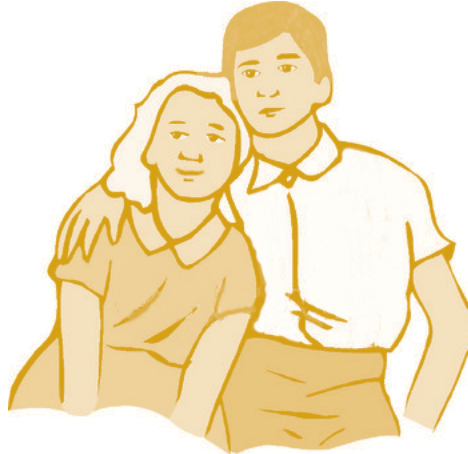


SPOUSES OF RAILROAD WORKERS

It is very important for both railroad workers and their spouses to be well informed about what is involved if the worker is injured on the job.

When an injury occurs on the railroad, many responsibilities may fall on the spouse. The wife or husband of the injured worker may be suddenly faced with having to take care of young children, handle family jobs, and make important decisions all by themselves. It can be a very confusing time, and through it all a decision must be made about how to seek compensation from the railroad for the injury. Sometimes these burdens can seem overwhelming.



However, being armed with knowledge about the process and knowing where to look for help can help ease the weight of those burdens.

The attorneys and staff at the Yaeger Firm are always available to answer any additional questions you might have.

FELA BASICS: WHAT EVERY SPOUSE NEEDS TO KNOW

When a railroad worker is injured on the job, the right to compensation is governed by a Federal law known as the Federal Employers' Liability Act commonly called the FELA. The FELA became law in 1908 as a result of public anger over the devastating injuries and loss of life on the rails. The United States Supreme Court observed, "In 1888 the odds against a railroad brakeman dying a natural death were almost four to one; the average life expectancy of a switchman in 1893 was seven years." Prior to the FELA, few of these workers or their families received any compensation for the injuries they sustained.



The FELA was the first great social legislation of the twentieth century. Before the FELA, when an injured worker attempted to recover damages for the negligence of the railroad, the law was unfairly stacked against the worker. For example, if a worker was at all contributorily negligent, all recovery was denied.

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IN THIS ISSUE

FELA Basics: What Every Spouse Needs to Know

Why Not Just "Deal" With the Railroads Directly?

Family and Medical Leave Act May Allow Spouses Time Off From Work

Accident Checklist for Spouses

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Even if the railroad was 99 percent at fault for the accident, and the worker only one percent contributorily negligent, there could be no recovery. Incredibly, if a coworker caused an accident, an injured railroader could not recover from the railroad due to a defense known as "The Fellow Servant Doctrine." And even when a railroad was blatantly negligent, it was frequently able to escape liability by arguing that the injured worker "assumed the risk" of employment.

With the FELA, Congress established that injured railroad workers could sue for damages suffered as a result of the negligence of their employer in either State or Federal court. The Act abolished defenses like "The Fellow Servant Doctrine" and "assumption of risk" and eliminated harsh contributory negligence rules by substituting a comparative fault system. Thus, if a railroad worker is partly responsible for an accident, his damages are reduced by his negligence. For example, if the worker has lost wages and pain and suffering of \$100,000 and is 25% responsible, the recovery would be \$75,000. In cases where the railroad violated a Federal railroad safety

statute such as The Federal Safety Appliance Act or Federal Boiler Inspection Act, it would become strictly liable for all injuries resulting from that violation.

In 1939, Congress improved the FELA by making it a crime for a railroad to intimidate its workers from furnishing information about an accident to an injured railroad worker or his attorney. In the 1950s, a series of U.S. Supreme Court decisions further strengthened the FELA, broadening definitions of "cause" in the worker's favor. Today, if railroad negligence played even a slight role in a workers becoming injured, the railroad will be liable.

To recover under the FELA, it is necessary to first establish some negligence on the part of the railroad. This differs from state workers' compensation laws where no such proof is needed.

However, the amount of negligence that must be demonstrated is slight: essentially, it must be shown that the railroad failed to provide a reasonably safe place to work. When railroads act negligently, recoveries under the

FELA will generally be far greater than they would be under state workers' compensation systems. Injuries resulting in permanent total disability under state workers' compensation systems will often result in a life of poverty for injured workers and their families. For example, in several states the maximum permanent total disability benefits that are allowed under workers' compensation fall below the current poverty level for a family of four. Workers' compensation benefits tend to be fixed and arbitrary and grossly undercompensate workers for injuries. The FELA, in turn, was intended to provide injured workers and their families with fair and liveable compensation for injuries.

Not every case goes to trial. However, the FELA provides every railroad worker with the right to sue in state or federal court. The client controls the major decision-making in each case. After conferring with counsel, the injured worker can decide to accept a railroad settlement offer, make a different proposal, or go to trial.

WHY NOT JUST "DEAL" WITH THE RAILROADS DIRECTLY?

Workers and spouses occasionally ask why they should talk to or hire an attorney. They say, "Why not let the company take care of things and find out what they might offer before talking to a lawyer?"

In an ideal world that idea makes sense. In the real world, however, the moment an injury occurs, the railroad's claim agents and legal departments start taking statements and photographs, and gathering

evidence to blame the injured worker and make the railroad look innocent. Their goal is to minimize the railroad's financial responsibility to the worker and his family.

Railroads often act "two-faced" in injury situations. They will talk about how the railroad is one big "family" and how you need to stick with them at times of crisis. They might offer to pay medical expenses (which is something they are already obligated

to do under the insurance contracts) and put the injured worker's family up at a nice hotel and agree to take care of living expenses. They employ a wide range of tactics, but the key is to gain your trust when you are especially vulnerable. While they are doing this, an army of investigators and lawyers are researching all aspects of the claim to deny or lower compensation. It is the claim department's job to keep settlements as low as possible for the financial

benefit of the corporation.

Who at this crucial time is actually looking out solely for the injured railroad worker? No one, unless you have talked to knowledgeable FELA attorneys.

FELA lawyers work exclusively for the injured railroader, protecting and aggressively promoting the rights of the injured worker and the worker's family against the power and might of giant railroad corporations. A knowledgeable FELA attorney works with you and union officials to develop evidence establishing the railroad's liability and maximizing the compensation owed by the railroad.

Immediate legal advice from trusted FELA attorneys assures knowledge.

And "knowledge is power." If an injury is minor, such as a sprained ankle, it might not be necessary to hire a lawyer. But it is always wise to talk to a knowledgeable attorney to know your rights because even a minor ankle sprain may lead to complexities concerning sickness benefits, health coverage, railroad investigations, pain and suffering, future problems, contract release language, etc.

The Yaeger firm has represented injured railroad workers and their families since 1929. This long unbroken string of commitment to railroaders' rights assures you of honest, expert and caring advice with your best interests, and only your interests, at heart.

PLEASE NOTE...

We realize that there are many more questions and concerns than can be addressed in our newsletter. The Yaeger Report is intended to be used as a general information source only and does not constitute legal advice under any circumstances. Consult an attorney before taking any action. Our attorneys are available to answer questions and give free initial advice.

FAMILY AND MEDICAL LEAVE ACT MAY ALLOW SPOUSES TIME OFF FROM WORK

It is frequently asked whether a spouse can take time away from work to care for an injured railroader. If the spouse is employed by a company governed by a law called the Family and Medical Leave Act (FMLA), the answer is yes. This Federal law provides for up to twelve weeks per year of unpaid leave from jobs in order to care for a seriously injured or ill family member. (Note: FMLA also provides for time off for birth or adoption, and personal medical leave for the spouse.) If both spouses are employed by the same company, they are jointly entitled to a combined total of twelve work weeks of family leave per year.

To be eligible for FMLA benefits, an individual must work for an employer who is a public agency, including local, state and federal governments

or schools, or be employed by a private sector employer with fifty or more employees (within a 75 mile radius) engaged in or affecting interstate commerce. If you have any doubts as to whether you are covered by the FMLA, you can call the nearest office of the U.S. Department of Labor, Wage and Hour Division.

An employer can require reasonable documentation of the need for FMLA leave, but cannot deny the time off. Usually the time off is unpaid, unless you are required by your employer to first use any paid leave to which you are entitled. There are also reasonable notice requirements, although these can be waived in emergency situations. Ordinarily, an employee would be restored to the same position as before the leave. An employer is

required to maintain health insurance coverage on the same terms as prior to the leave. Discrimination against employees using the FMLA is prohibited.

If the situation arises where your railroad spouse is injured and you must take time off from your job to be with him or her, it is now Federal law that these larger employers give you time off to be at your spouse's side. This law is enforced by the Wage and Hour Division of the U.S. Department of Labor and also may be enforced by filing a private lawsuit. If you have questions about this law, please feel free to contact YJB or the U.S. Department of Labor.

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News and Information for Railroad Employees and Their Families

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THE YAEGER REPORT

For over fifteen years, the Yaeger Firm has published The Yaeger Report. This free newsletter contains news and information for railroaders and their families, including any changes to FELA and related laws, significant cases and news about our firm. The newsletter is free to all railroaders, clients, and friends of the firm.

If you are interested in receiving The Yaeger Report, please call 1-800-435-7888 or e-mail your name and address to yrsub@yjblaw.com

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ACCIDENT CHECKLIST FOR SPOUSES

What should you do in the event you learn that your railroad spouse has been injured on the job?

1. Obtain the very best medical care that you can through your own doctors.
2. Contact experienced FELA lawyers and union officials for additional information and free, confidential, reliable advice.
3. Be sure the accident has been reported to the railroad and to the union.
4. Insist that your spouse not give a recorded or written statement to a claim agent or anyone else until you have had an opportunity to discuss the matter with counsel or union officials.
5. Write down the names, addresses and phone numbers of anyone who witnessed the accident.
6. Keep records of any out-of-pocket expenses due to the accident.
7. If your spouse has a disability insurance policy, contact the insurance company to begin receiving payments.
8. Apply to the Railroad Retirement Board for sickness benefits to which your spouse is entitled under the law.