

210.1 Types of Vacation Pay

210.1.1 Payment in Lieu of Vacation

Payment in lieu of vacation is a lump-sum the employer pays the employee for vacation he has not taken and is still due him.

If the employee is still in railroad service at the time the payment is made, the compensation can be credited to the month the payment was made or at the end of the employer's accounting year.

If the employee is no longer in railroad service when the payment is made, the compensation should be credited to the DLW-RR or last day on the payroll.

The employer should not report a service month for the month in which a lump sum in lieu of vacation is paid.

210.1.2 Payment for Vacation Taken

Payment for vacation taken is compensation the employee receives for vacation he actually takes. The compensation earned for a month in which vacation is taken should be credited to that month.

A month in which vacation is taken is considered a month of compensated service and the employer should report it as a service month.

210.2 Crediting Vacation Months

210.2.1 RRB Can Determine How Vacation Months Should be Credited

RRB has the authority to determine how a month in which vacation is taken (vacation month) should be credited. This means that the RRB has the option to credit or not credit a vacation month based on what most benefits the employee or family, even though the month has been reported as a month of compensated service.

Although the RRB has the authority to determine how vacation months should be credited, it does not have the authority to remove service months from an employee's service and compensation record that have been properly reported by the employer, including vacation months. Therefore, even if reported vacation months are not credited, they will remain on EDM as service months.

NOTE: Programming is being developed to identify not credited vacation months on EDM.

210.2.2 When Not Crediting Vacation Months Benefits the Employee

Because an annuity is not payable for a credited vacation month, it generally most benefits the employee to not credit (not use) vacation months when the additional service months will not make him eligible for any additional benefits and will:

- Delay the beginning of his annuity; or
- Create an overpayment.

Additional service months normally increase the monthly annuity rate. However, when vacation months are used in these cases, the increase usually is not large enough to offset the amount the employee would lose by delaying the start of his annuity or creating an overpayment.

EXAMPLE: The employee applies for a disability annuity 04/24/2008. He last performed service for the employer on 04/16/2007; took vacation in all months from 05/2007 through 09/2007; is rated disabled with an onset date of 12/19/2006; his earliest allowable ABD is 06/01/2007.

If the vacation months are used, he has 306 service months through 09/2007 and his annuity rate is \$2,864.10. However, the annuity is not payable until 10/01/2007, 4 months after the earliest allowable ABD.

If the vacation months are not used, he has 302 service months through 05/2007 and his annuity rate is \$2,854.05. The annuity is payable from 06/01/2007, the earliest allowable ABD.

Using the 4 additional vacation months increases the annuity rate by \$10.05, but the annuity is not payable for those months. However, if the 4 vacation months are not used, the employee is payable \$11,416.20 for those months (\$2,854.05 x 4). The \$10.05 increase is not large enough to offset the amount the employee would lose by using the vacation months. Therefore, the vacation months should not be used. Note: In order for the rate increase to offset the amount the employee would lose, he would have to live at least 94 more years [$(11,416.20 \div 10.05) \div 12 = 94$].

This same principle applies to using or not using vacation months when they are after the ABD. See [FOM1 207.12.7](#).C for examples.

210.2.3 When Crediting Vacation Months Benefits the Employee

It generally most benefits the employee to use vacation months when the additional service months will make him or his family eligible for additional benefits.

EXAMPLE: Same facts as in the example in [210.2.2](#), above, except the employee has 356 service months through 05/2007 if the vacation months after the earliest allowable ABD are not used and 360 service months through 09/2007 if they are. Also, the

employee is married and his spouse could qualify for a full age spouse annuity at age 60.

Although the employee's annuity is payable from the earliest allowable ABD if the 4 vacation months are not used, he would have only 356 service months, which is not enough to qualify his spouse for a full age spouse annuity when she attains age 60. Using the vacation months gives him 360 service months, which would qualify his spouse for the annuity. Therefore, it most benefits the employee and family to credit the vacation months, even though his annuity is not payable for 4 months after the earliest allowable ABD.

This same principle applies to crediting or not crediting vacation months when they are after the ABD. See [FOM1 207.12.7](#).C for examples.

210.2.4 When Vacation Months Previously Not Credited Can Be Credited

It may benefit an employee to have a vacation month credited that was previously not credited (e.g., the service month is needed at later date to make him eligible for a different benefit). In order to credit the vacation month, the annuity that was previously paid for that month must be recovered.

210.3 Initial Applications or Inquiries

An employee may want to take or schedule vacation after he last performed service for the employer in order to:

- Continue receiving health insurance or other benefits from the employer; or
- Have additional service months to qualify for additional benefits.

Employee Takes Vacation to Continue Benefits

Taking vacation does not prevent an annuity from being paid from the earliest allowable ABD. Although vacation is compensated service that can allow the employee to continue receiving benefits from the employer, vacation months do not have to be credited if it affects his ABD. Therefore, the DLW-RR does not have to be the employee's last vacation month, if he takes vacation. It can be as early the date he last performed service for the employer. This means we can pay the annuity with the earliest allowable ABD, regardless of how many vacation months there are after that ABD.

Employee Takes Vacation for Additional Service Months

In order for vacation months after the earliest allowable to be credited, the DLW-RR should be the last month the employee takes or schedules vacation. Because the ABD can be no earlier than the month following the DLW-RR, all the vacation months prior to the ABD will be credited.

Vacation Months Reviewed the Following Year

In both cases, when the employer submits the service and compensation report the following year, if there are service months after the ABD and we verify they are vacation months, we will determine whether or not it benefits the employee to credit them. If it does not benefit the employee to credit the vacation months, they will not be credited and will not affect his annuity. However, if vacation months are not credited, they also cannot be credited for any other benefits the employee or family may be eligible for, unless the annuity that was paid for those months is returned or recovered.

NOTE: RBD should always notify CESC if vacation months are not credited in a case (see [FOM1 207.12.7.C](#)).

Regardless of how we determine vacation months should be credited to most benefit the employee, if he does not accept the determination, we will reverse our action.

210.4 Vacation Pay Made In Death Cases

210.4.1 Paid in Month of Employee's Death or Later

Vacation pay paid in the month in which an employee dies is creditable as compensation for the month in which he died if he performed some creditable service during that month. A payment made in lieu of a vacation after an employee dies is creditable as compensation for the month in which death occurred if, during that month, the deceased performed some creditable service and the payment was made the same year as his death.

210.4.2 Paid in Lieu of Vacation Before Employee's Death

- A. Retirement Annuity Awarded - Any allocation properly made of a payment in lieu of vacation and used as the basis of an award of a retirement annuity may not be altered after the death of the annuitant.
- B. Not Used in Retirement Annuity Award - When a payment in lieu of vacation was made before the employee's death and before relinquishment of rights, but was not used as a basis of an award of a retirement annuity, the vacation pay will be credited as a service month, if:
 - Credit for additional service is needed for establishing the jurisdiction or current connection; or
 - The allocation of the payment to a month, other than the month in which the employee last performed service would increase the death benefits.

210.5 Crediting Payment in Lieu of Vacation for Retirement Work Deductions

When crediting a payment of accrued vacation pay in lieu of taking the vacation for work deductions, RBD follows the guidelines in the Social Security Administration's RS 02505.035. Accrued vacation pay (or annual leave) paid in a lump-sum at retirement is for service performed prior to the date the employment relationship terminated.

Example:

Case History: Mr. Jones made arrangements to work January through May 1987 for exactly the annual exempt amount and then retired. His objective was to limit the amount of his earnings for the year of retirement to the allowable amount. His annuity beginning date (ABD) is June 1, 1987.

However, the employer then paid him \$2,500.00 in lieu of vacation. In the case of an employee having the seniority Mr. Jones had, the union contract provided for a vacation of 4 weeks, such 4 weeks to be credited for his use as of January 1 of the following year if he was then on the company payroll.

The contract also had a provision, however, under which Mr. Jones would get less than 4 weeks if he was absent from work under certain conditions for more than a certain number of days in the year prior to January. In such a situation, the number of paid vacation days would be reduced to compensate for the days of absence.

The contract also provided for crediting additional days of vacation in the year of retirement. The retiring individual was, in addition to a full vacation, entitled to a pro rata part of a full vacation in the proportion that the number of full months worked in that year bore to 12 months.

Thus, for Mr. Jones' year of retirement after he had worked 3 months, he was eligible for 1 additional week's vacation, making a total of 5 weeks to his credit when he retired.

The question is: When were the services rendered for the 5 weeks' payment of \$2,500.00 in lieu of vacation?

Rule Applied: Since there was a written plan which shows that services for \$2,000.00 of the payment were for the 4 weeks earned for services rendered in 1986, it may be found that the vacation pay was earned in 1986, even though use of the vacation could not start until January 1, of the following year. The services for the week's payment in lieu of vacation (\$500.00) was for the services performed in January through March of 1987.

In the absence of a written contract which shows the payment is for prior services, the vacation may still be considered to have been based on services rendered prior to the last month worked if the employee could have received payment for, or could have taken the vacation, before the year of retirement. In such cases, the vacation would be

considered to be based on services in the year in which the accrued vacation was available for the employee's use.

Example: In the example given in Section A, if the written plan had not stipulated a basis on which services were rendered, but \$2,000.00 of the \$2,500.00 had actually been credited to Mr. Jones and made available for his immediate use in 1986, the services for this part (\$2,000.00) would be considered to have been rendered in 1986.