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U.S. RAILROAD RETIREMENT BOARD

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### **Railroad Retirement Service Credits and Pay for Time Lost**

The Railroad Retirement Board frequently receives questions from railroad employers, employees, and employees' legal advisors about the Board's treatment of pay for time lost in retirement cases. The most common type of pay for time lost arises out of personal injury settlements. Other types include dismissal allowances, guaranteed wages, displacement allowances paid for loss of earnings resulting from the employee being placed in a position or occupation paying less money, and reinstatement awards which include back pay.

It is important that agreements between employers and employees involving pay for time lost are structured correctly for railroad retirement purposes because they are often intended to provide an employee with additional months of creditable service needed to qualify for railroad retirement benefits. Crediting fewer service months than intended may leave an employee ineligible for benefits, while crediting an excessive number of months may delay the beginning date of those benefits. The following questions and answers describe the requirements for the railroad retirement crediting of pay for time lost.

#### **1. How do the railroad retirement laws treat pay for time lost?**

Pay for time lost attributable to lost earnings for an identifiable period of absence from active service is treated as compensation creditable under the Railroad Retirement and Railroad Unemployment Insurance Acts. Since the intent of an award for pay for time lost is to treat the employee as if he or she had actually performed compensated service during that period of time, the effect upon railroad retirement eligibility and benefits is identical to the effect of regular earnings for which service and compensation credit is received.

#### **2. What factors should be taken into account to ensure that pay for time lost will be creditable for railroad retirement purposes?**

A payment must be made with respect to an identifiable period of time. The specific months during the period of absence from active service must be identified, for example "the 12 month period beginning September 2003 and ending August 2004." In the case of a payment for personal injury, the entire amount is considered pay for time lost unless, at the time of payment, the employer states that a particular amount of the payment was for other reasons. The compensation is considered earned in, and therefore creditable to, the specified period.

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An employment relationship must exist in the months to be credited with pay for time lost. Allocation toward future months is permissible as long as an employment relation is retained for that period. If a settlement agreement requires that an employee resign to receive the payment, the employment relation ceases upon resignation. Allocation after the resignation date is not allowed because it cannot be considered time lost as an employee. With respect to pay for time lost allocated into the future, service months and compensation are not creditable until the time lost has actually elapsed.

The allocation must also relate to the actual period of absence from service for which payment is made. Pay for time lost due to personal injury may not be allocated to service months missing from an employee's record before the date of injury. Similarly, the amount of the pay for time lost must relate to an employee's normal monthly pay. A monthly allocation of at least ten times the employee's daily pay rate in effect on the date of injury is ordinarily considered a reasonable relationship to actual lost earnings. A lesser amount would be considered a token payment and would not be acceptable. For example, if an employee normally earns \$120 a day, the amount of pay for time lost allocated to each month should be at least \$1,200.

### **3. What other factors should be considered to ensure that pay for time lost correctly provides the total of railroad retirement service months intended?**

It is of primary importance to have a precise breakdown of an employee's service prior to any allocation. As a starting point, an employee should check his or her most recent Form BA-6, or the employee may request a service and compensation statement from the Board. This will avoid allocating pay for time lost to a month or months already reported as service months. Occasionally, an employee will have service months reported for vacation pay, or by another railroad employer--for example, by reason of paid union activity. Credit can only be received once for any given month. Because the period specified is the period for which service credit is due, a month allocated to the same month already on record may result in a shortage of the total months desired.

In addition, deemed service months should not be considered in the number of total service months when an allocation period is determined if those deemed service months are within the allocation period. A pay for time lost allocation increasing service and compensation will generally eliminate or reduce the number of deemed service months on record for any affected year. Deemed service months are the product of a calculation. If the components of that calculation change as the result of an adjustment to service and compensation due to a payment for time lost, then the number of deemed service months to which an employee is entitled is likely to change.

Also, the possibility that an employee has creditable military service should be considered because such military service may not be reflected in the Board's records and may reduce the number of allocated months needed to attain annuity eligibility. Employees are encouraged to file proof of any military service well in advance of retirement so the Board can determine whether the military service is creditable as railroad service. The Board will include creditable military service in its records, which will expedite the annuity application process and also ensure that the Board's records of an employee's service are as complete as possible.

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**4. Is pay for time lost subject to railroad retirement tier I and tier II payroll taxes?**

As with all compensation, pay for time lost is subject to taxation under the Railroad Retirement Tax Act at the tier I and tier II tax rates and annual maximum earnings bases in effect when payment is made. Pay for time lost is not, however, creditable on the basis of when the payment is made, but to the period for which the payment is allocated. Therefore, the taxable amount and creditable amount will sometimes differ. The employee's portion of the railroad retirement tax liability is usually withheld from the gross amount of the award.

**5. What effect would pay for time lost have on the payment of a railroad retirement annuity or unemployment or sickness benefits for the same days?**

Because pay for time lost is considered earned in the month allocated, an employee is not entitled to an annuity under the Railroad Retirement Act with respect to any months to which pay for time lost has been allocated. If an employee applies for retirement benefits at the expiration of an allocation period, he or she should submit documentation of the period covered by the agreement with the application.

Similarly, an employee is not entitled to unemployment or sickness benefits under the Railroad Unemployment Insurance Act with respect to any months to which pay for time lost has been allocated. If a payment for time lost is made which covers a period for which benefits under the Railroad Unemployment Insurance Act were previously paid, the benefits would be subject to recovery.

**6. Where can someone get more information about pay for time lost?**

Additional information on pay for time lost, as well as other railroad retirement topics, is available on the Board's Web site at [www.rrb.gov](http://www.rrb.gov). In addition, specific questions can be directed to the Railroad Retirement Board's Quality Reporting Service Center, 844 North Rush Street, Chicago, Illinois 60611-2092. Their phone number is (312) 751-4992.

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