

provides an updated indicator of when earnings demonstrate the ability to engage in SGA and is a significant improvement to the existing incentives to encourage individuals with disabilities to attempt to work. This increase also conforms to changes in the regulations of the Social Security Administration which became effective July 1, 1999 (64 FR 18566, April 15, 1999; a correction appears at 64 FR 22903, April 28, 1999).

The Board published this rule as an interim final rule on November 18, 1999 (64 FR 62976) and invited comments by July 18, 2000. No comments were received. Accordingly, the interim final rule is adopted as a final rule without change.

Dated: March 8, 2000.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

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RAILROAD RETIREMENT BOARD

20 CFR Part 322

RIN 3220-AB38

Remuneration

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations defining remuneration and how that term is applied to claims for benefits under the Railroad Unemployment Insurance Act (RUIA) to reflect changes in that statute and to reflect administrative rulings not readily available to the public.

EFFECTIVE DATE: This rule will be effective April 17, 2000.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Senior Attorney, Railroad Retirement Board, (312) 751-4945, FAX (312) 751-7102, TDD (312) 751-4701.

SUPPLEMENTARY INFORMATION: As administrator of the RUIA, the Railroad Retirement Board pays benefits to qualified railroad employees for their days of unemployment or days of sickness, as defined in section 1(k) of the Act. Benefits are not payable for any day if "remuneration", as defined in section 1(j) of the RUIA, is payable or accrues to the employee for such day. Part 322 defines the term "remuneration" and explains how the

term is applied to claims for benefits, but it has not been revised in recent years to reflect statutory changes and agency practice and procedure.

Section 322.1 which currently recites applicable statutory provisions, is revised to provide a plain language introduction that explains the purpose of part 322.

The general definition of "remuneration" set forth in § 322.2 is revised by expanding the definition to cover two statutory exceptions to the definition, subsidiary remuneration and supplemental unemployment or sickness benefits.

Section 322.3(b) is amended by explaining that although "remuneration" does not accrue for days that are termed "layover" days, such days are not compensable "days of unemployment". Also, a new paragraph (d) is added to explain the rules that would apply to a fully employed employee who has additional days off from work by reason of a compressed or flexible work schedule.

Paragraph (a) of § 322.4 is revised by indicating that the Board will seek information from the employee's base year employer on whether remuneration is payable for days claimed.

Section 322.5 is amended to remove a reference to an obsolete regulation. Paragraph (a) of § 322.6 is revised by indicating that payments made to an employee with respect to personal injury are considered remuneration unless allocated to other "damages".

Section 322.7 is revised to conform with the practices of the railroad industry that coordination and dismissal allowances, separation, and severance payments are remuneration, even when paid other than through a collective bargaining agreement, and even when paid as the result of an involuntary dismissal or separation.

Section 322.8 is amended to update the amount of earnings by a local lodge official that may be regarded as subsidiary remuneration. This amendment is necessary because of a statutory change that increased to \$15 per day the amount of an employee's earnings that comes within the definition of subsidiary remuneration.

Finally, a new § 322.9 is added to explain the term "subsidiary remuneration". Such remuneration does not prevent payment of benefits, except as explained in § 322.9.

The Board published this rule as a proposed rule on November 16, 1999 (64 FR 62135), and invited comments by January 18, 2000. No comments were received.

The Board, with the concurrence of OMB, has determined that this is not a

significant regulatory action for purposes of Executive Order No. 12866. Therefore no regulatory impact analysis is required. The information collection requirements contained in this rule have been approved by the Office of Management and Budget under control numbers 3220-0049 and 3220-0022.

List of Subjects in 20 CFR Part 322

Railroad employees, Railroad unemployment benefits, Reporting and record keeping requirements.

For the reasons set out in the preamble, the Railroad Retirement Board amends title 20, chapter II, part 322 of the Code of Federal Regulations as follows:

PART 322—REMUNERATION

1. The authority citation for part 322 is revised to read as follows:

Authority: 45 U.S.C. 362(l).

2. Section 322.1 is revised to read as follows:

§ 322.1 Introduction.

The Railroad Unemployment Insurance Act provides benefits for a qualified employee's days of unemployment or days of sickness, as defined in section 1(k) of the Act. Under that section, no day can be a day of unemployment or a day of sickness for any employee if "remuneration" is payable or accrues to the employee for such day. In computing the amount of benefits payable to an employee for days of unemployment or days of sickness in any registration period, or in determining whether the employee has satisfied the waiting period requirement, the Board will not count any day with respect to which remuneration is payable or accrues to the employee. Section 322.2 defines the term "remuneration" and explains what types of payments to employees constitute remuneration.

3. Section 322.2 is revised to read as follows:

§ 322.2 General definition of remuneration.

(a) *Remuneration.* (1) Remuneration includes pay for services for hire, pay for time lost as defined in § 322.6, and other earned income payable or accruing with respect to any day. Income is "earned" if it is payable or accrues in consideration of services and if such services were in turn rendered in consideration of the income payable or accruing.

(2) Remuneration includes income in the form of a commodity, service, or privilege if, before the performance of the service for which it is payment, the

parties have agreed upon the value of such commodity, service, or privilege, and that such part of the amount agreed upon to be paid may be paid in the form of such commodity, service, or privilege.

(3) Remuneration for a working day that includes a part of two consecutive calendar days is deemed to have been earned on the first of such two days.

(b) *Subsidiary remuneration.* For the purpose of this part, remuneration does not include subsidiary remuneration, as defined in § 322.9. Subsidiary remuneration for any day does not prevent such day from being a day of unemployment or a day of sickness, except as explained in § 322.9.

(c) *Supplemental unemployment or sickness benefits.* The term remuneration does not include money payments received by an employee pursuant to any nongovernmental plan for unemployment or sickness insurance, as defined in part 323 of this chapter. Employer payments of sick pay to an employee are remuneration, except when payment is made pursuant to a nongovernmental plan for sickness insurance.

4. In § 322.3, revise paragraph (b), and add a new paragraph (d) to read as follows:

§ 322.3 Determining the days with respect to which remuneration is payable or accrues.

* * * * *

(b) *Layover days.* Remuneration shall not be regarded as payable or accruing to an employee with respect to his or her "layover" days between regular assignments in train and engine service solely because they are termed "layover" days. But no such "layover" day may be considered as a day of unemployment or sickness. See § 332.6 of this chapter.

* * * * *

(d) *Equivalent of full-time work.* An employee who works fewer than five days each week under a compressed work schedule that provides the equivalent of full-time employment does not earn remuneration with respect to his or her additional rest days resulting from such work schedule, but such employee will not be considered to be available for work on such rest days. See § 327.10(d) of this chapter.

5. In § 322.4, revise paragraph (a) to read as follows:

§ 322.4 Consideration of evidence.

(a) *Initial proof.* A claimant's certification that he or she did not work on any day claimed and did not receive income such as vacation pay or pay for time lost for any such day shall

constitute sufficient evidence for an initial finding that no remuneration is payable or has accrued to him or her with respect to such day, unless a base year employer reports that he or she worked on days claimed or received payments that constitute remuneration as defined in this part, or unless there is other conflicting evidence.

* * * * *

§ 322.5 [Amended]

6. Amend § 322.5(c)(2) by removing "in accordance with § 222.3(h) of this chapter".

7. In § 322.6, revise paragraph (a) to read as follows:

§ 322.6 Pay for time lost.

(a) *Definition.* The term "pay for time lost" means any payment made to an employee with respect to an identifiable period of time during which the employee was absent from the active service of the person or company making the payment, including absence on account of personal injury. The entire amount paid to an employee who was absent on account of personal injury is pay for time lost if such amount includes pay for time lost, unless at the time of payment the parties, by agreement, specify a different amount as the amount of the pay for time lost and the period of time covered by such pay. The amount allocated to time lost is remuneration for every day in the period of time lost. The amount of a payment for personal injury that is apportioned to factors other than time lost is, nevertheless, a portion of "damages" for the purposes of part 341 of this chapter.

* * * * *

8. Revise § 322.7 to read as follows:

§ 322.7 Dismissal, coordination, and separation allowances.

(a) *Coordination or dismissal allowance.* Coordination or dismissal allowances are payments made to an employee who has been furloughed for a specified period of time during which he or she continues in an employment relationship and remains subject to call. Such pay is remuneration with respect to each day in the month or other period for which it is payable. The employer shall be held liable to the Board for any benefits paid to the employee and found recoverable under section 2(f) of the Railroad Unemployment Insurance Act by reason of the payment of any such allowances or other pay for the same days for which the Board paid benefits.

(b) *Separation allowance.* A separation allowance or severance payment made to an employee who voluntarily or involuntarily terminates

his or her employment relationship is not remuneration with respect to any day after the employment relationship is severed. An employee who is paid a separation allowance, whether in a lump sum or in installments, is disqualified by section 4(a-1)(iii) of the Railroad Unemployment Insurance Act from receiving unemployment or sickness benefits for the period of time approximating the length of time it would have taken the employee to earn, at his or her "straight" time rate of pay, the amount of the separation allowance if he or she had continued working in the job from which he or she separated.

§ 322.8 [Amended]

9. In § 322.8(e) remove the phrase "three dollars" and add in its place "\$15".

10. Add new § 322.9 to read as follows:

§ 322.9 Subsidiary remuneration.

(a) *Definition.* The term "subsidiary remuneration" means remuneration not in excess of an average of \$15 per day for the period with respect to which it is payable or accrues, if

(1) The work from which the remuneration derives requires substantially less than full time as determined by generally prevailing standards; and

(2) The work is susceptible of performance at such times and under such circumstances as not to be inconsistent with the holding of normal full-time employment in another occupation.

(b) *Exception.* If a claimant's remuneration is "compensation" as defined in part 302 of this chapter, such remuneration is not subsidiary unless the claimant had base year compensation from a different position or occupation of not less than two and one-half times the monthly compensation base for months in the base year in which he or she received the remuneration. Compensation in excess of an average of \$15 per day is remuneration for the days for which it is payable or accrues.

(c) *Period for which remuneration is payable or accrues.* The "period" of time used in determining whether remuneration averages more than \$15 per day depends on the terms and conditions of the employment and the rate of payment for the work. If the claimant is paid a monthly salary, the "month" is the period with respect to which the pay must average not more than \$15 per day. The average is the monthly salary divided by 30. If the claimant is paid a weekly salary, the amount of the salary is divided by

seven. If the claimant is paid by the hour or the day, the "period" is the day. Where payment is made by the hour or the day, the pay is not added up and then averaged out over the week or the month. For example, earnings of \$20 on one day and \$10 on another day do not average out to \$15 per day so as to permit both days to be considered as days of unemployment or days of sickness.

(d) *Substantially less than full time.* The phrase "substantially less than full time" means employment of not more than four hours per day.

(e) *Compatibility with full time employment.* Work is considered to be susceptible of performance at such times and under such circumstances as not to be inconsistent with the holding of normal full-time employment in another position or occupation if it is a form of secondary employment that a claimant has done or could do at his or her own convenience while performing the duties of his or her railroad job.

(f) *Determinations.* The Board shall make a determination whether remuneration is subsidiary by applying the standards in this section to the facts of each case. Earnings that average more than \$15 per day are not subsidiary remuneration under any circumstances. Also, earnings of any amount that are included in a claimant's qualifying base year compensation are not subsidiary remuneration. Even if earnings do not exceed an average of \$15 per day, they may still not be subsidiary remuneration if the claimant worked more than four hours per day or if the work had to be performed at such times and under such circumstances as to be inconsistent with the holding of normal full-time work in his or her regular railroad work. If the evidence does not establish that the earnings are subsidiary remuneration, the question whether they are remuneration for particular days will then be considered.

(g) *Examples.* The following examples illustrate this section.

(1) A claimant receives a salary of \$350 per month for serving as secretary-treasurer of the local lodge of his union. He performs a variety of duties at his own convenience while holding down a full-time railroad job in his craft. The average payment per day is not more than \$15 and is, therefore, subsidiary remuneration.

(2) A claimant worked three hours per day, at \$5 per hour, in the family insurance business. He was marked up for work as an extra board trainman and worked whenever he was called. When called, he skipped work in the family insurance business. His insurance

earnings of \$15 per day were subsidiary remuneration.

(3) While unemployed from her railroad job, a claimant took a job as a school bus driver. She worked from 7 a.m. to 9 a.m., and 2:30 p.m. to 5:30 p.m. Her regular railroad job was a daytime job from 8 a.m. to 4:30 p.m. Her pay as a school bus driver was not subsidiary remuneration because the job was not compatible with the holding of full time work in her regular railroad occupation.

Dated: March 8, 2000.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 290

RIN 1076-AD74

Tribal Revenue Allocation Plans

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is establishing regulations to implement Section 11(b)(3) of the Indian Gaming Regulatory Act (IGRA). This rule establishes procedures for the submission, review, and approval of tribal revenue allocation plans for the distribution of net gaming revenues from tribal gaming activities.

EFFECTIVE DATE: These regulations take effect on April 17, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Pierskalla, Management Analyst, Office of Indian Gaming Management, at 202-219-4066.

SUPPLEMENTARY INFORMATION: The IGRA, 25 U.S.C. § 2701 *et seq.*, was signed into law on October 17, 1988. Pursuant to Section 11(b)(3)(B), 25 U.S.C. 2710(b)(3)(B), of IGRA, the Secretary of the Interior (Secretary) is charged with the review and approval of tribal revenue allocation plans relating to the distribution of net gaming revenues from a tribal gaming activity. These regulations establish a method for the submission, review and approval of tribal revenue allocation plans.

The IGRA provides that net gaming revenues from class II and class III gaming may be distributed in the form of per capita payments to members of the Indian tribe provided the Indian

tribe has prepared a Tribal Revenue Allocation Plan which is approved by the Secretary. On December 21, 1992, the Assistant Secretary—Indian Affairs (AS-IA) issued Guidelines to Govern the Review and Approval of Tribal Revenue Allocation Plans. As outlined in IGRA, the Guidelines require that the Indian tribe must dedicate a significant share (or portion) of net gaming revenues for economic development and governmental purposes, that the interests of minors and other legally incompetent persons entitled to receive per capita payments must be protected and preserved, and that per capita payments are subject to Federal income taxes. The AS-IA does not mandate the distribution of net gaming revenues to individual tribal members. However, it is essential that Indian tribes choosing to make per capita payments comply with the requirements of IGRA. The proposed rule was published on June 7, 1996 (61 FR 29044). A notice to extend the comment period was published on March 7, 1997 (62 FR 5588). Comments received during the comment period ending August 6, 1996, and March 24, 1997, were considered in the drafting of this final rule.

Review of Public Comments

Fifty-three comments were submitted in response to the June 7, 1996, **Federal Register** publication of the proposed rule, 25 CFR 290, and the March 7, 1997, **Federal Register** publication to extend the comment period.

Section 290.1 Purpose

No comments were received on this section.

Section 290.2 Definitions—Governing Document

One comment recommended adding a definition for the term "governing document."

Response: This comment was not adopted. Some tribes do not have constitutions or other written governing documents. Some tribes which do have written governing documents have also developed substantial bodies of tribal law interpreting those documents. Accordingly, we have substituted the phrase "applicable tribal law" as a more inclusive term than the phrase "governing document" in the definition of "Member of an Indian tribe" and elsewhere. It was unnecessary, therefore, to define the term "governing document."

Section 290.2 Definitions—Legal Incompetent

One comment suggested that the definition of the term "legal