



Legal Opinion L-2005-02
January 27, 2005

U.S. Railroad Retirement Board Phone: (312) 751-7139
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TO : Ronald J. Hodapp
Chief, Information Resources Management Center
Bureau of Information Services

FROM : Steven A. Bartholow
General Counsel

SUBJECT : Electronic Form ID-4K Prepayment Notice
Electronic Form ID-4E Notice of RUIA Claim Determination
Forms Approval

This is in reply to your inquiry of December 28, 2004, requesting my comments regarding the proposed electronic format for Board forms ID-4K and ID-4E, developed to notify railroad employers of claims for benefits under the Railroad Unemployment Insurance Act. As explained below, I have no legal objections to the forms themselves. However, current regulations of the Board must be amended to allow implementation of paperless requests for reconsideration of initial decisions as contemplated by the proposed electronic form ID-4E.

Procedure for claims for benefits is specified by section 5 of the RUIA (45 U.S.C. § 355). Section 5(a) states that claims for benefits, and appeals from determinations on those claims, shall be made pursuant to regulations prescribed by the Board. Section 5(b) further states in part that:

When a claim for benefits is filed with the Board, the Board shall provide notice of such claim to the claimant's base-year employer or employers and afford such employer or employers an opportunity to submit information relevant to the claim before making an initial determination on the claim. When the Board initially determines to pay benefits to a claimant under this Act, the Board shall provide notice of such determination to the claimant's base-year employer or employers.

Section 345.405(a) of the Board's regulations states that "the Board will give the employee's base year employer notice of the claim and an opportunity to provide information to the Board with respect to the employee's eligibility" prior to making payment to the employee. See also section 320.5 of the regulations, which requires that "the Board shall provide the claimant's * * * * employer * * * with notice that a claim has been filed and that the employer(s) has an opportunity to submit information which may be pertinent to the adjudication of the claim." In addition, section 325.6 of the Board's regulations states with respect to claims for unemployment insurance benefits that:

325.6 Verification Procedures

The Board's procedures for adjudicating and processing applications and claims for unemployment benefits filed pursuant to this part will include both pre-payment and post-payment procedures for verifying the validity of such applications and claims. Such procedures shall be designed with a view to obtaining substantial evidence as to the days of unemployment of the employees who register in accordance with this part. The verification procedures shall include, but are not limited to:

(a) Pre-payment contacts with railroad employers, utilizing data processing techniques to the extent feasible so as not to delay unduly the payment of valid claims; * * *

After the employer has had an opportunity to provide information pursuant to the section 345.405(a) notice, the Board's regulations provide at section 345.405.(b) that the adjudicating office of the Board will determine the employee's entitlement to benefits on the claim, and "will send notice to the base year employer showing what determination was made on the claim." See also section 320.8(a), which states that "A notice of the [initial] award will be sent to the base-year employer(s)."

The background material you furnished states that form ID-4K provides employers with information regarding proposed payment of a claim, including days for which benefits are payable, or are denied. The proposed electronic format presents the same information as the current paper form, but will be accessible through a program



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available to employers over the Internet. The employer must register with the Board to allow use of this program. As electronic pre-payment verification procedures are authorized by the above-quoted regulations, I find no legal objection to use of the new format.

The ID-4E provides employers notice of payments actually made to the claimant employee, as required by sections 320.8(a) and 345.405.(b) of the regulations noted above. Section 345.405(b) specifically provides that where the employer disagrees with the Board's determination of payment, the employer "may request reconsideration in accordance with part 320 of this chapter." Section 320.10(a), which establishes the right of both a claimant and an employer to request reconsideration of an initial determination of benefit entitlement under the RUIA, states in part that

A reconsideration request shall be made in writing and addressed to the adjudicating office that issued the initial determination and must be received by the adjudicating office no later than 60 days from the date of the notice of the initial decision.

Currently, reconsideration requests are made on paper documents. As part of the new electronic program of which the proposed ID-4E is a part, it is proposed that the employer may make a request for reconsideration of an award of benefits by sending an electronic transmission over the Internet. Because the regulations merely state that notice of the initial decision must be "sent" to the employer, I see no legal objection to furnishing the notice to the employer via electronic transmission as proposed. However, in my opinion, a return electronic transmission from the employer would not constitute a request "made in writing", within the meaning of the regulation. Section 320.10 must be amended to allow the filing of electronic reconsideration requests.