

Program Letter

United States
Railroad Retirement Board



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SUBJECT: Employer Responsibilities Under Section 12(o) of the
Railroad Unemployment Insurance Act (RUIA)

This program letter supplements program letter 2007-02 from November 2006. It explains that the Railroad Retirement Board (RRB) will no longer reduce its lien for medical and hospital expenses where the employer and rail labor have agreed that medical expenses paid by the employer shall not be recovered in an action under the FELA. The National Carriers' Conference Committee has informed the RRB which employers are parties to the 1975 Agreement providing for such arrangement. For other employers, this program letter explains how they may provide the RRB information about such insurance voluntarily. **Copies of this program letter should be provided to all claims department, labor relations and payroll department personnel involved in the processing and payment of personal injury settlements.** Printable versions of these program letters are available at RRB.gov.

General Information – RUIA Section 12(o)

Under section 12(o) of the RUIA, the RRB is entitled to reimbursement of benefits paid for days of sickness resulting from any injury or infirmity for which the employee is paid a personal injury settlement or damages. Section 12(o) of the RUIA reads as follows:

(o) Benefits payable to an employee with respect to days of sickness shall be payable regardless of the liability of any person to pay damages for such infirmity. The Board shall be entitled to reimbursement from any sum or damages paid or payable to such employee or other person through suits, compromise, settlement, judgment, or otherwise on account of any liability (other than a liability under a health, sickness, accident, or similar insurance policy) based upon such infirmity, to the extent that it will have paid or will pay benefits for days of sickness resulting

from such infirmity. Upon notice to the person against whom such right or claim exists or is asserted, the Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement.

RRB Notices Regarding Section 12(o)

A notice of lien (**Form ID-30B**) is mailed to an employer when an applicant for sickness benefits indicates that he or she has filed or expects to file a claim against the employer for personal injury. Form ID-30B is notice of the RRB's right to reimbursement of sickness benefits from any sum or damages payable on account of liability for the employee's injury or illness.

Prior to payment of a personal injury settlement, railroad employers should contact the RRB's Sickness and Unemployment Benefits Section to obtain information about the amount of benefits to be deducted from the award for reimbursement to the RRB under section 12(o).

Amount of Reimbursement

The RRB's regulations specify the amount of reimbursement due the RRB under section 12(o) of the RUIA.

Title 20, Section 341.5 of the Code of Federal Regulations states:

§ 341.5 Amount of reimbursement.

(a) The Board shall receive as reimbursement the lesser of:

(1) The amount of sickness benefits paid to the employee for the infirmity for which he or she recovers any sum or damages; or

(2) The net amount of the sum or damages paid to the employee for the infirmity, after subtracting the amount of the expenses listed in paragraph (b) of this section.

(b) The expenses that may be subtracted from the amount of damages recovered are:

(1) The medical and hospital expenses that the employee incurred because of his or her injury. These expenses are deductible even if they are paid under an insurance policy covering the employee or are covered by his or her membership in a medical or hospital plan or association. But such expenses are not deductible if they are not covered by insurance or by membership in a medical or hospital plan or association and are consequently paid by a railroad or other person directly to the doctor, clinic or hospital that provided the medical care or services.

(2) The cost of litigation. This includes both the amount of the fee to which the attorney and the employee have agreed and the other expenses that the employee incurred in the conduct of the litigation itself.

Medical and Hospital Expenses Covered by FELA Liability Insurance

In Legal Opinion L-2011-06, issued July 2011, the General Counsel reviewed the provisions of the Health and Welfare Agreement that was entered into by railroad management represented by the National Carriers' Conference Committee and railroad labor represented by the Brotherhood of Maintenance of Way Employees on October 22, 1975. Under Article III, Section A of the 1975 Agreement, the parties specify that employee medical expenses are paid to the providers directly by the insurance company United Healthcare and will be offset against any right of recovery. The General Counsel concluded that in calculating the net amount of the sum or damages paid to an employee for an infirmity, medical and hospital expenses incurred as a result of an on-the-job injury are not deductible from the damages if the medical and hospital expenses are paid on the employee's behalf pursuant to the 1975 Health and Welfare Agreement.

Based on the General Counsel's advice in Legal Opinion L-2011-06, for purposes of calculating the amount of sum or damages subject to the lien under RUIA section 12(o), if the sum or damages under the FELA is assessed against an employer which is subject to the 1975 Agreement, then the RRB will no longer reduce the sum or damages by the medical and hospital expenses of the employee which are paid pursuant to the 1975 Agreement.

Request for Information

The 1975 Health and Welfare Agreement covers over 100 employers. The National Carriers' Conference Committee will keep the RRB advised of the parties to the agreement, so those employers do not need to contact the RRB about this policy change unless they have questions.

Employers who are *not* a party to the 1975 agreement, however, may wish to provide the RRB information if they have FELA insurance and have agreed with labor to offset expenses. These plans pay employee medical and hospital expenses directly to the providers as part of a FELA liability insurance plan rather than as insurance provided as a fringe benefit portion of an employees' compensation paid by an employer. The RRB will review the information to determine whether medical and hospital insurance payments under the plan are similar to those of the 1975 Health and Welfare Agreement. If this information is not submitted, the RRB will deduct medical expenses pursuant to Title 20, Section 341.5 of the Code of Federal Regulations when determining the net amount of reimbursement due to the RRB.

Employers who are not parties may, if they wish, provide us with:

- The name and effective date of each such employer indemnity plan or agreement,
- The name of the insurance company that administers the plan and pays the medical and hospital expenses,
- The craft(s) of the employees covered by the plan
- Confirmation that the parties agreed to the offset of expenses

The voluntary information may be provided by letter to Policy and Systems, Office of Programs, U. S. Railroad Retirement Board, Chicago, Illinois 60611. As you create, revise or terminate plans, be sure to send us notice. Please direct any notice and questions to Policy and Systems at the contact number and email address above.