

## § 301.4

by railroad, subject to part I of the Interstate Commerce Act.

[Board Order 40-368, 5 FR 2718, Aug. 1, 1940, as amended by Board Order 41-526, 7 FR 97, Jan. 6, 1942]

### § 301.4 Who are employers.

The provisions of § 201.1(k) and the provisions of §§ 202.2 through 202.15 of this chapter shall be applicable to the determination of who are employers under the Railroad Unemployment Insurance Act to the same extent and in the same manner as they are applicable to the determination of who are employers under the Railroad Retirement Act of 1937.

[Board Order 40-368, 5 FR 2718, Aug. 1, 1940]

## PART 302—QUALIFIED EMPLOYEE

Sec.

- 302.1 Introduction.
- 302.2 Definitions.
- 302.3 Qualifying conditions.
- 302.4 Nonqualifying earnings or payments.
- 302.5 Accelerated benefit year.
- 302.6 Publication requirements.
- 302.7 Establishing base year service and compensation.

AUTHORITY: 45 U.S.C. 362(1).

SOURCE: 56 FR 6966, Feb. 21, 1991, unless otherwise noted.

### § 302.1 Introduction.

This part sets forth the base year service and compensation required of an employee to qualify for benefits under the Railroad Unemployment Insurance Act with respect to a benefit year. Under the Act, only employees who satisfy the qualifying conditions of section 3 of the Act may be paid benefits. No provision is made for payment of dependents benefits for an employee's spouse or children. A qualified employee who claims benefits must demonstrate that he or she is eligible for benefits in accordance with the other provisions of the Act and this chapter. However, a qualified employee who is disqualified under any of the provisions of section 4 of the Act does not forfeit his or her status as a qualified employee.

### § 302.2 Definitions.

*Base year.* The term "base year" means the completed calendar year im-

## 20 CFR Ch. II (4-1-25 Edition)

mediately preceding the beginning of the benefit year.

*Benefit year.* The term "benefit year" means the 12-month period beginning July 1 of any year and ending June 30 of the next year. If a registration period begins in June and ends in July, the benefit year ending date is deemed to be the last day of such registration period. If an employee is eligible for payment of extended benefits, the benefit year ending date for such employee will be June 30, or the last day of his or her extended benefit period, whichever date is later.

*Compensation.* The term "compensation" means generally any form of earnings or money remuneration earned on the basis of railroad employment during any month, excluding any amount in excess of the monthly compensation base for that month and also excluding payments of the character described in § 302.4 of this part.

*Monthly compensation base.* The term "monthly compensation base" means the greater of \$600, or the amount calculated using the following formula:

$$MCB = 600 \left( 1 + \frac{A - 37,800}{56,700} \right)$$

For the purpose of this formula, "MCB" is the dollar amount of the monthly compensation base, and "A" is the amount of the Tier I tax base under section 3231(e)(2) of the Internal Revenue Code for the calendar year for which the monthly compensation base is being computed. If the dollar amount computed under this formula is not a multiple of \$5, it shall be rounded to the nearest multiple of \$5. If the dollar amount computed is equidistant between two multiples of \$5, it shall be rounded up the nearest multiple of \$5.

*Registration period.* With respect to unemployment benefits, the term "registration period" has the meaning given in § 325.1(c) of this chapter. With respect to sickness benefits, the term "registration period" has the meaning given in § 335.1(d) of this chapter.

[56 FR 6966, Feb. 21, 1991; 56 FR 10302, Mar. 11, 1991]

## Railroad Retirement Board

## § 302.5

### § 302.3 Qualifying conditions.

(a) *Basic requirements.* To qualify for benefits with respect to a benefit year, an employee:

(1) Must have earned compensation in an amount equal to at least 2.5 times the amount of the monthly compensation base during his or her base year; and

(2) If such employee has earned no compensation prior to such base year, he or she must have earned compensation in at least five months during his or her base year.

(b) *Deemed service months disregarded.* For purposes of paragraph (a) of this section, service months deemed under § 210.3 of this chapter shall be disregarded.

### § 302.4 Nonqualifying earnings or payments.

The following types of earnings or payments do not count as compensation for the purpose of determining whether an employee has satisfied the base year qualifying conditions:

(a) Compensation earned as an employee representative, as defined in part 205 of this chapter, or as an employee of a local lodge or division of a railway labor organization;

(b) Tips;

(c) Payments under nongovernmental plans for unemployment, maternity or sickness insurance;

(d) Personal injury settlements or judgments, unless a portion thereof represents pay for time lost;

(e) Wages from employment that is subject to the Federal Unemployment Tax Act;

(f) Earnings from self-employment or investments;

(g) Pay for military service;

(h) Remuneration for service which is performed by a nonresident alien individual for the period he or she is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be; and

(i) Any payment that is not subject to contributions under section 8 of the

Railroad Unemployment Insurance Act.

[56 FR 6966, Feb. 21, 1991; 56 FR 10302, Mar. 11, 1991]

### § 302.5 Accelerated benefit year.

(a) *Eligibility conditions.* An employee who is not a qualified employee with respect to the benefit year in effect at the time of his or her application for benefits may be eligible for an “accelerated” benefit year if he or she meets all of the following conditions.

(1) The employee has 10 or more years of service, as defined in part 210 of this chapter, prior to the beginning of his or her current period of unemployment or sickness;

(2) The employee has satisfied the qualifying conditions as defined in § 302.3 of this part with respect to the next succeeding benefit year;

(3) The employee’s current period of unemployment or sickness includes at least 14 consecutive days of unemployment or 14 consecutive days of sickness; and

(4)(i) If the applicant is claiming unemployment benefits, he or she did not voluntarily leave work without good cause or did not voluntarily retire, or

(ii) If the applicant is claiming sickness benefits, he or she has not attained age 65 or has not voluntarily retired.

(b) *Beginning date of benefit year.* An accelerated benefit year begins on the first day of the month during which the employee’s period of 14 consecutive days of unemployment or 14 consecutive days of sickness begins. Thus, for example, if an eligible employee has 14 consecutive days of unemployment from May 29–June 11, his or her benefit year beginning date is May 1, that is, he or she does not have to wait until July 1 to begin receiving benefits. If such employee also had a claim for the period May 15 to May 28, such claim may then be compensable or may serve as the waiting period even though the claim did not consist of 14 days of unemployment. His or her benefit year ends June 30 of the following year.

(c) *Effect of attaining age 65.* If a benefit year begins early for the purpose of paying sickness benefits and the employee attains age 65 before July 1 of

## § 302.6

the general benefit year, sickness benefits may not be paid for any day from the day on which the employee attained age 65 up to and including June 30, but unemployment benefits may be paid in this interim period if the employee is otherwise eligible. Sickness benefits may be paid for days of sickness beginning July 1 or later. If a benefit year begins early for the purpose of paying unemployment benefits, attainment of age 65 will have no effect on the employee's rights to sickness benefits, other than extended sickness benefits, in the accelerated benefit year. An employee is deemed to attain age 65 on the day before his or her sixty-fifth birthday.

### § 302.6 Publication requirements.

(a) *Publication of base year compensation requirement.* On or before December 1 of each year, the Railroad Retirement Board will compute the amount of base year compensation that an employee must have during the following calendar year in order to be a qualified employee on the basis of such compensation. Within 10 days of such computation, the Board will publish a notice in the FEDERAL REGISTER of the amount so computed and will notify each employer of that amount. Information as to such qualifying amount may also be obtained from any district or regional office of the Railroad Retirement Board or from the Bureau of Unemployment and Sickness Insurance.

(b) *Notices.* The Board will provide employers with notices of their employees' rights to benefits under the Railroad Unemployment Insurance Act. The Board will arrange with employers to post such notices in such numbers and in such places as may be necessary to ensure that they will be seen by the greatest number of employees.

### § 302.7 Establishing base year service and compensation.

(a) *Employer reports.* In determining whether an applicant for benefits is a qualified employee, the Board will rely initially upon reports of base year service and compensation provided by employers in accordance with part 209 of this chapter.

## 20 CFR Ch. II (4-1-25 Edition)

(b) *No employer report located.* If the Board cannot locate the employer's report of base year service and compensation for an applicant, the applicant will be afforded an opportunity, by completing the form prescribed by the Board, to provide such other statement, information, evidence or documentation to establish his or her status as a qualified employee. An employee's claim for credit for service or compensation that is not shown in the Board's records of service and compensation shall be verified in accordance with §§ 210.7 and 211.14 of this chapter.

(c) *Employer fails to report.* When an employer has failed or refuses to file a report under part 209 of this chapter, an employee may establish his or her base year service and compensation by submitting:

(1) Statements, under oath or otherwise, signed by an official or duly authorized employee of a Federal or State governmental agency, based upon reports to the agency by the employer; or

(2) Statements, under oath or otherwise, signed by an officer or a duly authorized employee of the employer, or if not so signed, on forms prepared by the employer.

(Approved by the Office of Management and Budget under control numbers 3220-0025 and 3220-0070)

## PART 319—PROCEDURE FOR DETERMINING LIABILITY FOR CONTRIBUTIONS OR REPAYMENTS OF BENEFITS

Sec.

319.1 Statutory provisions.

319.2 Procedure for determining entitlement to benefits awarded where employer status is denied, and for determining liability for contributions.

AUTHORITY: Sec. 12, 52 Stat. 1107, as amended; 45 U.S.C. 362.

### § 319.1 Statutory provisions.

\* \* \* In any case in which benefits are awarded to a claimant in whole or in part upon the basis of pay earned in the service of a person or company found by the Board to be an employer as defined in this Act but which denies that it is such an employer, such benefits awarded on such basis shall be