

**YOUR RIGHTS WHEN INJURED
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1. You **must verbally** report your injury to your supervisor immediately
 - a. If in a yard or terminal, call the trainmaster or yardmaster
 - b. If on the road, call the dispatcher or trainmaster

2. You **must** complete a **written** accident report form as soon as possible
 - a. GCOR 1.3.3 does not require an immediate written report, rather an immediate verbal report
 - b. GCOR 1.3.3: “All cases of personal injury, while on duty, or on company property, must be immediately reported to the proper manager and the prescribed form completed.”
 - c. Complete the written report as soon as possible
 - i. UP accident report form 52032
 - ii. BNSF accident report form SAF 51662
 - iii. KCS accident report form 68D
 - iv. PTRS Special and Accident Report form 86219 (Rev9/02)

3. It is **violation** of Federal Law for a railroad to: “discharge, discriminate, demote, suspend, reprimand, or any way discriminate, in whole or in part, against an employee that **notifies or attempts to notify the railroad of a work related personal injury or illness.**” 49 U.S.C. 20109(a)(4)

4. It is a **violation** of Federal Law for a railroad to:
 - a. Harass or intimidate an employee in a manner designed to discourage or prevent such employee from receiving proper medical treatment or from reporting an accident, incident or injury 49 C.F.R. 225.33
 - b. Tell an injured employee that he will be disciplined or investigated if an injury report is filed 49 C.F.R. 225.33
 - c. Discipline an employee if the railroad interfered with the employee’s ability to make prompt report of the injury 49 C.F.R. 225.33
 - d. Refuse to furnish the injured worker with an injury report form 49 C.F.R. 225.33

5. QUESTIONS REGARDING ACCIDENT REPORTS & REPORTING:
 - a. **Do I have to fill an accident report when I am injured at work?**

- i. Answer:
 - 1. YES.
 - a. GCOR rules that require immediate verbal reporting. *GCOR1.3.3*
 - b. GCOR requires a written report be completed, but the rule does not specify when. However, the best rule is to complete the accident report as soon as possible. *GCOR 1.3.3*
 - c. Many board awards have upheld employee discharge and other lesser discipline for late reporting

b. When/how much time do I have to fill out the accident report?

- i. Answer:
 - 1. Accident reports should be completed as soon as possible after the injury occurs.
 - a. GCOR requires immediate verbal reporting to the supervisor
 - b. It does not require an immediate written report
 - c. However, the written report should be completed as soon as possible
- ii. The BNSF 72 hour rule:
 - 1. Many BNSF employees think the rule is to report an injury within 72 hours, not immediately
 - 2. This is simply not the case
 - 3. The BNSF rule provides: "If the employee experiences muscular aches and pains from routine work that do not appear to be serious when they first occur he or she has 72 hours to notify the appropriate supervisor that an injury has occurred," provided:
 - a. The supervisor is notified before seeking medical attention
 - b. The medical attention VERIFIES THAT THE INJURY WAS MOST LIKELY LINKED TO THE EVENT SPECIFIED.
 - i. Thus, parts a & b must be satisfied or the rule has no application
 - 4. The best advice is not to rely on this rule for late reporting, but rather to immediately verbally report to the supervisor and then make a written report

c. What if I don't realize I am hurt at the time of the incident?

- i. Many times the injury will not manifest itself until some hours after the event
- ii. If the event occurs on Thursday afternoon, but the employee does not have symptoms until Friday morning the injury should be reported Friday morning.
- iii. This is in compliance with GCOR and FRA regulations 49 C.F.R. 225.33
- iv. The later the report, the less credibility the claim has
- d. **Will I get fired if I late report?**
 - i. Answer: Probably so.
 - ii. However, there some PLB awards that do help. For example, Award 5, PLB 6931 rendered by Chairman Lyn Ellsworth that held the employee's duty to report begins "when they reasonably believe they are injured."
- e. **Can I get help completing the accident report?**
 - i. Answer:
 1. There is no law that provides the injured worker with the right to confer with his attorney, a fellow co-worker or the union before completing the accident report.
 2. Some labor agreements do provide for this right and if so the employee would then have the right to confer.
 3. There are no Weingarten rights for rail workers, so no absolute lawful right to demand that a union officer be present before completing the report. *944 F.2nd. 247 (1991)*.
 4. Nothing prohibits asking for assistance or having someone present, so the injured worker SHOULD certainly call his Local Chairman for advice and/or ask that the Local Chairman be present
 5. An injured worker SHOULD contact designated legal counsel for assistance by phone for assistance before completing the report
- f. **Do I have to let the supervisor help me fill out the report?**
 - i. Answer:
 1. NO. Report must be complete and accurate. *49 CFR 225.33*.
 - a. The law prohibits a company officer from an act of intimidation or harassment of an employee in connection with reporting.
 2. No rule that requires assistance from a supervisor

3. The new whistleblower protection specifically prohibits a RR officer from interfering with the reporting of an injury 49 U.S.C. 20109(a)(4)

g. Do I have to fill out a written report before I get medical attention?

- i. Answer: Maybe - Maybe not!
 1. This will depend on the circumstances of the injury
 - a. However, the real issue is not look for excuses to put this off, but to complete as soon as possible.
 2. The new 20109 law helps with this question as it states: "If transportation to a hospital is requested by an employee injured in the course and scope of employment, the railroad shall **promptly** arrange for transportation to the nearest hospital..."
 - a. The question then becomes what is promptly?
 - b. Being interrogated about the injury for 2 hours before being transported is probably not "PROMPTLY."
 - c. There is no case law this time that defines promptly, however at one case is currently being pursued where the employee was interrogated for two hours before being taken to the hospital.
 3. Also note that 20109(a)(4) is applicable, as one can argue that a lengthy interrogation prior to receiving medical attention is "interfering" with reporting

h. Why does the RR accident report ask who is at fault?

- i. Answer: Under FELA law the RR does not owe the injured worker any money for the claim unless the RR is at fault. Thus, if the employee indicates on the accident report that the RR is not at fault, the RR probably does not owe for the injury.

i. Why does the RR accident report ask if I am at fault?

- i. Answer: Under FELA law any percentage of fault the employee has in connection with the accident is deducted from the damages. For example, if the employee is found to be 40% at fault and awarded \$100,000.00 he/she would only recover 60%, or \$60,000.00.

FELA COMPENSATION

- To recover in any railroad case the injured employee must prove:
 - The RR was at fault
 - The EE is not at fault
- If no one is at fault, the injured worker gets no money
- Just getting hurt at work does not mean the RR owes



6. AN INJURED EMPLOYEE HAS THE **ABSOLUTE RIGHT TO SELECT HIS OWN DOCTOR**:
 - a. If injured at work, you have the right to request transportation to a hospital and the: “railroad shall **PROMPTLY** arrange to have the injured employee transported to the **NEAREST** hospital where the employee can receive safe and **APPROPRIATE** medical care.” 49 U.S.C. 20109(c)(1)
 - b. “A railroad carrier may not deny, delay or INTERFERE with medical or first aid treatment of an employee who is injured during the course and scope of his employment.” 49 U.S.C. 20109(c)(1)
 - c. A railroad may not discipline, or threaten to discipline an employee for requesting medical or first aid treatment, or for following order or a treatment plan of a treating physician. 49 U.S.C. 20109(a)(2)
7. QUESTIONS REGARDING DOCTORS:
 - a. **Do I have to see the company doctor for a second opinion?**
 - i. Answer: NO.
 - ii. There is no rule or law that requires the injured worker to see a company doctor for a second opinion.
 - iii. In fact, under the 20109(c)(1) it is unlawful for the RR to interfere with the orders of his selected treating physician or the treatment plan selected by the treating physician. Thus, under this provision it is clearly improper for the RR to demand a second opinion, unless the treating physician has recommended a second opinion.
 - b. **Does the RR pay for my job related medical bills?**
 - i. Answer: NO

- ii. UHC GA 23000 (medical policy for active employees) pays for all medical treatment and care of an on duty injury
 - iii. There is no requirement to obtain approval from the RR or the RR claim agent to get treatment or to get the policy to pay for the treatment
 - iv. The employee is initially responsible for the co-pays, but they are recoverable at the end of the case
8. Statements to a claim agent when injured:
- a. The injured employee is not required to give a recorded verbal statement to the claim agent
 - b. It is not an insubordinate act to refuse to give a recorded verbal statement to the claim agent
 - c. GCOR does not require an injured worker to give a recorded verbal statement to the claim agent
9. Remedies provided by 49 U.S.C. 20109:
- a. If the RR violates any of the provisions of 20109:
 - b. The employee has individual recourse against the railroad
 - c. The employee must file a complaint with OSHA
 - d. If the complaint is valid the aggrieved employee is entitled to reinstatement, back pay with interest, attorney fees and punitive damages up to \$250,000.00

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