



Legal Opinion L-2005-20
August 3, 2005

U.S. Railroad Retirement Board
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TO : Ronald Russo
Director of Policy and Systems

FROM : Steven A. Bartholow
General Counsel

SUBJECT : Seasonal Employment and Last Pre-Retirement Employment
Restrictions

This is in response to your memorandum in which you inquire whether work classified as "seasonal" employment by a Federal agency is exempt from the Last Pre-Retirement Non-railroad Employment (LPE) provisions of section 2(f)(6) of the Railroad Retirement Act (RRA). The question arises from a case where an employee annuitant worked as a GS-4 seasonal employee for the Internal Revenue Service (IRS) for a period of a little more than four years.

As you know, prior to 1988, the RRA provided that an employee must terminate all employment, railroad and non-railroad employment, in order to be entitled to an annuity and no annuity was payable for any month an individual worked for such employers after his annuity began. In 1988 the restrictions related to non-railroad employment were revised such that an individual was no longer required to terminate his non-railroad employment, but was subject to work deductions for such work after his annuity began. These restrictions are found in subparagraph (A) of section 2(f)(6) of the RRA (45 U.S.C. § 231a(f)(6)(A)), which provides, in part, as follows:

Except as provided in subparagraph (B) – (i) that portion of the annuity for any month of an individual as is computed under section 3(b) and as adjusted under section 3(g), plus any supplemental amount for such month under section 3(e) * * * shall each be subject to a deduction of \$1 for each \$2 of compensation received by such individual from compensated service rendered in such month to the last person, or persons, by whom such individual was employed before the date on which the annuity of such individual under subsection (a)(1) began to accrue; * * *

On occasion, this office has held that employment of a seasonal nature falls outside the scope of the LPE restrictions. However, application of the "seasonal employment" exception requires the satisfaction of the following three factors: 1) the employee possesses no reemployment rights and must reapply each year for the position, 2) the employment relationship is terminated at the end of each period of employment, and 3) such employment has terminated prior to the annuity beginning date for some reason not related to the application for an annuity under the RRA. See Legal Opinions L-87-92, 97-37.

In the case at issue, the employee's annuity beginning date is August 1, 2000. His seasonal employment for the IRS ran from January 31, 2000 through March 17, 2004, and included several furloughs during that period. The following information was included in a letter from the IRS, discussing the employee's employment: [The employee] did not possess re-employment rights and did not reapply each year. His employment relationship did not terminate at the end of each period of employment. The employee started with the IRS on 1/31/00 as a seasonal employee and resigned 3/17/04." A table provided by the IRS indicates that the employee worked 8 months in 2000, 9 months in 2001, essentially all of 2002, 5 months in 2003 and one month in 2004.



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The fact that an employer categorizes certain types of employment as seasonal is not sufficient, in and of itself, to warrant application of the seasonal employment exception for LPE work restrictions. Such determinations must be made on a case-by-case basis and only after reviewing all of the available information regarding the employee's employment. Based on the available information, it does not appear that any of the three conditions enumerated above are satisfied. Although the IRS indicates that the employee does not possess any reemployment rights, the IRS also advises that the employee did not have to reapply each year. Furthermore, the IRS indicates that the employee was in furlough status when he was not working and that his employment relationship with the IRS did not terminate until he resigned in March of 2004. Finally, the employment did not terminate before the employee's annuity beginning date as the IRS indicates that the employee was first placed on furlough on August 26, 2000, which is after his annuity beginning date of August 1, 2000. I agree with your opinion that the employee's employment with the IRS is subject to the LPE work restrictions.