your express consent. Best practice is not to allow any railroad supervisor to enter into your medical treatment room;
- ◆ Be sure to file for your application for Railroad Retirement Board (RRB) Sickness Benefits and for any short-term supplemental disability (or sickness) benefits as soon as possible after an injury if you anticipate being out of work for more than a month. Your local union representative or DLC can assist you with obtaining the necessary applications;
- ◆ While your primary care physician (PCP) is likely someone you have known for a period of time and someone you may trust, be sure to schedule an appointment with a specialist as soon as possible (i.e., orthopaedic surgeon, neurosurgeon, neurologist, psychiatrist, etc.) assuming the injury warrants same;
- ◆ Arranging for an MRI Scan early on is always the best policy;
- ◆ Preserve or get copies of your last 5 years of tax returns and W-2 forms;
- ◆ Call your local union chairman for the name of a recommended Designated Legal Counsel;
- ◆ Stay off all Social Media especially Facebook. Advise your spouse, children, relatives and friends to keep you off their Facebook page at least until your FELA case is resolved; and
- ◆ Always be aware that the railroad employer will utilize video and photographic surveillance to watch and monitor your activities while you are off work due to injury. BE CAREFUL and avoid activities that are contrary to your injury;

B. Before you suffer an injury on the job:

- ◆ Know your legal rights by attending local union meetings or by conferring with DLC;
- ◆ Keep the name and contact information of your friendly Designated Legal Counsel in a place where you and/or your spouse can access same in a hurry. Magnet on the refrigerator is always a good idea;
- ◆ Purchase one or more disability policies so that if injured on the job and unable to work you can still feed, house and clothe yourself and your family while you recuperate from your injury. Also, having money coming in while off work due to injury will keep the railroad from starving you out while your FELA case is pending;
- ◆ If you see an unsafe condition at work, report it and make sure you keep proof of such a report;
- ◆ Make sure you wear approved PPE when working;
- ◆ Always know how many service months you have on record with the RRB as this will be critical should an injury force you to file for a RRB disability annuity either under RRB's occupational disability program or under its total and permanent disability program. Each July the RRB sends out to every employee a BA-6 card which shows the number of credited service months in connection with your railroad employment;
- ◆ Attend as many local union meetings as possible as this is when you can get educated as to your rights as an injured railroad worker.

J. FEDERAL WHISTLEBLOWER ACT UNDER THE FRSA:

In 2007 Congress passed the Whistleblower Act which essentially provides remedies for a railroad worker who believes he/she has been discriminated or retaliated against by his/her railroad employer due to the employee being engaged in certain proscribed activities which appear below;

- ◆ Not all discrimination or retaliation (or harassment) can be addressed under the Whistleblower Act. In order to trigger the protections of the Whistleblower Act, the employee must show that he/she suffered retaliation or discrimination for engaging in **protected activities**. Some examples of **"protected activity"** under the Whistleblower Act include:

- ✓ Notifying the railroad of your own work-related injury or illness;
- ✓ Notifying the railroad of a co-worker's related injury or illness;

- ✓ Reporting a hazardous safety or security condition;
- ✓ Refusing to violate any federal law, rule, or regulation relating to rail safety or security;
- ✓ Refusing to authorize the use of unsafe railroad equipment, track, structures;
- ✓ For any work-related injury, a railroad manager or medical department cannot deny, delay, or interfere with the entire course of your injury's medical treatment; and
- ✓ For any work-related injury or medical condition, following the orders or treatment plan of your treating doctor.

What an employee must prove under the Whistleblower Act:

- ◆ That he/she engaged in a protected activity (see above);
- ◆ That the railroad was aware the employee engaged in the protected activity;
- ◆ That the railroad subjected the employee to some form of adverse action (e.g., discipline, demotion, points assessment or some kind of discriminatory treatment; and
- ◆ That the employee's protected activity was a contributing factor to the adverse action.
- ◆ Even if you prove the elements of illegal retaliation or discrimination under the Whistleblower Act, the railroad can escape liability for its wrongdoing if it can prove by clear and convincing evidence that it would have taken the same action in the absence of the protected activity.

The Whistleblower Act is a “make whole remedy” law that gives workers the power to force the railroad:

- ◆ To avoid and expunge your discipline from your personnel file;
- ◆ To reinstate you to service with all seniority rights and benefits unimpaired;
- ◆ To pay you back wages with interest;
- ◆ To pay for all your economic losses;
- ◆ To pay unlimited emotional distress damages;

US Occupational Safety & Health Administration

1-800-321- **OSHA** (6742)

Offices by State

Alabama

950 22nd St N #1050
Birmingham, AL 35203
(205) 731-1534

Florida

1000 South Pine Island Road
Suite 100
Ft. Lauderdale, FL 33324
(954) 424-0242

5807 Breckenridge Parkway
Suite A
Tampa, FL 33610
(813) 626-1177

1851 Executive Center Dr. Ribault Bldg
Suite 227
Jacksonville, FL 32207
(904) 232-2895

Georgia

2296 Henderson Mill Rd #200
Atlanta, GA 30345
(770) 493-6644

61 Forsyth St SW #6T50
Atlanta, GA 30303
(678) 237-0400

North Carolina

111 Hillsborough Street
Raleigh, NC 27603

(919) 807-2900

South Carolina

1835 Assembly St # 1468
Columbia, SC 29201

(803) 765-5904

Whistleblower complaints must be filed within 180 days following the date the railroad worker knew or should have known the railroad decided to take adverse action against him/her.

The persons who can file a whistleblower complaint includes the railroad worker making the claim, his or her union representative or the worker's attorney (DLC).

Once the complaint is filed OSHA has 210 days in which to investigate the claim and to issue a written finding explaining whether or not a violation occurred. If either the railroad or the employee is aggrieved by written finding, within 30 days the aggrieved party can request an evidentiary hearing before an Administrative Law Judge (ALJ). Any appeal from the ALJ's decision goes to the federal Administrative Review Board (ARB) in Washington, D.C.

If OSHA fails to render a written decision within 210 days, the Whistleblower Act provides that the employee has an option to kick out his complaint from OSHA and proceed with his case in Federal District Court for a jury trial on all issues.

If you have any questions or require additional information, please call DLC, Attorney Howard A. Spier, Esq., at (800) 775-6511 or (305) 373-0708 .

WHAT YOUR SPOUSE SHOULD KNOW IF YOU ARE INJURED ON THE JOB

Unfortunately, accidents happen on the railroad. The following is a list of steps your spouse should take if you become injured:

1. If you are contacted by the railroad personnel, make them identify themselves and make certain they prove that they are affiliated with the railroad.
2. Make them tell you the location of your spouse and his/her condition.
3. You do not have to allow them into your home or into your injured spouse's hospital room.
4. Request pertinent information, but do not give the railroad official any information with regard to your spouse's condition. Do not give any verbal or written statements or recordings.
5. If a railroad official calls you, get whatever information you need to locate your spouse and then do not discuss anything further. You are under no obligation to talk to them about your spouse's condition.
6. Instruct your spouse's doctors and nurses that you do not want them to discuss his/her condition with the railroad and they are not allowed into the treatment area. The railroad does not have the right to discuss your spouse's condition with the medical staff. Do not sign any authorizations for the railroad to obtain your spouse's medical information. You are under no obligation to do so. Make sure your spouse does not sign anything or fill out any reports while he is medicated or in pain. If they request that he fill out an accident report, ask the doctor or nurse to have them removed from the room. This is covered by a Federal Statute - HIPAA. The railroad is not entitled to your spouse's private medical information without his/her consent or yours if they are unable to communicate for themselves.
7. Do not sign anything or accept anything from the railroad without first speaking to your spouse's union representative or designated legal counsel.
8. After you have been given the information relative to your spouse's whereabouts, have no further contact with any railroad official. Contact a union designated attorney by calling (800) 775-6511 to discuss your options, benefit information and rights. There is no charge for a

consultation with a union designated attorney. You can also contact your spouse's Local Chairman or other union officer for information.

9. Advise the railroad official that you do not want any further contact until you contact them directly or your attorney contacts them. Once you mention there is an attorney involved, they will leave you alone.
10. Do not let any railroad official make any medical decisions for your spouse. This includes the choice of doctors or hospitals for treatment. You have the right to make that decision yourself.
11. Your spouse is not covered by state workers' compensation laws. Railroad workers are covered by a federal law known as the "Federal Employers' Liability Act" (FELA). If the providers ask for insurance information, you should give them the current health insurance carrier information under the union's policy. Please be sure you advise them that it is not a workers' compensation case since the information will state it is work-related and they will assume it falls under workers' compensation and contact the railroad. It is very, important to make sure they do not discuss your spouse's case with the railroad.

In addition to the above information, your spouse should be aware of the following information in case of injury or death:

1. The name and telephone number of your Local Chairman or other officers including the International Office of the Union.

Local Chairman: _____

President: _____

International Office of Union: _____

2. Telephone numbers of approved Designated Counsel for the union.
3. Insurance policies: health, disability, life, and Railroad Retirement Board information for benefits.
4. Information and location of your Will, Living Will, Power of Attorney and organ donor information. Even though we do not like to think about it, it is very important to have these documents to assist your family members during this stressful time.

SICKNESS BENEFITS FOR RAILROAD EMPLOYEES

If you are sick or injured, you may be eligible to receive sickness benefits from the Railroad Retirement Board (RRB).

To receive sickness benefits, you must complete and file Forms SI-1a/b, Application for Sickness Benefits and Statement of Sickness, within ten (10) days from the first day you want to claim benefits. An application is considered filed on the day it is received by the RRB; if you file late, you may lose benefits.

You can file your claims for sickness benefits online at the RRB's website at www.rrb.gov. To use online services, you must have a PIN and Password (PPW) account. The website explains how to open a PPW account.

Eligibility Requirements

To receive sickness benefits you must:

- Be unable to work due to sickness, injury, pregnancy, or the birth of a child;
- Receive no wages, salary, pay for time lost, vacation pay, holiday pay, military reservist pay, pay under a wage continuation plan, sick pay or other remuneration from railroad or non-railroad employment for the days you claim benefits. You must report such pay on your claim. However, payments under your own health or accident insurance policy, or group insurance policy, or under a supplemental sickness benefit plan administered by your employer or an insurance company do not prevent the payment of sickness benefits and should not be reported on your claim forms;
- Obtain Form SI-1a, Application for Sickness Benefits from your employer, labor organization, or RRB office;
- Have your doctor complete Form SI-1b, Statement of Sickness in support of your claim for sickness benefits; and
- Complete and file the Application for Sickness Benefits (SI-1ab) within ten (10) days of the first day you become sick or injured. You may lose benefits if you file late. An application is considered filed on the day it is received by any office of the RRB.

Amount and Duration of Benefits Waiting Period:

Waiting Period:

To satisfy a one-week waiting period requirement, no benefits are payable for your first seven (7) days of sickness in your first claim in a period of continuing sickness, unless you have already served a waiting period in the benefit year. Benefits are payable for each remaining day of sickness in your first claim. For example, if you claim all fourteen (14) days in your first claim, you will be paid benefits for seven (7) days. If you are eligible and your claims are continuous from one benefit year to another, you generally will serve only one waiting period in your period of continuing sickness.

Normal Benefits:

You can receive normal benefits for as many as 130 days (26 weeks) in a benefit year, but your benefits cannot be more than your base year wages counting not more than a prescribed amount for any month. Benefit rights are exhausted when a benefit year ends (normally June 30) or earlier if benefit payments equal base year creditable earnings.

Personal Injury Settlements

You may receive benefits for any kind of injury or illness whether it occurs on or off the job; but if you are paid a settlement, judgment, or collect damages as a result of the injury or illness, the amount of your benefits must be refunded to the RRB. This is true regardless of a State's "no-fault" law. The RRB will normally notify the liable party, and the person or company making the settlement or paying the damages usually reimburses the RRB for the amount due. However, if the RRB is not reimbursed in full at the time of settlement, you may have to repay benefits to the RRB.

Verify the accuracy of the amount of benefits withheld from your settlement or judgment by checking your own record of RRB payments or by contacting the RRB. Notify the RRB immediately if you believe the correct amount was not withheld.

WHAT YOU SHOULD KNOW ABOUT THE FAMILY AND MEDICAL LEAVE ACT (FMLA)

What is FMLA?

The Family and Medical Leave Act is a federal law established in 1993 that allows “eligible” employees of a covered employer to take job-protected, unpaid leave, or to substitute appropriate paid leave if the employee has earned or accrued it, for up to a total of 12 workweeks in any 12 months because of the birth of a child and to care for the newborn child, because of the placement of an adopted or foster child, to take care of an immediate family member (child, spouse, parent) with a serious health condition, or because of the employee’s own serious health condition which makes the employee unable to perform their job.

What is the purpose of the Act?

FMLA is intended to allow employees to balance their work and family life by taking reasonable unpaid leave for medical reasons, birth or adoption of a child, and for the care of a child, spouse or parent who has a serious health condition.

When did the Act become effective?

The Act became effective on August 5, 1993 for most employers. If a collective bargaining agreement was in effect on that date, the Act’s effective date was delayed until February 5, 1994 or the date when the Agreement expired, whichever date occurred sooner.

What employers are covered by the Act?

Any employer who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year is considered a covered employer.

What notice is required to your employer?

The employer has a right to 30 days advance notice from the employee where practicable. The employer also has the right to request certification from a health care provider that the leave is due to a serious health condition of the employee or immediate family member. The employer can also require a certification that the employee is fit to return to work when the absence was caused by the employee’s serious health condition.

Which employees are “eligible” to take leave under FMLA?

You must have been employed for at least 12 months and for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave, and employed at a worksite where the employer within 75 miles of that worksite employs 50 or more employees.

Can you be forced to exhaust your vacation and personal leave days for FMLA purposes?

A recent Supreme Court decision was rendered on January 14, 2008 which sided with the Unions, ruling that the FMLA does not allow carriers to force employees to substitute paid vacation and personal leave for unpaid leave when existing collective bargaining agreements give the employees-not the carriers-the right to decide when to use their paid leave. However, if the provision is not in your collective bargaining agreement, the employer can require substitution of paid leave.

What effect will this have on your health benefits?

An employee on FMLA leave is also entitled to have health benefits maintained while on leave as if the employee had continued to work instead of taking the leave. The employee would still be responsible for his or her share during the leave period. The employer may recover its share only if the employee does not return to work for a reason other than the serious health condition of the employee or the employee's immediate family member, or another reason beyond the employee's control.

What about returning to your job?

An employee generally has a right to return to the same position or an equivalent position with equivalent pay, benefits, and working conditions at the conclusion of the leave. The taking of FMLA leave cannot result in the loss of any benefit that accrued prior to the start of the leave.

WHAT YOU SHOULD KNOW ABOUT HIPAA IF YOU ARE INJURED

What is HIPAA?

HIPAA stands for Health Insurance Portability and Accountability Act. It is a federal law that sets a national standard to protect medical records and other personal health information.

When did HIPAA become a law?

Congress passed this legislation in 1996. However, medical facilities had until April 2003 to be in compliance with HIPAA patient information regulations.

Is HIPAA applicable to all health care providers?

Yes, HIPAA applies to hospitals, physicians, insurance companies, laboratories, dentists, ambulatory surgery centers, business offices, etc.

What is considered “health information”?

Any information, whether oral, written, or electronic (computer). Information can be related to past, present, or future physical or mental health conditions.

What is Protected Health Information (PHI)?

The following is considered protected information about patients and their medical treatment: medical records, addresses, dates, telephone/fax numbers, social security numbers, patient account numbers, insurance plan numbers, photographs, fingerprints, e-mail/internet addresses. This includes oral disclosures of information regarding your treatment.

If Injured?

Your employer, nor its managers or supervisors, are allowed to be present when a physician or health care provider interviews you. Under the federal law, you may bar and prevent them from observing any part of your treatment, examination, or conferences with your physician or health care provider. Tell your employer or your employer's representative to leave the room or advise the doctor or nurse that you wish to enforce your rights under HIPAA and have them advise your employer or their representative to leave. It is important to protect your doctor/patient privileges.

PERSONAL INJURY REPORTS **- CRITICAL TO SUCCESSFUL CLAIMS -**

Personal injury reports may seem like routine documents but, in reality, when and how they are filled out can have a dramatic impact on the success of your injury claim and your future.

There are at least two reasons to carefully complete the report. **First**, company rules on virtually all railroads require an accident report be completed as soon as practicable after an incident. Failing to do so can lead to discipline ranging from a reprimand to termination. **Second**, the report is a key document in any personal injury claim because it is usually completed by the injured worker close to the time of the accident. Because of this, lawyers, claim agents, and ultimately judges and juries, will examine the document very closely. The more accurately the report is filled out, the greater the likelihood of having a successful claim.

Most of the report is self-explanatory: putting in your name, address, seniority date, and similar background information is quite simple. Two areas of the form are, however, not as simple but are critical. **The first is the explanation of the accident.** On the railroad's personal injury report this section is usually headed "Describe Fully How Incident Occurred." Here you must explain what took place. If you slipped and fell on grease and oil on an engine step that is what you should write. If your back was wrenched on a switch that did not throw smoothly, you should write that.

The second item on the railroad's personal injury report that requires special attention is entitled "If Any Defects Involved, Identify and Describe." That constitutes a "defect" has often been the source of confusion among railroaders because they have so long been provided with inadequate tools and poorly maintained equipment, facilities, and ground conditions. The word "defect" must be read as broadly as possible. It may be helpful to look at the personal injury report as an Unsafe place to work report because that is what the railroad should be interested in identifying and is really what you need to establish when you complete the form. The key is to remember that you are not simply reporting the INJURY, but also **THE UNSAFE CONDITIONS THAT CAUSED THE ACCIDENT.** You should consider ANYTHING about the work environment that contributed to the accident as a defect. For example, loose ballast, bent stirrups, and trash strewn in the workplace are all defects and should be noted if they played ANY part in causing an accident. If you feel the working conditions played a role in your injury, you can state the defect as being a "unsafe working conditions" and/or "unsafe equipment."

Railroads usually claim that accidents are the fault of the person injured. Experience has shown that is rarely the case. Rather, it is usually the failure of the railroads to provide adequate forces to keep work areas free of old brake shoes, tie plates, and other debris resulting in falls. Or it may be the failure of the railroad to provide adequate maintenance of switches, couplers, and hand brakes that causes back and shoulder injuries. Unfortunately, many railroaders simply get used to working with equipment that is not kept up to proper standards and mistakenly assume that if, for example, switches throw a little hard or drawbars are difficult to align, resulting injuries are not due to defective equipment and so do not report it. To protect your rights, you must be sure to report absolutely **ANYTHING** that contributes in any way to an accident. Think carefully and if at all possible try to talk to your union representative or designated legal counsel before you fill out the personal injury report.

It is also important to note on the form any part of your body that has been injured. No matter how minor it might seem, **EVERY PART OF YOU THAT HURTS TO EVEN THE SLIGHTEST DEGREE SHOULD BE LISTED.**

You should also be aware that if you are injured, you are only required to complete an accident report. The railroad cannot force you to give a written or tape-recorded statement to a claim agent. As an injured employee, you should **NEVER GIVE A STATEMENT UNLESS YOU FIRST TALK TO YOUR UNION REPRESENTATIVE OR DESIGNATED COUNSEL.**

Above all else, it is important to remember that we, as Designated Legal Counsel, have been appointed by your union to help you. While you may not need a lawyer in your particular circumstances, you do need legal advice. The attorneys and staff of **Rossman, Baumberger, Reboso & Spier** are here to answer your questions, so call (800) 775-6511.

Finally, **ALWAYS keep a copy of the personal injury report for your own files.**

THINK BEFORE GIVING THE RAILROAD A RECORDED STATEMENT

After a work-related injury and before an attorney is retained, the injured employee will often be asked to render to the company claims department a recorded statement concerning the circumstances surrounding his or her accident. While there is nothing in the union agreement or under FRA regulations which require the employee to give such a recorded statement, the railroad may otherwise exert pressure upon the employee to sit with a claim agent and provide the statement even after filling out the company required accident report. This is particularly true in those instances where the injured employee intends to collect loan advances from his or her employer. Under such a circumstance, the employee will be required to render a recorded statement in return for railroad advances.

Your author, however, recommends that you think long and hard before agreeing to provide a recorded statement to the company claim agent. When an employee is injured at work, he or she is required to verbally report the injury to a Company Officer as soon as possible and then complete the required accident report. There is no time limit as to when the accident report must be completed, but it should be done as soon as practicable. The injured employee is also required to provide additional information about his or her injury to a company officer when requested. It is reemphasized, however, that the law does not require that the injured employee render a recorded statement to the railroad.

First and foremost, keep in mind that if you happen to render a recorded statement it can and surely will be used against you should your injuries require you to pursue a FELA claim. Secondly, when being questioned about your injury and the circumstances surrounding it please keep in mind that the railroad claim agent is uniquely schooled and highly experienced to ask you questions and to probe into your case in a manner that is designed to get you to answer questions in a way most favorable to the company. In the author's experience, the vast majority of employee recorded statements are a plain disaster for the injured employee and subsequently make pursuing a successful FELA injury claim that much more difficult.

The recommendation here, therefore, is that (1) you do not have to give the claim agent a recorded statement concerning your injury and (2) if you think you will be rendering such a statement you should at least get the advice of experienced counsel so you don't end up "shooting yourself in your foot" even before your FELA case gets off the ground. Remember if you get hurt at work, don't mess around. Call RBR&S Law, at (800)775-6511, and get advice before it's too late.

A. WHEN YOU ARE INJURED:

Injured Railroad workers should keep in mind the following rules:

1. Get the names and addresses of all persons who saw the accident.
2. Get the number and description of any car, engine, machine, or any piece of equipment that was directly involved in your accident.
3. Report your accident as soon as practicable after consulting with your union representative.
4. Do not make or sign any statements or fill out any forms or reports for the Railroad before having your representative see and approve it and certainly not until you are physically and mentally able to so do.
5. Know your rights. Do not accept the Railroad's advice or decision as to how much money you are entitled to receive or whether you should consult a lawyer.
6. File all necessary papers as soon as possible in order to start your RRB sickness benefits and any supplemental sickness benefits (i.e., Provident). This will allow you to financially stabilize your family while you make efforts to recover from your work-related injuries.
7. Consult your lawyer. Protect yourself and your family.

CALL TOLL FREE 1-800-775-6511

INJURED RAILROAD WORKERS PROTECT YOURSELF

{UNDER THE FEDERAL EMPLOYERS' LIABILITY ACT}

The attorneys of ROSSMAN, BAUMBERGER, REBOSO & SPIER, P.A. have many years of experience in the representation of personal injury and wrongful death claims brought by railroad workers and their families. The firm also handles automobile accidents, defective product cases, medical malpractice cases, maritime claims, premises liability claims and construction site accident cases.

Charles H. Baumberger, Esq.

Stephen F. Rossman, Esq.

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LAW OFFICES OF

ROSSMAN BAUMBERGER REBOSO & SPIER, P.A.

A PROFESSIONAL ASSOCIATION

In Case of Injury
Important People to Call

Title & Name:

Attorney / Rossman, Baumberger, Reboso & Spier

Telephone Number:

(800)775-6511

Firm Investigator _____

Local Chairman _____

Local Chairman _____

Local Chairman _____

Local President _____

Local Sec/Trea _____

General Chairman _____

Disability Insurance Agent _____

UTUIA Field Supervisor _____

BE WARY OF CLAIM AGENTS / RISK MANAGEMENT
(Or whatever their new Title may be)