

Rail Employer Reporting Instructions
Part IV - Particular Types of Compensation Payments
Chapter 6: Pay for Time Lost

Pay for Time Lost Defined

[Pay for time lost](#) is a type of creditable compensation attributable to lost earnings for an identifiable period of absence from active service. Its statutory basis is found in Section 1(h)(2) of the Railroad Retirement Act (RRA), Section 1(h)(I) of the Railroad Unemployment Insurance Act (RUIA), and Sections 211.3 and 322.6 of the Railroad Retirement Boards regulations. *Pay for time lost is not the purchase of service credits by payment of railroad retirement taxes.*

Types of Pay for Time Lost

Types of pay for time lost include, but are not necessarily limited to, the following:

- A personal injury award or settlement which allocates a portion of the damages as lost wages for a specific period following the date of injury;
- A reinstatement award which includes back pay for the period of lost wages (see [Chapter 5](#) in this part);
- Dismissal allowances (see [Chapter 7](#) in this part) or guaranteed wage agreement (see [Chapter 8](#) in this part); and
- An allowance paid for loss of earnings resulting from job displacement to a less remunerative position.

Time Lost NOT Considered Creditable Compensation

In the following two situations, an award for time lost will not result in creditable service and compensation. In the first situation no payment was actually made and the other is where a payment was made but because the recipient was not an employee, the payment was not subject to RRTA taxes.

- Reinstatement awards often include awards for time lost, possibly referred to as "back pay". If an award for time lost does not result in a payment to the employee, then no service or compensation is creditable under the RRA. This might occur if a reinstatement award is reduced for other earnings. If the award is reduced to zero, no service or compensation is creditable.
- Hiring discrimination awards may or may not include an element of time lost. If the payment is made to an individual who is not in an employment relation with the employer making the payment and the payment is not subject to RRTA taxes, the payment would not result in creditable service or compensation.

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Governing Principles

There are six principles one must follow in order to ensure that a payment qualifies as creditable pay for time lost for which service and compensation credit may be received.

1. *The payment must be made with respect to an identifiable period of time.*

An allocation may not be arbitrarily made to any period of missing service, but must relate to an actual period of absence. Therefore, an allocation based on a reinstatement may not be prior to the dismissal. The specific months must be identified on Form BA-4, Report of Creditable Compensation Adjustments.

2. *An employment relationship must exist in the months to be credited with the pay for time lost.*

As with all compensation, an employment relationship must exist for that period (see [20 CFR 204.6](#)). If a settlement agreement requires that an employee resign to receive the payment, the employment relationship ceases effective with the resignation. Allocation into the future is permissible as long as an employment relation is maintained. It may not be credited until the period has elapsed and proven to be time lost. There is no provision for crediting service in advance.

3. *The allocation must be related to the actual period of absence from service for which the payment is made.*

Pay for time lost due to a personal injury must be allocated to months after the date of injury. Service months allocated to months missing from an employee's record before the injury is not allowed.

4. *The amount of pay for time lost must relate to an employee's normal monthly pay.*

By regulation (see [20 CFR 211.3\(b\)](#)), a monthly allocation must be at least ten times the employee's daily pay rate in effect on the date of injury. For example, if an employee normally earned, \$120 a day at the time of absence, the amount of pay for time lost allocated to each month should be at least \$1,200.

NOTE: A higher compensation amount per month may be allocated but it cannot exceed the annual maximum earnings base limitations for the years involved.

5. *The railroad retirement tax obligation for the pay for time lost must be met.*

As with all compensation, pay for time lost is taxed under the Railroad Retirement Tax Act (RRTA) when [paid](#). See taxation of compensation in [Part III, Chapter 4](#). Because pay for time lost represents a period other than the current, the taxed amount and the creditable amount of the pay for time lost may differ.

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6. *An agreement for pay for time lost must specify whether or not the intention of the payment is to provide service and compensation credit under the RRA.*

If you do not intend to receive service and compensation credit for your pay for time lost, the agreement must say that.

Crediting Pay for Time Lost

Pay for time lost differs from other compensation in that the payment may not be credited when paid. It must be credited to the period for which the time was lost or earned. To prevent a shortage of service months, these three factors affecting service months must be considered:

1. *Do not allocate pay for time lost months or months for which the employee has already received service months.*

Because the period specified is the period for which service credit is due, a month allocated to the same month already on record may result in a shortage of the total months desired. In order to prevent the duplicate reporting of service months when you are not sure of the open months on record, contact the Compensation and Employer Services Center (CESC) via telephone (312-751-4992), email (CESC@rrb.gov), or mail (U.S. Railroad Retirement Board, Office of Programs, P&S-CESC, 844 North Rush Street, Chicago, IL 60611-1275) for verification of the months on record as of the date of the request.

2. *When an allocation is determined, do not consider deemed service months after the date of the personal injury in the total number of service months.*

In most instances, a pay-for-time-lost allocation increases service as well as compensation, often eliminating or reducing any deemed service months in the year(s) involved. Therefore, deemed service months in the year(s) of the allocation should not be considered in counting an employee's total service months. See [Part III, Chapter 1](#) for an explanation of deemed service months. An example illustrating why we advise ignoring deemed service when determining months to allocate can be found later in this chapter.

3. *Military service may, under certain conditions, be counted as railroad service under the RRA.*

Military service may be credited towards retirement benefits under certain conditions. To be creditable as compensation under the RRA, service in the U.S. Armed Forces must be preceded by railroad service in the same or preceding calendar year. For additional information about creditable Military Service see [IB-2, Railroad Retirement and Survivor Benefits](#).

The possibility that an employee has military service which meets the requirements to be creditable under the RRA should be considered because creditable military service may reduce the number of allocated months needed to attain eligibility for an annuity.

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Contact the [nearest office of the RRB](#) for assistance in determining whether a military service period is creditable. Be prepared to provide proof of that military service to the RRB.

Example of Allocating Service When Deemed Service Months Are Involved

Employee Bob Brakeman worked from January through April 18, 2015, when he was injured on the job. Mr. Brakeman returned to work on October 6, 2015, and worked through December. Mr. Brakeman was reported to have service months of January through April and October through December and creditable compensation of \$68,845. Based on the creditable Tier II earnings, Mr. Brakeman would be entitled to ten service months. Since seven months were reported, an additional three months may be deemed. ($\$68,845 \div \$7,350 = 9.3$, rounded up to 10 total months. The \$7,350 represents the 2015 Tier II monthly earnings base of \$88,200 divided by 12.) Because Mr. Brakeman has an employment relation in all months in 2015, the months of May, June, and July are deemed as service months.

In 2017, Mr. Brakeman is awarded a settlement for personal injury that includes pay for time lost due to the injury of \$1,500 per month. Because Mr. Brakeman has deemed service for the three months stated above, the pay for time lost amount of \$3,000 is erroneously allocated to cover the two remaining months of August and September 2016. Mr. Brakeman now has total Tier II compensation of \$74,675 in 2016 and reported service for the months January through April and August through December (10 months). Based on the Tier II compensation of \$74,250, Mr. Brakeman is entitled to 11 service months in 2016. [$\$74,675 \div (\$88,200 \div 12) = 10.1$ rounded up to 11 months], so he will be deemed one (1) additional month. The settlement was intended to provide Mr. Brakemen with 12 months of service, however, he is now short one service month.

Note: Deemed service months should NOT be counted when allocating pay for time lost. May through September should have been allocated as pay for time lost and Mr. Brakeman should have 12 service months in 2016. Deemed service months are the product of a calculation and when the components of the calculation are adjusted, the deemed months may also be adjusted.

Example of Crediting Compensation to Period Lost and Assessing Taxes When Paid

Employee Carry Clark was dismissed in July 2015. As a result of a Public Law Board decision, she was ordered reinstated with full seniority rights and full pay for the period July 1, 2015 through October 31, 2017. Ms. Clerk returned to work in November 2017 and in December received a payment of \$56,000, \$2000 per month for the period July 2015 through October 2017. The total amount of \$56,000 should be considered together with the other compensation paid to Ms. Clerk in November and December 2017 to determine the correct amount of railroad retirement tax due for 2017. The 2017 tax rates and maximum earnings bases are used to compute the tax. Service months and compensation in the amount of the award are creditable as if they had been earned in the period July 1, 2015 through October 31, 2017, using the appropriate maximums for that period. This award requires an adjustment to the prior years as follows:

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2015

- Increase service months for July through December
- Increase Tier I and Tier II compensation by \$12,000, or by amounts to bring 2015 compensation to the maximums
- Increase RUIA compensation by \$8,700 (\$1,455 x 6)

2016

- Increase service months for January through December
- Increase Tier I and Tier II compensation by \$24,000
- Increase RUIA compensation by \$17,460 (\$1,455 x 12).

Reporting Adjustments to the RRB

As with all compensation, withholding and depositing the proper taxes is not sufficient in itself to update an employee's record of service and compensation. Form BA-4, "Report of Creditable Compensation Adjustments", must be filed to correct 2015 and 2016 record of service and compensation. The amount of the settlement allocated for 2017 (\$20,000) should be included on the Form BA-3, "Annual Report of Creditable Compensation", filed for 2017, along with the regular earnings paid in 2017 via ERSNet by February 28, 2018. Remember, service months, Tier I, Tier II, and RUIA compensation are creditable based on an award for time lost.

If an employee has filed for an annuity, the employer will likely receive [Form G-88A.1](#), Request for Verification of Last Date Worked. Any current payments for time lost should be included on this form. The "date last work" should reflect the last day paid for lost time, if that date is later than the actual date worked.

Personal Injury Settlement

Allocation for time lost must relate to the time lost resulting from the injury. Therefore, the allocation cannot begin prior to the date of the injury.

If the personal injury claim includes time lost and the settlement or court order does not specify an amount for time lost, or does not allocate an amount to factors other than time lost, the entire amount of the settlement is presumed payable for time lost and compensation is creditable and taxable based on the full amount.

Employee in Receipt of RUIA Benefits

If a payment is made for time lost which covers a period for which unemployment or sickness benefits under the RUIA were previously paid, reimbursement is due the RRB. Contact the Claims Adjustment and Settlement Section for the correct amount to withhold from the award to reimburse the RRB. Refer to [Part VI Chapter 8](#), for more information on employers' responsibilities under Sections 2(f) and 12(o) of the RUIA.

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The amount withheld for reimbursement of benefits is in addition to employment taxes that must be withheld on a payment for time lost. Reimbursement of sickness benefits yields a tax credit for the employer of any Tier I employer tax paid. Reimbursement of unemployment benefits is also credited to the employer's record in determining the RUIA contribution rate.

Reopening a Pay for Time Lost Award

The reopening of a pay for time lost award to make an additional award of service and/or compensation is considered a correction of the original record. The law limits the period during which corrections to service and compensation records may be filed. The period during which corrections may be filed begins with the date the report of the original award was due at the RRB. See [Part V, Chapter 8](#), to determine time limits for filing corrections.

Report Service and Compensation to the RRB

Service months, Tier I, Tier II, and RUIA compensation are creditable based on an award for time lost. Withholding and depositing the proper taxes will not update an employee's record of service and compensation. An appropriate report of service and compensation must be submitted to the RRB.