

Railroad Retirement Board

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period in a period of continuing unemployment or sickness.

[65 FR 19648, Apr. 12, 2000]

§ 330.2 Computation of daily benefit rate.

(a) *Basic formula.* A qualified employee's daily benefit rate for a given benefit year, as defined in part 302 of this chapter, is an amount equal to 60 percent of the employee's daily rate of compensation for his or her last railroad employment in the applicable base year, but such rate will not exceed the maximum amount set forth in paragraph (b) of this section nor will it be less than \$12.70 per day.

(b) *Maximum daily benefit rate.* The maximum daily benefit rate is the product of the monthly compensation base, as computed under part 302 of this chapter, for the base year immediately preceding the beginning of the benefit year, multiplied by five percent. If the maximum daily benefit rate so computed is not a multiple of \$1.00, the Board will round it down to the nearest multiple of \$1.00.

(c) *When increase effective.* Whenever the annual application of the formula in paragraph (b) of this section triggers an increase in the maximum daily benefit rate, such increase will apply to days of unemployment or days of sickness in registration periods beginning after June 30 of the calendar year immediately following the base year referred to in paragraph (b) of this section.

(d) *Notice.* Whenever the annual application of the formula in paragraph (b) of this section triggers an increase in the maximum daily benefit rate, or if the annual application of the formula does not trigger an increase, the Board will publish a notice in the FEDERAL REGISTER explaining how it computed the maximum daily benefit rate for the year. The Board will also notify each employer of the maximum amount of the daily benefit rate. The Board will make the computation as soon as it has computed the amount of the monthly compensation base under part 302 of this chapter and will publish notice as soon as possible thereafter, but in no event later than June 1 of each year. Information as to the current amount of the maximum daily benefit

rate will also be available in any Board district or regional office.

(e) *Sources of information.* In determining an employee's daily rate of compensation for the purpose of computing his or her daily benefit rate, the Board will rely on information furnished by the employee and his or her last employer in the base year. An employee's earnings from employment not covered by the Railroad Unemployment Insurance Act are not considered in computing his or her daily benefit rate.

[56 FR 28702, June 24, 1991, as amended at 65 FR 19648, Apr. 12, 2000]

§ 330.3 Daily rate of compensation.

(a) *Definition.* An employee's daily rate of compensation is his or her straight-time rate of pay, including any cost-of-living allowance provided in any applicable working agreement. It does not include any overtime pay, penalty payment, or other special allowance except as hereinafter provided. An employer's or employee's report of the daily rate of compensation shall, in the absence of information to the contrary, and subject to the considerations set forth in this section and §§ 330.4 and 330.5, be considered to show the daily rate of compensation of the employee by or for whom the report has been furnished. Where a rate other than a daily rate is reported, the Board will convert it to a daily rate.

(b) *Hourly, weekly or monthly rate.* An hourly rate shall be converted to a daily rate by multiplying such hourly rate by the number of hours constituting a working day for the employee's occupation or class of service. A weekly or monthly rate shall be converted to a daily rate by dividing such rate by the number of working days constituting the work week or work month, as the case may be, for the employee's occupation or class of service.

(c) *Mileage rate.* When a collective bargaining agreement provides for payment of compensation on a mileage basis, the employee's daily rate of compensation is his or her rate of pay for the number of miles constituting a basic day, including any allowance, as prescribed by the agreement, that is added to his or her basic rate of pay for

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the number of miles constituting a basic day.

(d) *Piece rate or tonnage rate.* Where a piece rate or tonnage rate is reported, the daily rate of compensation shall be determined by computing the employee's average earnings per day for the days on which he or she worked substantially full time (excluding any overtime pay or penalty rates) at such piece rate or tonnage rate during the last two pay periods in which he or she engaged in such work in the base year.

(e) *Commissions or percentage of sales.* Where the compensation reported consists of or includes commissions or percentages of sales, the daily rate of such commissions or percentage of sales shall be determined by computing the employee's average net commissions or percentage earnings (excluding any amounts he or she received to compensate him or her for expenses) per day for the days in the last two pay periods in which he or she worked on a commission or percentage basis in the base year.

(f) *International service.* In the case of an employee who, on his last day of employment in the base year, worked partly outside the United States and partly in the United States for an employer not conducting the principal part of its business in the United States, the employee's daily rate of compensation shall be determined in the same manner as it would if all his service on that day had been rendered in the United States.

§ 330.4 Last railroad employment in the base year.

The phrase "last railroad employment in the applicable base year," as used in § 330.2(a) of this part, means generally the employee's last "service performed as an employee," within the meaning of section 1(g) of the Railroad Unemployment Insurance Act. If an employee did not actually perform any service as an employee in the applicable base year (the calendar year preceding a benefit year) but did receive qualifying compensation such as vacation pay or pay for time lost for days in such base year, the Board will consider that his or her last railroad employment in the base year was the employment on which the qualifying com-

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penensation was based. The daily rate of such compensation shall be deemed to be the employee's daily rate of compensation for purposes of this part. If an employee's last railroad employment in the base year was casual or temporary work and was performed while on furlough from other base year railroad employment, the Board will disregard the daily rate of compensation paid for the casual or temporary work if such rate of compensation produces a daily benefit rate lower than the daily benefit rate based on the daily rate of compensation for the employment from which the employee was furloughed.

§ 330.5 Procedure for obtaining and using information about daily rate of compensation.

(a) *Information furnished by employers.* Every employer, as defined in part 301 of this chapter, shall furnish information to the Board with respect to the daily rate of compensation of each employee for his or her last employment in the applicable base year. The employer shall make such report when it files its annual report of compensation in accordance with part 209 of this chapter and shall use the form prescribed by the Board for that purpose. If an employee's last daily rate of compensation in the base year is \$99.99 or more, the employer may report such rate as \$99.99 instead of the employee's actual last daily rate of compensation. In the absence of evidence to the contrary or a challenge by the employee, the daily rate of compensation provided by an employer under this section shall be used to compute a qualified employee's daily benefit rate. If an employer fails to report the last daily rate of compensation for a qualified employee who has applied for benefits or if an employee challenges the daily rate reported by an employer, the procedure in paragraphs (b) and (c) of this section will apply.

(b) *Information furnished by employee.* The Board will afford an employee an opportunity to establish his or her last daily rate of compensation if the base year employer did not report a rate for the employee on its annual report of