

2400 Provisions of the Act, As Amended October 9, 1996

Section 2(a)(1) provides, in part that,

- "(ii) Waiting period for first registration period. -- Benefits shall be payable to any qualified employee for each day of unemployment in excess of 7 during that employee's first registration period in a period of continuing unemployment if such period of continuing unemployment is the employee's initial period of continuing unemployment commencing in the benefit year."
- "(ii) Waiting period for first registration period. -- Benefits shall be payable to any qualified employee for each day of sickness in excess of 7 during that employee's first registration period in a period of continuing sickness if such period of continuing sickness is the employee's initial period of continuing sickness commencing in the benefit year. For the purposes of this clause, the first registration period in a period of continuing sickness is that registration period that first begins with 4 consecutive days of sickness and includes more than 4 days of sickness."

Note: Prior to amendments to the RUIA in October 1996, no benefits were payable for an employee's first registration period having more than 4 days of unemployment and sickness in each benefit year. This resulted in a 14-day waiting period. The change to a 7-day waiting period applies to periods of continuing unemployment and periods of continuing sickness beginning on and after October 9, 1996.

2401 General

The term "waiting period" refers to the first 7-days of an employee's first registration period in the first period of continuing sickness and first period of continuing unemployment beginning in the benefit year. Benefits are payable for each day of unemployment or sickness in excess of 7 for an employee's first registration period in a period of continuing unemployment or period of continuing sickness. A second waiting period, as provided for prior to the October 1996 amendments, is no longer required when a claimant's benefit claims continue into a new benefit year. The term "first valid registration period" is also used to refer to the "waiting period."

2402 Establishing the Waiting Period

In general, the first registration period established in the first period of continuing sickness and first period of continuing unemployment in a benefit year constitutes the waiting period, provided there are at least 5 days of unemployment or sickness in the registration period and in the case of sickness benefits, the period

contains 4 consecutive days of sickness. Therefore, as few as 5 days of either unemployment or sickness can satisfy the benefit year waiting period requirement. No benefits are payable on the basis of a waiting period claim, however, unless there are at least 8 days of sickness or unemployment in the period.

The waiting period cannot begin until the employee establishes a valid day of sickness or unemployment. Accordingly, a waiting period may not begin with rest days followed immediately by days of employment or paid vacation, since such a registration is not in accordance with Part 325.2(c) of the regulations. In such a case, the waiting period is to begin with the first day of unemployment or sickness after the employee's date last worked or after the days to which remuneration is attributable.

2403 Possibility of Earlier Waiting Period

If a registration period is the first one to be recorded on a claimant's record for a benefit year and the period is an otherwise compensable period, the registration period will satisfy the waiting period requirement, even though there is a possibility that an earlier registration period may subsequently be determined to satisfy the waiting period requirement. If a claim for an earlier period is subsequently filed and meets the requirements, a redetermination is to be made of the claim previously held to satisfy the waiting period requirement, and benefits paid accordingly.

For example, an employee files a statement of sickness late for an infirmity beginning April 20. His first day of sickness is determined to be May 25. He claims all days as days of sickness in the claim period May 25 through June 7. His 7-day waiting period is satisfied in the claim period May 25 through June 7 leaving 7 days payable. The employee then provides information which allows conditional filing of his statement of sickness to April 20. The claim period April 20 through May 3 becomes the waiting period, and benefits are payable for subsequent registration for days of sickness in excess of 4, including days in the period beginning May 25 that were included in the original waiting period.

2404 Adjusting the Waiting Period

2404.01 General

As a general rule, an employee's earliest day of unemployment or sickness should be allowed regardless of the 7-day waiting period provision. Many employees have supplemental benefit plans that provide for payment of benefits for days in the waiting period(s), so the earliest permissible day is, in general, to the advantage of the employee. This rule also applies to days of unemployment or sickness prior to October 9, 1996, even though such days will result in a 14-day waiting period and possibly back-to-back waiting periods if claims begins at

the end of one benefit year and continue into the next. An exception may be made, however, if the employee insists on a later day to avoid back-to-back 14-day waiting periods or for some other legitimate reason.

If the employee requests a different beginning for the waiting period, it may be deemed that no registration was made and the waiting period may be adjusted. Such requests must be in writing and addressed to Operations-RUIA Adjudication, Attn: Claims Operations. Once the change is made, it cannot be reversed.

2404.02 Redetermination of days in the waiting period

The waiting period may be redetermined to change the number of days of unemployment or sickness. As long as there are 5 or more days of unemployment or sickness remaining, and in the case of sickness benefits, the days of sickness begin with 4 consecutive days of sickness, the waiting period remains valid.

For example, Employee A last worked December 31, and is initially determined to have 14 consecutive days of sickness from January 1 through 14. If it is subsequently determined that he received vacation pay for January 3, then the days January 1, 2 and 3 may not count toward the required five days of sickness in Employee A's first valid period. January 1 and 2 may not count because they are not part of, or preceded by 4 consecutive days of sickness. January 3 may not count because remuneration is attributable to that day. However, because a sufficient number of days of sickness remain in the claim period, the 7-days waiting period is still satisfied.

2405 Erroneous Determination of Waiting Period

2405.01 Claimant not at fault

When it is found that a claim previously considered to be a first valid registration period can no longer be considered the first valid period, determinations already made on claims for later periods may not be erroneous. The later determinations would not be erroneous if at the time of the determination:

1. The adjudicating office could not reasonable have been expected to know that a first valid registration period had not been established; and
2. The claimant is not at fault for establishment of the erroneous first valid period; and
3. The later determinations were not otherwise erroneous.

When it is found that a claimant has no first valid registration period, no further benefits of that type are to be paid to the claimant in the benefit year unless a

first valid registration period is thereafter established. In such a case, the next claim to process in the same benefit year will be determined to be the first valid period. Form Letter ID-11V will automatically be prepared and referred to a claims examiner for checking and release. Form Letter ID-11V advises the claimant that his or her recent claim was used to reestablish a first valid period. Such a situation may occur, for example, where a claimant receives pay for time lost for a period that previously satisfied the waiting period requirement.

If an attempt is made to redetermine a claim already on record to increase benefits, but there is no first valid period established, the redetermination will not take place and the case will be referred to an examiner for reason "690". Examiners are to notate the referral as a "suspense payable" and file the referral in the claimant's folder. If a first valid period is subsequently established, the redetermination action is to be completed by the next examiner who handles the case so the amount due the claimant is paid.

2405.02 Claimant at fault

If a first valid period is established erroneously through fault of the claimant, then benefits for the first succeeding compensable period are recoverable. Such first succeeding period, after redetermination to establish the amount recoverable from the claimant, may be again redetermined to establish a waiting period. For reasons of administrative finality, further adjustment of the record to reflect the change in first valid periods, such as reexhaustion of normal benefits and alteration of extended benefit periods, is not to be undertaken once rights to benefits have been exhausted or the benefit year has ended. Questionable cases should be briefed to Policy and Systems.

2406 Effect of Section 4(a-1)(ii) on the Waiting Period

The receipt of social insurance payments does not prevent a registration period from being considered a first valid period if the apportionable amount of social insurance is less than the amount of benefits otherwise payable for days in excess of 4 in a period containing 14 days of sickness or unemployment. However, regardless of the amount of social insurance payments, receipt of such payments, after a first valid period has been correctly determined, does not cancel such first valid period.

2407 Effect of Section 12(o) on the Waiting Period

Settlements under section 12(o) do not keep days from being days of sickness, but may prevent payment of benefits for such days. Therefore, a claim containing days of sickness to which section 12(o) applies may establish a first valid period. Recovery under section 12(o) does not cancel a first valid registration period previously established.

2408 Effect of Section 2(f) on the Waiting Period

If days in a first valid period are redetermined under section 2(f) leaving less than 5 days of unemployment or sickness, additional benefits of that type may not be paid in the benefit year unless a first valid period is thereafter established.

2409 Strike 'Waiting Period'

Section 2(a)(1)(A)(iii) provides, in effect, that no benefits are payable for an employee's first 14 days of unemployment due to a strike in the establishment at which the employee otherwise works. An employee who becomes unemployed due to a strike and satisfies the strike waiting period by filing a claim having 5 or more days of unemployment need not establish a 7-day 'waiting period' in the same benefit year. The strike 'waiting period' satisfies the general benefit year 'waiting period requirement'.

On the other hand, an employee who establishes a waiting period, returns to work, and is subsequently unemployed in the same benefit year due to a strike in the establishment where he or she works, must satisfy the strike waiting period to become eligible for benefits for days of unemployment due to the strike. An established general benefit year waiting period does not satisfy a subsequent strike waiting period requirement.

If a strike begins in one benefit year, continues into a second benefit year and the days are in one period of continuing unemployment, no strike waiting period or general benefit year waiting period is required at the beginning of the second benefit year.

2410 Suspense Recoverable Amounts

In rare circumstances, the change to an earlier first valid period when claims are filed out of sequence may generate an amount recoverable. The adjustment type will be "08". The case will refer a claims examiner for verification that the correct processing occurred. If the processing is correct, claims examiners are to take no action on the referral.

The amount due will offset against the next claim to process in the same benefit year, but will not be included in the "claimant owes" amount and will not be included in the automated follow-up system. No recovery letter is to be sent to the claimant.

If the earlier claim is clearly not to the advantage of the claimant, the claims examiner is to redetermine the claim and restore the registration periods to offset the debt. For example, allowing an earlier filing date and establishing an amount recoverable may be to the claimant's advantage if benefits payable for the next registration period to process will offset the entire debt. So, unless there is an

actual EEI or other evidence that no benefits would be payable for the next registration period, the earlier filing date should be assumed to be to the claimant's advantage. If, on the other hand, when the next claim processes it is clear that the earlier filing date results in less total benefits being payable or a debt remaining, the original filing date and registration period sequence should be restored.

2411 Form Letters Prescribed

Form Letter ID-11v is used to notify a claimant that no benefits are payable for a claim because the original waiting period claim is no longer valid and thus the recent claim establishes a new waiting period. The letter is automatically generated and referred to an examiner for review and release when a claim that is not the earliest in the benefit year is processed or redetermined and used to reestablish a waiting period.

