



**Legal Opinion L-2001-14**  
**September 28, 2001**

U.S. Railroad Retirement Board Phone: (312) 751-7139  
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Chicago Illinois, 60611-2092 Web: <http://www.rrb.gov>

**TO** : Ronald Russo  
Director of Policy and Systems

**FROM** : Steven A. Bartholow  
General Counsel

**SUBJECT** : Burlington Northern Santa Fe Sick Leave Policy

This is in reply to your memorandum of September 13, 2001, asking whether the payments made pursuant to the Burlington Northern Santa Fe sick leave policy constitute compensation under the Railroad Retirement Act.

The plan provides salaried employees salary continuation for absences due to illness or injury, or for care of a spouse, child, or parent, on an intermittent basis up to a total of ten days per calendar year.

The plan also provides a Short-Term Disability Program for employees with three months of company service and at least one day of salaried service. To qualify for benefits, an employee must be off work due to illness or injury for at least six consecutive calendar days. Certain procedures must be followed: the employee must contact his supervisor; the employee's department must submit a specified form; and the employee must submit medical forms. Benefits are 100 percent of regular salary, payable for a maximum of 182 days.

As cited in Legal Opinion L-2000-25, mentioned in your memorandum, section 1(h)(6)(v) of the Railroad Retirement Act excludes from the definition of "compensation:" the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, any employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of sickness or accident disability or medical or hospitalization expenses in connection with sickness or accident disability \* \* \*.

Accordingly, a payment made pursuant to a plan as included in section 1(h)(6)(v) would not constitute compensation. As quoted in that legal opinion, paragraph 10,274.07 of the CCH Unemployment Insurance Reporter defines a plan or system as including the following characteristics:

- (1) makes provisions for employees generally, and/or their dependents; or a class or classes of employees and/or their dependents; provides for payment to or on behalf of an employee or any of the employee's dependents; and assures employee awareness, i.e., the terms and conditions must be communicated directly or indirectly, via a bulletin board or similar method customarily used by the employer, to all employees or the class affected;
- (2) contains definite payment eligibility standards that may include length of service, salary, classification, or occupation, but may not be based solely on need, efficiency, or loyalty;
- (3) contains a formula for determining the minimum benefit amount for each eligible employee; and
- (4) specifies the minimum period of payments, e.g., payments will be made for the duration for the employee's illness, or for as long as the employment relationship continues.

Clearly the Short-Term Disability Program of the BNSF meets the above criteria. It makes provision for employees generally and is communicated to them. It contains definite eligibility standards. It contains a formula for determining the minimum benefit amount (i.e., the amount of salary), and specifies the minimum period of payments (i.e., the employee must be off work for six days, in which case he is eligible for benefits from the first day up to 182 days).



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In addition, the sick leave payments described in the BNSF plan also meet those criteria. The plan for sick leave payments makes provision for employees generally and is communicated to them. It contains definite eligibility standards (all salaried employees). It contains a formula for determining the minimum benefit amount (i.e., the amount of salary), and specifies the minimum period of payments (i.e., one-half day, up to ten days per year).

Accordingly, the BNSF sick leave policy, or the salary continuation system, constitutes a plan under the foregoing definition set out in section 1(h)(6)(v) of the Railroad Retirement Act. Thus, payments under that plan should be excluded from the definition of "compensation" under the Railroad Retirement Act.