

3401 Provisions Of The Act

Section 2(a)(1) of the Act provides, in part, that:

"No benefits shall be payable to an otherwise eligible employee for any day of unemployment in a registration period where the total amount of the remuneration (as defined in section 1(j)) payable or accruing to him for days within such registration period exceeds the amount of the base year monthly compensation base. For purposes of the preceding sentence, an employee's remuneration shall be deemed to include the gross amount of any remuneration that would have become payable to that employee but did not become payable because that employee was not ready or willing to perform suitable work available to that employee on any day within such registration period."

This section was added to the Act by the Railroad Unemployment Insurance Amendments Act of 1996, and is effective October 9, 1996.

3402 Summary Of Requirement

In accordance with section 2(a)(1) of the Act, unemployment benefits are not payable for any day in a registration period beginning on or after October 9, 1996, where the total amount of remuneration payable or accruing to the claimant for days in the period exceeds the amount of the monthly RUIA compensation base for the base year. The amount of earnings to be counted includes remuneration from railroad and non-railroad work; it does not include income from investments, insurance payments, pensions, strike pay, welfare payments, payments in lieu of vacation, productivity fund payments, etc. The amount of remuneration attributable to days in the registration period also includes the amount of earnings that would have been paid to the claimant for days that he or she was not ready or willing to perform suitable work that was available.

Days denied because of the earnings test remain days of unemployment for purposes of satisfying the waiting period requirement and determining a period of continuing unemployment.

3403 Analysis Of Earnings Test

3403.01 Unemployment Benefits Only

The earnings test applies to claims for unemployment benefits and not to claims for sickness benefits.

3403.02 Earnings Means Remuneration

The only type of earnings subject to the test is "remuneration" as defined in section 1(j) of the RUIA, Part 322 of the regulations and AIM-9. In general, remuneration comprises wages, salary, pay for time lost and business profits. Income from other sources, e.g. investments and pensions, is not remuneration.

3403.03 Earnings Attributable to Registration Period

Only remuneration earned or accruing on days in the registration period counts in the earnings test. Payments made or received during the registration period but attributable to days outside the period are not subject to the test.

3403.04 Gross Earnings

Earnings include gross remuneration prior to taxes and other deductions.

3403.05 Foregone Earnings

Earnings include remuneration the employee would have earned but did not because he or she was not ready or willing to perform suitable work available to him or her on one or more days within the registration period.

3403.06 Monthly Compensation Base

Benefits are not payable if earnings for the registration period exceed the monthly compensation base for the employee's base year. Three different bases can apply to the same period, depending upon whether the claim is for normal, extended or accelerated benefits. For example, a claim for days in November 1996, may be subject to three bases as follows:

- * If the claim is for normal BY-96, \$850 is the base, i.e. the 1995 base.
- * If the claim is for extended BY-95, \$840 is the base, i.e. the 1994 base.
- * If the claim is for accelerated BY-97, \$865 is the base, i.e. the 1996 base.

3404 Considerations In Applying The Earnings Test

3404.01 Registration or Claim Period

Section 2(a)(1)A(vi) of the RUIA provides that the earnings test is to be applied to registration periods. Registration and claim periods usually coincide. But where they are out of adjustment (not the same period of days), the earnings test may be applied on a claim-by-claim basis to prevent payment delays. The amount of earnings attributable to registration periods (as opposed to claim periods) need not be determined unless the claimant or base year employer protests the

determination. This is analogous to the procedure used in applying the work restriction proviso in section 1(k) of the Act.

3404.02 Work Shifts that Begin and End on Different Days

All earnings for a work shift that begins before midnight and ends after midnight are attributable to the day the shift begins.

3404.03 Return to Work

Remuneration for days within the registration period and after the employee's return to partial or full-time employment is to be included in applying the earnings test.

3404.04 Self Employment

Remuneration accrues from self-employment to the extent the employee has a profit or salary from the enterprise. The days to which remuneration is attributable depend upon the nature of the enterprise. For example, remuneration may accrue with respect to each day an employee operates a service or store, to the day a sales agent makes a sale, or to the day a certain result is accomplished triggering an obligation to pay for the result. Refer to AIM-9 for details.

3404.05 Pay for Time Lost/Guarantee Payments

An employee is to report on each claim all pay for time lost that is paid or payable for days in the claim period. Pay for time lost is not considered paid or payable for purposes of applying the earnings test until the employee has filed a claim for pay for time lost and been notified of the determination on the claim. In most cases, therefore, benefits will not be denied under the earnings test due to pay for time lost. Rather, the pay for time lost will become payable after the payment of unemployment benefits.

The unemployment benefits are subject to recovery under section 2(f). The amount due under section 2(f) is the amount of remuneration payable or the amount of benefits paid for the same period, whichever is less. This is true even if the pay for time lost increases the claimant's earnings for days in a claim period to more than the monthly compensation base.

3404.06 Developing Earnings for Days Unclaimed or Denied for Availability

Even if the reported earnings are less than or equal to the monthly base, a sufficient number of days may be unclaimed or denied on the basis of availability to require a determination on whether all earnings and foregone earnings were reported. If reported earnings are unreasonably low, contact the claimant's employer to develop the amount of actual and foregone earnings. The employer need not be contacted, however, if the employee could not reasonably have

been expected to earn an amount in excess of the limit, the employee did not stand for work on the days he or she was unavailable (e.g. the claimant was furloughed or suspended, had insufficient seniority, etc.), or if excess earnings can be presumed using the claimant's daily rate of pay shown in EDMA or other sources.

3404.07 Examples of the Earnings Test

The following examples illustrate application of the earnings test.

1. Employee A worked on 6 days in the period December 13 through 26, 1996, and received holiday pay for December 25. His earnings and holiday pay total \$845.00. Since that amount is less than the 1995 compensation base of \$850.00, benefits are payable for all days of unemployment in the period.
2. Employee B files a claim that is identical to the one filed by employee A, except employee B is in an extended BY-95 benefit period. Because her earnings of \$845.00 exceed the 1994 compensation base of \$840.00, she is denied benefits and claimed days are coded '4'.
3. Employee C worked intermittently on the extra board in the first week of May 1997, bumped into a regular brakeman's assignment on May 8, worked May 8 and 10, had a layover on day 9, and missed his turn in pool service with respect to days 12, 13 and 14. He reported earnings of \$600. The district office denied benefits for May 9 because the employee was on a layover between regularly scheduled runs. The office also denied benefits for the days May 12, 13 and 14, on grounds of availability due to his missing a turn in pool service. Benefits were denied with respect to other claimed days because the employee's foregone earnings of \$300.00 attributable to the missed turn and calculated on the basis of the pay rate shown in EDMA, when added to his reported earnings of \$600.00, total \$900.00, exceeding the earnings limitation of \$850.00.
4. Employee D, a clerk, worked 1 day, reported wages of \$100.00, and marked off 2 days. Because it can be presumed that the employee would not have earned \$750.00 on the two days on which he marked off, the district office denied the 2 days on grounds of availability and allowed the other claimed days, all without requesting wage information from the employer.
5. Employee E reported earnings of \$700.00 and called in sick on 2 days claimed as days of unemployment. The district office denied the sick days on grounds of availability, and denied the remaining claimed days code '4' due to the earnings test. The district office assumed that the claimant would have earned more than \$150.00 for the two sick days. (Note: If the employee received sick pay for the two days, the days are to be coded "9")

- or "0" depending on whether benefits were claimed, and the sick pay is to be included in the earnings total for purposes of the test.) If the employee protests the denial, the district office is to contact the employer for detailed earnings information.
6. Employee F, an extra-board switchman, reported earnings of \$800.00 and employment on 3 days in the first week of his claim. He was suspended beginning with the second week of his claim. The employee reported he was sick on the 12th day of the claim due to a cold. There is no need to develop or to estimate earnings for day 12 because the employee was suspended and did not stand for work. Benefits are to be denied on grounds of availability for day 12, and the claim is considered to have passed the earnings test.
 7. In his first claim of the benefit year, Employee G, files a claim for 5 days of unemployment. The remaining days, he worked and earned \$200.00 a day from his logging business. The days are not to be denied because of the earnings test because the days claimed satisfy the waiting period requirement and affect determination of the period of continuing unemployment. After the claim is processed and shown on MACRO, however, a stop must be entered to prevent inadvertent payment of days in the waiting period claim.
 8. Employee H files a claim with less than 5 days claimed as days of unemployment and has earnings over the monthly compensation base. It is not necessary to send a Form ID-9e denial notice to the claimant. Rather the claimant should be informed that the claim was not payable because it did not have more than 4 days of unemployment (Form ID-6m). Similarly, if the claimant failed to report any earnings, it would not be necessary to develop the earnings because he did not have a sufficient number of days of unemployment to make a compensable claim.

