



FROM THE DESK OF

JOHN BRAGG
LABOR MEMBER



U.S. Railroad Retirement Board

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Buyouts and Railroad Retirement Benefits

Railroad employees frequently ask the Railroad Retirement Board (RRB) how accepting a buyout from a railroad employer affects their future eligibility for benefits under the Railroad Retirement and Railroad Unemployment Insurance Acts. The following questions and answers provide information on this subject.

1. Would leaving railroad work and accepting a buyout mean that an employee forfeits any future entitlement to an annuity under the Railroad Retirement Act?

As long as an employee has acquired at least 10 years (120 months) of creditable railroad service, or 5 years (60 months) of creditable railroad service performed after 1995, he or she would still be eligible for a regular railroad retirement annuity upon reaching retirement age, or, if determined to be totally disabled, for an annuity before retirement age, regardless of whether or not a buyout was ever accepted.

However, if a person permanently leaves railroad employment before attaining retirement age, the employee may not be able to meet the requirements for certain other benefits, particularly the current connection requirement for annuities based on occupational, rather than total, disability and for supplemental annuities paid by the RRB to career employees.

In addition, if an employee does not have a current connection, the Social Security Administration (SSA), rather than the RRB, would have jurisdiction of any survivor benefits that become payable on the basis of the employee's combined railroad retirement and social security covered earnings. The survivor benefits payable by the RRB are generally greater than those paid by SSA.

2. How are buyout payments treated under the Railroad Retirement and Railroad Unemployment Insurance Acts?

Buyout payments that result from the abolishment of an employee's job are creditable as compensation under the Railroad Retirement and Railroad Unemployment Insurance Acts. While the actual names of these employer payments may vary, the treatment given them by the RRB will depend upon whether the employee **relinquished or retained** his or her job rights. If the employee **relinquishes job rights** to obtain the compensation, the RRB considers the payment a **separation (or severance) allowance**. This compensation is credited to either the month last worked or, if later, the month in which the employee relinquishes his or her employment relationship. While all compensation subject to tier I payroll taxes is considered in the computation of a railroad retirement annuity, no additional service months can be credited after the month in which rights are relinquished.

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The RRB considers the buyout payment a **dismissal allowance**, even though the employer might designate the payment a separation allowance, if the employee **retains job rights** and receives monthly payments credited to the months for which they are allocated under the dismissal allowance agreement. This is true even if the employee relinquishes job rights after the end of the period for which a monthly dismissal allowance was paid. However, supplemental unemployment or sickness benefits paid under an RRB-approved nongovernmental plan by a railroad or third party are **not** considered compensation for railroad retirement purposes.

3. Suppose an employee is given a choice between (1) accepting a separation allowance, relinquishing job rights and having the payment he or she receives credited to one month or (2) accepting a dismissal allowance, retaining job rights and having the payment credited to the months for which it is allocated. What are some of the railroad retirement considerations the employee should keep in mind?

Individual factors such as an employee's age and service should be considered.

For example, if an employee is already eligible to begin receiving a railroad retirement annuity, he or she may find it advantageous to relinquish job rights, accept a separation allowance, and have the annuity begin on the earliest date allowed by law. Any periodic payments made after that date would not preclude payment of the annuity because the employee has relinquished job rights.

On the other hand, some younger employees may find it more advantageous to retain job rights and accept monthly compensation payments under a dismissal allowance if these payments would allow them to acquire 120 months of creditable rail service (or 60 months of creditable rail service performed after 1995) and establish future eligibility for a railroad retirement annuity. Also, additional service months might allow a long-service employee to acquire 30 years of service, which is required for early retirement at age 60, or 25 years of rail service, which could help an employee maintain the current connection needed to meet the eligibility requirements for an occupational disability annuity or survivor annuity under the Railroad Retirement Act.

4. How would acquiring 25 years of railroad service help an employee maintain a current connection?

A current connection determination is made when an employee files for a railroad retirement annuity. (If an employee dies before applying for an annuity, it is made when an applicant files for a survivor annuity.)

The current connection requirement is normally met if the employee has railroad service in at least 12 of the 30 consecutive months immediately preceding the month his or her railroad retirement annuity begins. If the employee died before retirement, railroad service in at least 12 months in the 30 months before the month of death will meet the current connection requirement for the purpose of paying survivor benefits.

If an employee does not qualify as explained above, but has 12 months of service in an earlier 30-month period, he or she may still meet the requirement if the employee does not work outside the railroad industry in the interval between the 30-month period and the month the employee's annuity begins, or the month of death if that occurs earlier. Full or part-time nonrailroad employment in that

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interval can break the employee's current connection. Self-employment in an unincorporated business will not break a current connection. However, if the business is incorporated the individual is considered to be an employee of the corporation, and such self-employment can break a current connection. All self-employment will be reviewed to determine if it meets the standards for maintaining a current connection.

A current connection can be maintained for purposes of supplemental and survivor annuities, but **not** occupational disability annuities, if the employee completed 25 years of railroad service, was involuntarily terminated without fault from his or her last job in the railroad industry, and did not thereafter decline an offer of employment in the same class or craft in the railroad industry, regardless of the distance to the new position. If all of these requirements are met, an employee's current connection may not be broken, even if the employee works in regular nonrailroad employment after the 30-month period and before the month his or her railroad retirement annuity begins, or, the month of his or her death. This exception to the normal current connection requirements became effective October 1, 1981, but only for employees who were alive on that date, and who left the rail industry on or after October 1, 1975.

5. Would the acceptance of a buyout have any effect on determining whether an employee could maintain a current connection under the exception provision discussed in the last paragraph of the answer to Question 4?

In cases where an employee has **no option** to remain in the service of his or her employer, the termination of the employment is considered involuntary, regardless of whether the employee does or does not receive a separation or dismissal allowance.

However, an employee who **chooses** a separation allowance instead of keeping his or her seniority rights to railroad employment would, for railroad retirement purposes, generally be considered to have voluntarily terminated railroad service, and, consequently, would not maintain a current connection under the exception provision.

6. An employee with 25 years of service is offered a buyout with the option of either taking payment in a single lump sum, or receiving monthly payments until retirement age. Could the method of payment affect the employee's current connection under the exception provision discussed in the last paragraph of the answer to Question 4?

If the employee had the **choice to remain** in employer service and **voluntarily relinquished** job rights prior to accepting the payments, his or her current connection would not be maintained under the exception provision, **regardless of which payment option is chosen**. Therefore, nonrailroad work after the 30-month period and before retirement, or the employee's death if earlier, could break the employee's current connection. Such an employee could only meet the current connection requirement under the normal procedures.

7. Is it always advantageous to maintain a current connection?

While a current connection is generally advantageous for railroad retirement purposes, the costs of maintaining a current connection could outweigh its value, depending on individual circumstances.

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There may be other financial or personal factors involved besides railroad retirement eligibility and/or the preservation of a current connection, and these will vary from individual to individual.

8. Are separation and dismissal allowances subject to railroad retirement payroll taxes?

Under the Railroad Retirement Tax Act, which is administered by the Internal Revenue Service, payments of compensation, including most buyouts, are subject to tier I, tier II and Medicare taxes on earnings up to the annual maximum earnings bases in effect when the compensation is paid. This is true whether payment is made in a lump sum or on a periodic basis.

To the extent that a separation allowance does not yield additional tier II railroad retirement service credits, a lump sum, approximating part or all of the railroad retirement tier II payroll taxes deducted from the separation allowance, will be paid upon retirement to employees meeting minimum service requirements or their survivors. This lump sum applies to separation allowances made after 1984.

If an employee receives a dismissal allowance, he or she receives service credits for the tier II taxes deducted from the dismissal allowance payments. Consequently, such a lump sum would not be payable.

If an employee has an option about how a buyout is to be distributed, he or she should consider the impact of both payroll taxes and income tax on the payments. Employees with questions in this regard should contact the payroll department of their railroad employer and/or the Internal Revenue Service.

9. Would an employee be able to receive unemployment or sickness benefits paid by the RRB after accepting a separation allowance?

An employee who accepts a separation allowance cannot receive unemployment or sickness benefits for roughly the period of time it would have taken to earn the amount of the allowance at his or her straight-time rate of pay. This is true regardless of whether the allowance is paid in a lump sum or installments. For example, if an employee's salary was \$5,000 a month without overtime pay and the allowance was \$20,000, he or she would be disqualified from receiving benefits for approximately four months.

10. Can an employee receive unemployment benefits after his or her separation allowance disqualification period has ended?

An employee who has not obtained new employment by the end of the disqualification period and is still actively seeking work may be eligible for unemployment benefits at that time. The employee must meet all the usual eligibility requirements, including the availability for work requirement. An employee can establish his or her availability for work by demonstrating a willingness to work and making significant efforts to obtain work. In judging the employee's willingness to work, the RRB considers, among other factors, the reason the employee accepted the separation allowance and the extent of his or her work-seeking efforts during the disqualification period.

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11. How would the acceptance of a dismissal allowance affect an employee's eligibility for unemployment and sickness benefits?

Payments made under a dismissal allowance would be considered remuneration under the Railroad Unemployment Insurance Act and the employee would not be eligible for unemployment or sickness benefits during the period the dismissal allowance is being paid. The employee may, of course, be eligible for benefits after the end of this period if he or she is still actively seeking work or is unable to work because of illness or injury.

12. Where can employees get more specific information on how benefits payable by the RRB are affected by a buyout?

Individuals with questions about how buyouts affect their RRB benefits can send a **secure message** to their local RRB office by accessing **Field Office Locator** at **RRB.gov** and clicking on the link at the bottom of their local office's page. If a customer needs to talk to an RRB representative, they can call the agency's toll-free number (1-877-772-5772) between the hours of 9 a.m. and 3 p.m. each weekday, except Federal holidays. However, customers are asked to be patient because of the increased call volume due to the COVID-19 pandemic.

On April 25, 2022, RRB field offices will begin to offer in-person service on a **limited** basis and **by appointment**. To schedule an appointment, call 1-877-772-5772. Individuals should bring a photo ID when visiting a field office, and, depending on guidance from the Centers for Disease Control and Prevention for the county in which the field office is located, *may* be required to wear an appropriate face mask. In such circumstances, if visitors do not have a mask, one will be provided for them.

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