

TITLE 45 - RAILROADS**CHAPTER 11 - RAILROAD UNEMPLOYMENT INSURANCE****§ 354. Disqualifying conditions****(a-1) Day of unemployment or day of sickness**

There shall not be considered as a day of unemployment, or as a day of sickness, with respect to any employee—

(i) any of the seventy-five days beginning with the first day of any registration period with respect to which the Board finds that he knowingly made or aided in making or caused to be made any false or fraudulent statement or claim for the purpose of causing benefits to be paid;

(ii) any day in any period with respect to which the Board finds that he is receiving or will have received annuity payments under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], or insurance benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.], or unemployment, maternity, or sickness benefits under an unemployment, maternity, or sickness compensation law other than this chapter, or any other social-insurance payments under any law: Provided, That if an employee receives or is held entitled to receive any such payments, other than unemployment, maternity, or sickness payments, with respect to any period which include days of unemployment or sickness in a registration period, after benefits under this chapter for such registration period will have been paid, the amount by which such benefits under this chapter will have been increased by including such days as days of unemployment or as days of sickness shall be recoverable by the Board: Provided further, That, if that part of any such payment or payments, other than unemployment, maternity, or sickness payments, which is apportionable to such days of unemployment or days of sickness is less in amount than the benefits under this chapter which, but for this paragraph, would be payable and not recoverable with respect to such days of unemployment or days of sickness, the preceding provisions of this paragraph shall not apply but such benefits under this chapter for such days of unemployment or days of sickness shall be diminished or recoverable in the amount of such part of such other payment or payments;

(iii) if he is paid a separation allowance, any of the days in the period beginning with the day following his separation from service and continuing for that number of consecutive fourteen-day periods which is equal, or most nearly equal, to the amount of the separation allowance divided (i) by ten times his last daily rate of compensation prior to his separation if he normally works five days a week, (ii) by twelve times such rate if he normally works six days a week, and (iii) by fourteen times such rate if he normally works seven days a week;¹

(a-2) Day of unemployment

(i) (A) subject to the provisions of subdivision (B) hereof, any of the days in the period beginning with the day with respect to which the Board finds that he left work voluntarily, and continuing until he has been paid compensation of not less than \$1,500 with respect to time after the beginning of such period and before 1989 or, if any part of such compensation is paid in a calendar year after 1988, not less than an amount that is equal to 2.5 times the monthly compensation base for months in such calendar year, as computed under section 351 (i) of this title;

(B) if the Board finds that he left work voluntarily with good cause, the provisions of subdivision (A) shall not apply, with respect to him, to any day in a registration period if such period does not include any day which is in a period for which he could receive benefits under an unemployment compensation law other than this chapter, and he so certifies. Such certification shall, in the absence of evidence to the contrary, be accepted subject to the penalty provisions of section 359 (a) of this title;

(ii) any of the thirty days beginning with the day with respect to which the Board finds that he failed, without good cause, to accept suitable work available on such day and offered to him, or to

comply with instructions from the Board requiring him to apply for suitable work or to report, in person or by mail as the Board may require, to an employment office;

(iii) subject to the provisions of subsection (b) of this section, any day with respect to which the Board finds that his unemployment was due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which he was last employed, and the Board finds that such strike was commenced in violation of the provisions of the Railway Labor Act [45 U.S.C. 151 et seq.] or in violation of the established rules and practices of a bona fide labor organization of which he was a member.

(b) Participation, interest, or financial assistance in labor dispute

The disqualification provided in subsection (a-2)(iii) of this section shall not apply if the Board finds that—

(i) the employee is not participating in or financing or directly interested in the strike which causes the stoppage of work: Provided, That payment of regular union dues shall not be construed to constitute financing a strike or direct interest in a strike within the meaning of this and the following paragraphs; and

(ii) he does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed in the establishment, premises, or enterprise at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute: Provided, That if separate types of work are commonly conducted in separate departments of a single enterprise, each such department shall, for the purposes of this subsection, be deemed to be a separate establishment, enterprise, or other premises.

(c) Unsuitable work

No work shall be deemed suitable for the purposes of subsection (a-2)(ii) of this section, and benefits shall not be denied under this chapter to any otherwise qualified employee for refusing to accept work if—

(i) the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(ii) the remuneration, hours, or other conditions of work offered are substantially less favorable to the employee than those prevailing for similar work in the locality, or the rate of remuneration is less than the union wage rate, if any, for similar work in the locality;

(iii) as a condition of being employed he would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(iv) acceptance of the work would require him to engage in activities in violation of law or which, by reason of their being in violation of reasonable requirements of the constitution, bylaws, or similar regulations of a bona fide labor organization of which he is a member, would subject him to expulsion from such labor organization; or

(v) acceptance of the work would subject him to loss of substantial seniority rights under any collective bargaining agreement between a railway labor organization, organized in accordance with the provisions of the Railway Labor Act [45 U.S.C. 151 et seq.], and any other employer.

(d) Factors in determination of suitable work

In determining, within the limitations of subsection (c) of this section, whether or not any work is suitable for an employee for the purposes of subsection (a-2)(ii) of this section, the Board shall consider, in addition to such other factors as it deems relevant,

(i) the current practices recognized by management and labor with respect to such work;

(ii) the degree of risk involved to such employee's health, safety, and morals;

(iii) his physical fitness and prior training;

(iv) his experience and prior earnings;

(v) his length of unemployment and prospects for securing work in his customary occupation; and

(vi) the distance of the available work from his residence and from his most recent work.

(e) Voluntarily leaving unsuitable work

For the purposes of subsection (a-2)(i) of this section, no voluntary leaving of work shall be deemed to have been without good cause if the Board finds that such work would not have been suitable for the purposes of subsection (a-2)(ii) of this section.

Footnotes

¹ So in original. The semicolon probably should be a period.

(June 25, 1938, ch. 680, § 4, 52 Stat. 1098; June 20, 1939, ch. 227, § 11, 53 Stat. 846; Oct. 10, 1940, ch. 842, §§ 14–18, 54 Stat. 1097, 1098; July 31, 1946, ch. 709, §§ 309, 310, 60 Stat. 737, 738; Oct. 30, 1951, ch. 632, § 27, 65 Stat. 691; Pub. L. 85–927, pt. II, § 202, Sept. 6, 1958, 72 Stat. 1782; Pub. L. 86–28, pt. III, § 305, May 19, 1959, 73 Stat. 31; Pub. L. 88–133, title III, § 302(a), Oct. 5, 1963, 77 Stat. 222; Pub. L. 90–257, title II, § 204, Feb. 15, 1968, 82 Stat. 24; Pub. L. 93–445, title IV, § 402, Oct. 16, 1974, 88 Stat. 1359; Pub. L. 98–76, title IV, § 411(a)(3), Aug. 12, 1983, 97 Stat. 436; Pub. L. 100–647, title VII, § 7101(d), Nov. 10, 1988, 102 Stat. 3758.)

References in Text

The Railroad Retirement Act of 1974, referred to in subsec. (a-1)(ii), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of this title. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of this title, section 231t of this title, and Tables.

The Social Security Act, referred to in subsec. (a-1)(ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Railway Labor Act, referred to in subsecs. (a-2)(iii) and (c)(v), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of this title. For complete classification of this Act to the Code, see section 151 of this title and Tables.

Amendments

1988—Subsec. (a-2)(i)(A). Pub. L. 100–647 inserted “and before 1989 or, if any part of such compensation is paid in a calendar year after 1988, not less than an amount that is equal to 2.5 times the monthly compensation base for months in such calendar year, as computed under section 351 (i) of this title” after “such period”.

1983—Subsec. (a-2)(i)(A). Pub. L. 98–76 substituted “\$1,500” for “\$1,000”.

1974—Subsec. (a-1)(ii). Pub. L. 93–445 substituted “annuity payments under the Railroad Retirement Act of 1974” for “annuity payments or pensions under the Railroad Retirement Act of 1935 or the Railroad Retirement Act of 1937”.

1968—Subsec. (a-1)(iii). Pub. L. 90–257, § 204(a), added cl. (iii).

Subsec. (a-2)(i)(A). Pub. L. 90–257, § 204(b), substituted “\$1,000” for “\$750”.

1963—Subsec. (a-2)(i). Pub. L. 88–133 substituted cl. (i) providing in subd. (A) that an employee who voluntarily leaves his work shall not be considered as having days of unemployment for a period beginning with the day he so leaves and continuing until he has been paid compensation of not less than \$750 with respect to time after the beginning of such period and subd. (B) that if the Board finds that the employee left work voluntarily with good cause, such disqualification shall not apply, except that in such case the employee would not be considered as having days of unemployment with respect to any day in a registration period if such period includes a day which is in a period for which he could receive benefits under an unemployment law other than this chapter and he so certifies, for former cl. (i) providing that an employee who leaves work voluntarily is not considered as having days of unemployment with respect to any of the first 30 days after he so leaves if the Board finds that he left work voluntarily without good cause.

1959—Subsec. (a-2)(iv). Pub. L. 86–28 struck out cl. (iv) which prevented Sundays and holidays from being considered as days of unemployment unless they were preceded and succeeded by a day of unemployment.

1958—Subsec. (a-1)(ii). Pub. L. 85–927 substituted “other than this chapter or any other social-insurance payments under any law” for “of any State of the United States other than this chapter, or any other social-insurance payments under a law of any State or of the United States”.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

1951—Subsec. (a–1). Act Oct. 30, 1951, struck out cls. (iii) and (iv) which excepted from consideration as a day of unemployment or as a day of sickness, any days in any registration period in which the employee had certain specified earnings.

1946—Subsec. (a–1). Act July 31, 1946, § 309(a), (b), designated provisions of former subsec. (a) which apply both to days of unemployment and to days of sickness as subsec. (a–1) and changed cl. (ii) to include sickness and maternity benefits.

Subsec. (a–2). Act July 31, 1946, § 309(c), designated provisions of former subsec. (a) which apply only to days of unemployment as subsec. (a–2).

Subsecs. (b) to (e). Act July 31, 1946, § 310, changed references to subsec. (a) of this section to refer to subsec. (a–2).

1940—Subsec. (a)(ii). Act Oct. 10, 1940, § 14, inserted provisions relating to employee’s failure to comply with instructions of the Board.

Subsec. (a)(iv). Act Oct. 10, 1940, § 15, substituted “registration period” for “half-month”.

Subsec. (a)(v). Act Oct. 10, 1940, § 16, struck out applicability to employee having a right to receive compensation or other wages in lieu of notice, and inserted provisions relating to recovery of certain other payments and inapplicability of paragraph under specified conditions.

Subsec. (a)(vi). Act Oct. 10, 1940, § 17, substituted provisions relating to earnings of employees during any day in any registration period, for provisions relating to earnings of employees during any day in any half-month.

Subsec. (a)(vii), (viii). Act Oct. 10, 1940, § 18, added cls. (vii) and (viii).

1939—Subsec. (a). Act June 20, 1939, generally revised criteria for determining what shall not be considered as a day of unemployment with respect to any employee.

Subsec. (b). Act June 20, 1939, substituted provisions setting forth criteria for determining nonapplicability of disqualification provided in subsec. (a)(iii) of this section, for provisions setting forth criteria for determining nonapplicability of disqualification provided in subsec. (a)(v) of this section.

Subsecs. (c) to (e). Act June 20, 1939, substituted references to subsec. (a)(ii) of this section for references to subsec. (a)(iii) or (iv) of this section.

Effective Date of 1983 Amendment

Amendment by Pub. L. 98–76 applicable to compensation paid for services rendered after Dec. 31, 1983, see section 411(b) of Pub. L. 98–76, set out as a note under section 351 of this title.

Effective Date of 1974 Amendment

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of Title 42, The Public Health and Welfare.

Effective Date of 1968 Amendment

Amendment by section 204(a) of Pub. L. 90–257 effective with respect to calendar days in benefit years beginning after June 30, 1968, and amendment by section 204(b) of Pub. L. 90–257 effective with respect to voluntary leaving of work (within the meaning of subsec. (a–2)(i) this section) after February 15, 1968, see section 208 of Pub. L. 90–257, set out as a note under section 352 of this title.

Effective Date of 1963 Amendment

Section 302(b) of Pub. L. 88–133 provided that: “The amendment made by subsection (a) [amending this section] shall be effective only with respect to an employee who leaves work voluntarily after the date of enactment of this Act [Oct. 5, 1963].”

Effective Date of 1959 Amendment

Amendment by Pub. L. 86–28 effective with respect to benefits accruing in general benefit years which begin after the benefit year ending June 30, 1958, and in extended benefit periods which begin after Dec. 31, 1957, see section 309 of Pub. L. 86–28, set out as a note under section 351 of this title.

Effective Date of 1958 Amendment

Amendment by Pub. L. 85–927 effective with respect to days in benefit years after the benefit year ending on June 30, 1958, see section 207(a) of Pub. L. 85–927, set out as a note under section 351 of this title.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

Effective Date of 1951 Amendment

Amendment by act Oct. 30, 1951, effective with respect to registration periods beginning on and after Jan. 1, 1952, see section 28 of act Oct. 30, 1951, set out as a note under section 351 of this title.

Effective Date of 1946 Amendment

Amendment by act July 31, 1946, effective July 1, 1947, see section 403 of act July 31, 1946, set out as a note under section 352 of this title.

Effective Date of 1940 Amendment

For effective date of amendment by act Oct. 10, 1940, see section 1 of act Oct. 10, 1940, set out as a note under section 351 of this title.