

SPECIAL REPORT RAILROAD INJURY CASES

Protect Your Rights: 7 Mistakes That Can Derail Your Injury Case

If you are employed in the train industry, you should be aware of what to do should you become injured on the job at work, or if your injuries are determined to be work related. The Federal Employers' Liability Act (FELA) includes protections for workers who are injured on the job, killed, or injured because of the nature of their train job duties. Railroads are held responsible by FELA for any injury that is caused by an unsafe workplace or by equipment that is not properly maintained. These protections are further extended to cover injuries that are due to railroad work duties.

It is important that you, as a railroad industry employee, understand that you are not alone if you become injured, and that your family has recourse if you are killed on the job. Rossi Cox Vucinovich Flaskamp PC is a law firm that is union designated legal counsel for railroad workers. Our skilled litigators have extensive experience that will help you to protect your rights under FELA, so the outcome of your case has the best possible opportunity to be beneficial to you and your family. You have an advantage over any other working person in the country under FELA protections. It is important that you thoroughly understand and exercise these rights.

Our firm has been actively helping railroad employees and their families for over 40 years. We are a personal injury law firm staffed with superior attorneys who are listed in the "Best Lawyers in America" compilation, and attorneys who have achieved the Martindale-Hubbell national directory highest rating. Two of our attorneys were previously named President of the Academy of Rail Labor Attorneys. We have helped railroad employees in most states of the United States, representing them in state and in federal court cases.

To protect your full rights following a train injury, beware of the following 7 mistakes that can derail your train injury case:

Mistake #1 - Assuming You're Covered by Workman's Compensation and Not Understanding FELA

The first thing to understand about FELA is that it was put in place by the U.S. Congress to protect railroad workers in 1908 because they are not covered by Workman's Compensation. Understanding the difference before you are injured will help you deal better with an injury later on.

Railroading is one of the most dangerous occupations, especially around the 1900s. Due to the interstate nature of railroading, no railroad worker is covered under state workmen's comp laws, so they needed this Federal protection. The two protections are different, however. Under workmen's comp law, the injured party collects a portion of their regular pay for being injured on the job, no matter who is at fault. Under FELA, the railroad worker

can collect a much higher amount, but they must sue and prove liability and negligence on the part of the railroad. If liability is not proven, the worker gets nothing.

FELA requires railroads to provide a safe work environment. This includes training, safe tools, safe equipment, supervision and adequate manpower. Railroads must continually inspect and maintain equipment. They cannot argue that the worker accepted danger risk as part of their work. When faced with a lawsuit, railroads fight to prove they were not liable.

Under FELA, those workers who are injured on the job or due to job related activities may sue to recover damages, including future damages. This may include wages that are lost, lost benefits and perks, medical bills, pain and suffering, loss of life enjoyment, and retraining. Survivors of those who are killed at work also have rights for compensation for the lost wages, benefits, companionship, inheritance and other contributions their deceased loved one would have brought to the family unit. Even pain and suffering of the decedent is an issue for compensation that can be calculated by expert witnesses.

Mistake # 2 – Not Consulting Your Union Designated Legal Counsel Immediately

Do not make any statements to the railroad's claims department about the accident or your injury to anyone prior to obtaining legal advice, or you could jeopardize your rights to compensation for damages. Do not sign any type of papers without getting legal advice about those papers, statements, medical authorizations or releases. If you do, your case could be ended right there.

To assist your legal counsel in preparing your case, try immediately to document your injuries:

- Complete the company injury report, but do not admit fault.
- Keep your own notes about any unsafe conditions, unsafe equipment, safety rule violations or procedures that may have been contributory.
- Get photos if possible, and tell others what happened.
- Make a list of witnesses and their contact information.
- Make a written report about the injury to your Union.
- Keep a file of any expenses related to the accident/injury, amount of wages lost, details of the incident such as time, date, weather conditions, etc.

Mistake # 3 - Not Knowing What Your Rights Are For Medical Care

When you are injured, you may not be thinking clearly. This is another reason why you need to understand your rights before any injury happens. The company representative or your supervisor has no legal right to go with you to your doctor or to be present at any exams you need. Your communication with your doctor is privileged information and should be kept private. This applies to any discussions about evaluations, diagnoses,

treatment or prognosis of your injuries. It also applies to discussions about when you can return to work. You have the option and entitlement to select your own doctor and to retain privacy of your medical records.

Aside from your own doctor, the only person you should discuss your injury with would be your union designated legal counsel. If you do not have a doctor, ask your legal counselor for a reference; with their experience, they know the best physicians in your area. Your legal advisor can also provide your doctor with a complete job description so they can make the best decision about when you might return to work again. You can tell your doctors exactly what type of physical chores are part of your job, how you feel, and what your symptoms are. During the course of treatment, you will also want to let the doctor know if any symptoms worsen.

Mistake # 4 – Misunderstanding Train Industry Work Related Injuries

There are two types of railroad industry work related injuries to consider:

- On the Job Injuries
- Injuries Due to Work Duties

On the job injuries include injuries that happen while the worker is actively clocked in at work. Many types of injuries can be caused in this dangerous profession. Accidents can happen anywhere on the train equipment and accessory equipment or from the environment. Some possible work injuries are caused by the following: carpal tunnel, fire on the train, brake malfunctions, defective equipment, slip and fall, toxic exposure or inhalation of toxins, ladder or platform accidents, collision, derailment, machinery operation, unsafe work procedures, deadheading, noise or hearing loss and other equipment failure.

Injuries due to work duties may include physical disabilities that occur later in life but are traced back to work duties. This could include lung cancer, whole body vibration (WBV) injuries that are caused by long term exposure to jolts, bumps and vibration shocks while at work. Cumulative trauma is another type of injury caused by the accumulation of stress and injury to joints and bones over time while at work, but that may not show up until after retirement. Injuries that occur while riding in company vehicles are also covered under FELA, and possibly also under state laws.

Mistake # 5 - Thinking Legal Counsel Is Not Important

Some railroad workers mistakenly believe the company can punish or fire them for talking to an attorney about an injury. Workers absolutely have the right to obtain legal counsel and the company cannot prevent this or practice intimidation or discrimination against a worker who does. In fact, doing that is a crime under the FELA. If this does happen, our firm will intervene to protect you from this violation of the FELA.

The company will fight your claims hard with their own lawyers; you deserve the same backing from your legal counsel. They will not be fair, and their lawyers only want to save the company from paying out a high settlement. You must obtain your own attorney to preserve your best interests and rights.

Mistake # 6 - Not Using Your Union Designated Legal Counsel

Your Union designates legal counsels who are experienced and skilled in working with train injury cases and who meet high ethical standards in their practice of railroad law. A law firm or attorney who knows how to handle FELA claims is an asset. They are available for advice and education in addition to legal representation when the chips are down and you have been injured on the job. The designated legal counsel also offers substantially lower fees for their services than would other attorneys who are personal injury specialists.

Mistake # 7 - Missing Deadlines and Not Understanding FELA Limitations

The statute of limitations for FELA railroad injury lawsuits is three (3) years. If you do not initiate a lawsuit within three years of the date of injury, you cannot attempt damage recovery. The only exception would be if fraud or deception occurred. For injuries that are hidden, such as lung cancer that develops later in life due to exposure on the job, the three year period begins when you reasonably know that that problem/injury is related to your railroad work. In every case, it is essential that you contact your legal counsel immediately when there is injury or discovery of injury. Waiting can be a risk because it would then be harder to recall events, find witnesses, or even have your claim barred due to the delay in time.

We work hard for settlement, because not all cases go to a jury trial, for many reasons. Determinations that must be made include:

- Who is at fault? With comparative negligence, the railroad must be at least in part liable or there is no recovery possible.
- Was the reason you were injured due to the railroad's negligence? Negligence must be established.
- What are the exact damages?

Juries tend to award very high damage compensation amounts, which is why defendants in personal injury cases tend to agree to a settlement prior to trial.

CONCLUSION:

Knowing what laws apply to a train injury case is step one in protecting yourself and your rights to fair and entitled compensation for your railroad work related injuries. The attorneys at Rossi Cox Vucinovich Flaskamp PC are well experienced with FELA work injury cases; as your Union Designated

Counsel, our job is to help you enforce your FELA rights as a railroad employee. **Knowing your FELA rights and employing them after a train injury incident will protect you and your family from the devastating effects of a job related injury or death.** Make your one chance to recover damages for your train work-related injury count; call us immediately for a free, confidential consultation.

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