

# **Pay for Time Lost From Regular Railroad Employment**

**UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD**

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# CONTENTS

## PAGE

INTRODUCTION..... 1

### **PART I - PAY FOR TIME LOST**

#### **EXPLAINED**

What is pay for time lost?..... 1

What are some examples of pay  
for time lost?..... 2

Why is it important to prevent  
pay for time lost problems? ..... 2

How do I ensure pay for time  
lost is creditable as service  
and compensation?..... 3

Are there additional factors  
for allocating service months  
in a personal injury case?..... 5

How is pay for time lost  
allocated when there is a  
court ordered judgment? ..... 8

### **PART II - TAX ISSUES**

How is pay for time lost taxed  
for retirement purposes? ..... 8

How can there be, for retirement  
purposes, inconsistent taxing  
and crediting of the same  
payment? ..... 9

How is pay for time lost taxed  
for Medicare purposes?..... 9

How is pay for time lost taxed  
for unemployment/sickness  
purposes?..... 10

Is the tax liability of pay for  
time lost met by withholding  
a reimbursement amount under  
the Railroad Unemployment  
Insurance Act (RUIA)? ..... 10

# CONTENTS

---

## PAGE

Where can I get information about tax rates and earnings bases? .....	10
If I'm not working, can I purchase additional service months by paying additional taxes? .....	11
Is pay for time lost includable as wages for income tax purposes?.....	11
Does withholding the correct tax amount update my service and compensation record? .....	11

### **PART III - PAY FOR TIME**

#### **LOST AND BENEFITS UNDER THE RAILROAD RETIREMENT ACT & RAILROAD UNEMPLOY- MENT INSURANCE ACT**

How does pay for time lost affect my entitlement to an annuity or sickness/ unemployment benefits?.....	12
--	----

### **PART IV - HELPS AND REFERENCES**

Where can I get more information? .....	13
--	----



## ***INTRODUCTION***

The Railroad Retirement Board (RRB) frequently receives questions from railroad employers and employees and their respective legal agents about the treatment of pay for time lost from regular employment. Because this can be a complex and confusing subject, we have prepared this pamphlet to answer the most commonly asked questions about pay for time lost.

This pamphlet contains general information about pay for time lost. However, certain limitations, exceptions, and special cases are not covered. If you have any question about the information covered in this pamphlet, contact the nearest office of the RRB.

## ***WHAT IS PAY FOR TIME LOST?***

Pay for time lost is compensation paid by a railroad employer which is creditable under the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA) and which is attributable to lost earnings for an identifiable period of absence from active service. ***Pay for time lost is not the purchase of service credits by payment of railroad retirement taxes.***

The intent behind the pay for time lost concept is to treat an employee as if he or she had actually performed compensated service during an identifiable period of time.

The effect of pay for time lost upon eligibility and benefits under the RRA and the RUIA is identical to the effect of regular earnings for which service and compensation credit are received.

The statutory basis for pay for time lost is found in Section 1(h)(2) of the RRA (45 USC 231(h)(2)), Section 1(h)(i) of the RUIA (45 USC 351(i)), and Sections 211.3 and 322.6 of the Railroad Retirement Board's Regulations (20 CFR 211.3 and 322.6).

The most common type of pay for time lost arises out of "on the job" personal injury settlements, but other types of agreements may have pay for time lost provisions.

***WHAT ARE SOME EXAMPLES OF PAY FOR TIME LOST?***

Examples of pay for time lost include, but are not necessarily limited to, the following:

- □ A personal injury award or settlement which allocates a portion of the damages as lost wages for a specific period following the date of the injury.
- □ A reinstatement award which includes back pay for the period of lost wages.
- □ A dismissal allowance or guaranteed wage agreement.
- □ An allowance paid for the loss of earnings resulting from job displacement to a less remunerative position.

***WHY IS IT IMPORTANT TO PREVENT PAY FOR TIME LOST PROBLEMS?***

Unfortunately, it is not unusual for errors to be made when structuring a pay for time lost agreement and reporting the payment as creditable compensation to the employee's records at the Railroad Retirement Board. Some errors stem from a lack of a clear understanding of the nature of pay for time lost. Other errors occur because payments for time lost are usually made outside the regular payroll process.

It is important that pay for time lost agreements between employers and employees are structured correctly. Frequently, an agreement is established with the intent of attaining additional months of

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creditable railroad service so an employee will meet the service requirement for an annuity under the Railroad Retirement Act (RRA). If the agreement overlooks certain factors or does not meet the pertinent statutory requirements, the employee may be denied that annuity.

It is also important that pay for time lost be reported as service and compensation correctly and timely. Annuity applications under the RRA and benefit claims under the Railroad Unemployment Insurance Act (RUIA) are adjudicated with the information available on the employee's earnings record. If the record is not updated and if we have no knowledge of additional credit which should be on the record, RRA annuities to disabled employees or RUIA benefits to sick or unemployed employees may be greatly delayed or even erroneously denied.

***HOW DO I ENSURE PAY FOR TIME LOST IS CREDITABLE AS SERVICE AND COMPENSATION?***

Six principles must be followed in order to ensure that a payment qualifies as creditable pay for time lost for which service and compensation credit may be received. The six principles are:

***1. The payment must be made with respect to an identifiable period of time.***

The months of the period of absence from active service must be specified. For example, the agreement should state the pay for time lost is "for the 12 month period beginning October 1994 and ending September 1995." The compensation is considered earned in, and is therefore creditable to, that specified period.

**2. *An employment relationship must exist in the months to be credited with the pay for time lost.***

Pay for time lost may be allocated into the future as long as an employment relationship is retained for that period. If an agreement requires that an employee must resign in order to receive the payment, the employment relationship ceases upon the resignation. An allocation to months after the resignation date is not allowed because the allocated service months cannot be considered genuine time lost as an employee.

If pay for time lost is allocated into the future and an employee does not resign, the service months are not creditable until the time lost has actually elapsed.

**3. *The allocation must relate to the actual period of absence from service for which the payment is made.***

Pay for time lost due to a personal injury must be allocated to months after the date of the injury. Service months allocated to months missing from an employee's record before the injury is not allowed.

**4. *The amount of the pay for time lost must relate to an employee's normal monthly pay.***

By regulation, a monthly allocation of at least ten times the employee's daily pay rate in effect on the date of the injury is ordinarily considered a reasonable relationship to actual lost wages. A lesser amount is considered to be a token payment and is not acceptable to the Railroad Retirement Board.



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For example, Employee Jones had a daily pay rate of \$130.00 when he was injured. Therefore, a minimum of \$1,300.00 must be allocated as pay for each month allocated as time lost.

A higher compensation amount per month may be allocated, but it cannot exceed the annual maximum earnings base limitations for the years involved. Cost-of-living or other increases which would have applied to the employee's pay over the period of time lost need not be considered.

**5. *The railroad retirement tax obligation for the pay for time lost must be met.***

Pay for time lost is considered compensation under the Railroad Retirement Tax Act. Thus, an employer is required to withhold and pay the employment taxes due on pay for time lost.

**6. *An agreement for pay for time lost must specify whether or not the intention of the payment is to provide service and compensation credit under the Railroad Retirement Act.***

If you do not intend to receive service and compensation credit for your pay for time lost, the agreement must say that.

***ARE THERE ADDITIONAL FACTORS FOR ALLOCATING SERVICE MONTHS IN A PERSONAL INJURY CASE?***

When the implicit intent of a personal injury allocation is to provide 120, 240, or 360 service months for the employee's record at the Railroad Retirement Board (RRB), it is vital to ensure that an

allocation for time lost correctly provides the total number of service months desired.

If a shortage of service months occurs, the RRB has no authority to reallocate months. The allocation may be re-opened only if both parties to the settlement are agreeable. However, it is important to note that the RRB will accept a re-opened agreement with respect to pay for time lost only within the four year time limitation imposed by Section 9 of the Railroad Retirement Act.

To prevent a shortage of service months, these three factors affecting service months must be considered:

- 1. Do not allocate pay for time lost to a month or months for which the employee has already received service month credit.***

Occasionally, an employee has service months reported for vacation pay or service months reported by another railroad employer (for example, union activity). However, credit can be received only one time 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. To prevent the duplicate reporting of service months, always contact the nearest office of the Railroad Retirement Board for an exact accounting of the months on record as of the date of the request.

Sometimes an award of back pay is for the same months for which service is already credited. In such a case, even though the months are not creditable, the compensation from the award is creditable.

2. ***When an allocation period is determined, do not consider deemed service months after the date of the personal injury in the total number of service months.***

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. This is true because 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.

3. ***Military service may, under certain conditions, be counted as railroad service under the Railroad Retirement Act (RRA).***

Creditable military service is not currently maintained in the records of the Railroad Retirement Board (RRB). The possibility that an employee has military service which meets the requirements to be creditable under the RRA should be considered because creditable military service may reduce the number of allocated months needed to attain eligibility for an annuity.

Contact the nearest office of the RRB for assistance in determining whether a military service period is creditable. Be prepared to provide proof of that military service to the RRB.

***HOW IS PAY FOR TIME LOST ALLOCATED  
WHEN THERE IS A COURT ORDERED  
JUDGMENT?***

When an employer pays an employee a settlement for a personal injury, the whole amount of the settlement is considered pay for time lost, ***if there is no designation that the settlement amount, or any part of it, is for factors other than pay for time lost.***

When an employee receives a court ordered judgment as the result of a personal injury action against an employer, the employer and the employee may reach an agreement as to what amount of the judgment is attributable to time lost, ***if the judgment does not indicate that any amount of it is attributable for time lost.***

Absent an agreement between the employer and the employee, the Railroad Retirement Board (RRB) has the authority to determine what, if any, amount of the judgment is attributable to pay for time lost. The RRB's determination is based upon the pleadings and evidence submitted at the trial. ***Unlike the case of a settlement of a personal injury action, the payment to an employee by way of a judgment does not automatically result in a pay for time lost allocation.***

***HOW IS PAY FOR TIME LOST TAXED FOR  
RETIREMENT PURPOSES?***

All compensation under the Railroad Retirement Tax Act (RRTA) is subject to the Tier I and Tier II tax rates and the annual maximum earnings bases in effect when the payment is made. This is also true of pay for time lost.

The nature of pay for time lost is such that the payment is attributable to lost earnings in a different time period. Therefore, it is creditable, for retirement purposes under the Railroad Retirement Act, to the months to which the time lost payment relates. ***But, the taxation of the payment under the RRTA always relates to the calendar year in which the payment is made.***

***HOW CAN THERE BE, FOR RETIREMENT PURPOSES, INCONSISTENT TAXING AND CREDITING OF THE SAME PAYMENT?***

If a payment for time lost is allocated to a period other than the year of payment, the taxable amount and creditable amount of the pay for time lost may differ.

There are circumstances where pay for time lost may be fully creditable under the Railroad Retirement Act, but taxable only to a limited extent, or not taxable at all, under the Railroad Retirement Tax Act. On the other hand, pay for time lost may be taxed at a higher percentage rate and subject to a higher earnings base than it would have been had it actually been paid in the period for which it is considered creditable.

***HOW IS PAY FOR TIME LOST TAXED FOR MEDICARE PURPOSES?***

Medicare taxes must be withheld from a payment for time lost. The railroad retirement and Medicare parts of the Tier I tax rate have separate, different earnings bases. When an employee's taxable earnings attain the Tier I maximum earnings base, Medicare taxes must continue to be deducted because there is no Medicare maximum amount.

***HOW IS PAY FOR TIME LOST TAXED FOR UNEMPLOYMENT/SICKNESS PURPOSES?***

Unlike Tier I and Tier II tax, the amount of the employer contributions due under the Railroad Unemployment Insurance Act is computed at the rates in effect, subject to a monthly limit, during the months to which the pay for time lost payment relates.

***IS THE TAX LIABILITY OF PAY FOR TIME LOST MET BY WITHHOLDING A REIMBURSEMENT AMOUNT FOR BENEFITS RECOVERABLE UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT (RUIA)?***

Reimbursement is due under the RUIA if a payment for time lost covers a period for which sickness or unemployment benefits were previously paid. However, withholding this amount from the award is a separate matter and should never be confused with satisfying the railroad retirement tax liability for the award.

***WHERE CAN I GET INFORMATION ABOUT TAX RATES AND EARNINGS BASES?***

Information about the annual tax rate percentages, maximum earnings base amounts, and employer contribution amounts for any year may be obtained from the nearest office of the Railroad Retirement Board. The payroll department of any railroad employer should also be able to provide this information.

***IF I'M NOT WORKING, CAN I PURCHASE  
ADDITIONAL SERVICE MONTHS BY  
PAYING ADDITIONAL TAXES?***

An employee who is not working may not buy additional service months simply by paying the taxes for the months desired. *Service months may never be bought just by the payment of taxes.*

***IS PAY FOR TIME LOST INCLUDABLE AS  
WAGES FOR INCOME TAX PURPOSES?***

The Railroad Retirement Board cannot speak authoritatively on issues involving income tax law. Therefore, we must refer questions relating to the treatment of pay for time lost under federal income tax laws to the Internal Revenue Service (IRS). However, we can advise that, in the past, under certain conditions, the IRS has held that pay for time lost is includable as wages for income tax purposes.

***DOES WITHHOLDING THE CORRECT TAX  
AMOUNT UPDATE MY SERVICE AND  
COMPENSATION RECORD?***

Withholding the proper taxes is not sufficient to update an employee's record of service and compensation at the Railroad Retirement Board (RRB). An appropriate report of service and compensation must also be submitted by the employee's railroad employer. As noted previously, pay for time lost should be reported as service and compensation for the allocated period of absence because it is considered earned under the Railroad Retirement Act in that period.

An employee applying for retirement benefits at the expiration of an allocation period should submit documentation of the period covered by the agreement with the retirement application. This is necessary to establish service eligibility if the report for additional service credit is not yet reflected in the employee's records at the RRB. The RRB will then solicit the necessary service and compensation report, but the final annuity award must be delayed until the report is received.

***HOW DOES PAY FOR TIME LOST AFFECT MY ENTITLEMENT TO AN ANNUITY OR SICKNESS/UNEMPLOYMENT BENEFITS?***

Because pay for time lost is effectively the same as compensated service for active employment, 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. For this reason, a pay for time lost allocation to an employee who is already receiving an annuity may cause an annuity overpayment.

For example, an injured employee may apply for and begin receiving a disability annuity while his settlement is pending. If the settlement is finalized and includes pay for time lost for months for which he was also paid an annuity, the annuity is overpaid for those months.

Similarly, an employee is also not entitled to sickness or unemployment benefits under the Railroad Unemployment Insurance Act (RUIA) with respect to any month to which pay for time lost is allocated. If a payment for time lost is made which covers a period for which benefits under the RUIA were previously paid, a reimbursement is due under the RUIA.



***WHERE CAN I GET MORE INFORMATION?***

The Claims Adjustment and Settlement Section in the Bureau of Unemployment and Sickness Insurance can provide information about the correct amount to withhold from pay for time lost for reimbursement of benefits paid under the Railroad Unemployment Insurance Act. The telephone number of the Claims Adjustment and Settlement Section is (312) 751-4820.

Questions relating to the treatment of pay for time lost under Federal income tax laws should be directed to the Internal Revenue Service.

Any other questions about pay for time lost should be directed to the nearest office of the Railroad Retirement Board (RRB). Addresses and telephone numbers for offices of the RRB are listed in telephone directories under "United States Government." Most business can be conducted by telephone, but if you need to visit an office, you may want to call ahead to arrange a convenient time.

***NONDISCRIMINATION ON THE  
BASIS OF DISABILITY***

Under Section 504 of the Rehabilitation Act of 1973 and Railroad Retirement Board (RRB) regulations, no qualified person may be discriminated against on the basis of disability. RRB programs and activities must be accessible to all qualified applicants and beneficiaries, including those who are vision or hearing-impaired. Disabled persons needing assistance (including auxiliary aids or program information in accessible formats) should contact the nearest RRB office. Complaints of alleged discrimination by the RRB on the basis of disability must be filed within 90 days in writing with the Director of Administration, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092. Questions about individual rights under this regulation may be directed to the RRB's Director of Equal Opportunity at the same address shown above.

### ***FRAUD AND ABUSE HOT LINE***

Call the toll-free Fraud and Abuse Hot Line if you have reason to believe that someone is receiving railroad retirement or unemployment-sickness benefits to which (s)he is not entitled; that persons responsible for the financial affairs of minors or incompetent beneficiaries are misappropriating benefits; or that a doctor, hospital, or other provider of health care services is performing unnecessary or inappropriate services or is billing Medicare for services not received. You may also use the Hot Line to report any suspected misconduct by a Railroad Retirement Board (RRB) employee. The Hot Line has been installed by the RRB's Inspector General to receive any evidence of fraud or abuse of the RRB's benefit programs.

Call (toll-free) 1-800-772-4258. Or you may send your complaints in writing to the RRB, OIG, Hot Line Officer, 844 North Rush Street, Chicago, Illinois 60611-2092.

Please do not call the Inspector General's Hot Line with questions about eligibility requirements, delayed claims, or similar problems. Such matters should be directed to the nearest RRB field office.