



FROM THE DESK OF

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Buyouts and Railroad Retirement Benefits

Railroad employees frequently ask the Railroad Retirement Board (RRB) how accepting a buyout from a railroad employer affects their future eligibility for benefits under the Railroad Retirement and Railroad Unemployment Insurance Acts. The following questions and answers provide information on this subject.

1. Would leaving railroad work and accepting a buyout mean that an employee forfeits any future entitlement to an annuity under the Railroad Retirement Act (RRA)?

Not necessarily. As long as an employee has acquired at least 10 years (120 months) of creditable railroad service or 5 years (60 months) of creditable railroad service performed after 1995, they would still be eligible for a regular railroad retirement annuity upon reaching retirement age, or, if determined to be totally disabled, for an annuity before retirement age, regardless of whether a buyout was ever accepted.

However, if a person permanently leaves railroad employment before attaining retirement age, the employee may not be able to meet the requirements for certain other benefits, particularly the current connection requirement for annuities based on occupational disability, rather than total disability, and for the supplemental annuities paid by the RRB to career employees with railroad service prior to October 1981. (The current connection requirement is explained in the answer to Question 4.)

In addition, if an employee does not have a current connection, the Social Security Administration (SSA), rather than the RRB, would have jurisdiction of any survivor benefits that become payable based on the employee's combined railroad retirement and social security covered earnings. The survivor annuities payable by the RRB are generally greater than the benefits paid by SSA.

2. How are buyout payments treated under the RRA and Railroad Unemployment Insurance Act (RUIA)?

Buyout payments that result from the abolishment of an employee's job are creditable as compensation under the Acts. While the actual names of these employer payments may vary, how the RRB treats the payments will depend on whether the employee **relinquished or retained** their job rights. If the employee **relinquishes job rights** to obtain the compensation, the RRB considers the payment a **separation (or severance) allowance**. This compensation is credited to the month last worked or, if later, the month in which the employee relinquishes their employment relationship. While all compensation subject to tier I payroll taxes is considered in the computation of a railroad retirement annuity, no additional service months can be credited after the month in which job rights are relinquished. The RRB considers a buyout payment a **dismissal allowance**, even though the employer

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might designate the payment as a separation allowance, if the employee **retains job rights** and receives monthly payments credited to the months for which they are allocated under the dismissal allowance agreement. This is true even if the employee relinquishes job rights after the end of the period for which a monthly dismissal allowance was paid. However, supplemental unemployment or sickness benefits paid under an RRB-approved nongovernmental plan by a railroad or third party are **not** considered compensation for railroad retirement purposes.

3. Suppose an employee is given a choice between (1) accepting a separation allowance, relinquishing job rights, and having the payment they receive credited to one month or (2) accepting a dismissal allowance, retaining job rights, and having the payment credited to the months for which it is allocated. What are some of the factors that the employee should consider?

An employee should consider such individual factors as their age and how many years of railroad service they have earned.

For example, employees who are eligible to receive a railroad retirement annuity may find it advantageous to relinquish their job rights, accept a separation allowance, and have their annuity begin on the earliest date allowed by law. Any periodic payments made after that date would not preclude payment of the annuity because the employee has relinquished job rights.

However, some younger employees may find it more advantageous to retain job rights and accept monthly compensation payments under a dismissal allowance if these payments would allow them to acquire 120 months of creditable rail service (or 60 months of creditable rail service performed after 1995) and establish future eligibility for a railroad retirement annuity.

Also, additional service months might allow a long-time employee to acquire the 30 years of railroad service required to be eligible for railroad retirement at age 60 or the 25 years of railroad service that can help maintain the current connection needed to be eligible for a railroad retirement occupational disability annuity or survivor annuity. Additional service months might also enable employees under age 60 who have maintained a current connection to earn the 20 years of service needed to be eligible for an occupational disability annuity.

4. What is the current connection requirement and how would acquiring 25 years of railroad service help an employee maintain a current connection?

A “current connection” is the term the RRB uses to describe a railroad employee’s maintenance of a relationship to the railroad industry. It is demonstrated by an employee having earned 12 months in a 30-month period as explained below and is an eligibility requirement for certain railroad retirement annuities. The current connection determination is made when an employee files for an annuity. If an employee dies before applying for an annuity, the determination is made upon notification of death.

Normally, the current connection requirement is met if the employee has railroad service in at least 12 of the 30 consecutive months immediately preceding the month their railroad retirement annuity begins. If the employee died before retirement, railroad service in at least 12 months in the 30 months before the month of death will meet the current connection requirement for the purpose of paying survivor annuities.

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However, if an employee does not qualify as explained above, but has 12 months of service in an earlier 30-month period, they may still meet the requirement if the employee does not work outside the railroad industry in the interval between the 30-month period and the month the employee's annuity begins or the month of death if that occurs earlier. Full or part-time nonrailroad employment in that interval can break the employee's current connection. Self-employment in an unincorporated business will not break a current connection. However, if the business is incorporated the individual is considered an employee of the corporation and such self-employment can break a current connection. All self-employment will be reviewed to determine if it meets the standards for maintaining a current connection.

A current connection can be maintained for purposes of supplemental and survivor annuities, but not occupational disability annuities, if the employee completed 25 years of railroad service, was involuntarily terminated without fault from their last job in the railroad industry, and did not thereafter decline an offer of employment in the same class or craft in the railroad industry, regardless of the distance to the new position. If **all** these requirements are met, an employee's current connection may not be broken, even if the employee works in regular nonrailroad employment after the 30-month period and before the month their railroad retirement annuity begins or the month of their death. This exception to the normal current connection requirement was established by amendments to the RRA and became effective October 1, 1981. It only covers employees alive on that date who left the rail industry on or after October 1, 1975, and, as noted, **cannot** be used to establish eligibility to an occupational disability annuity.

5. Would the acceptance of a buyout affect whether an employee could maintain a current connection under the exception provision detailed in the answer to Question 4?

Yes, in some instances. In cases where an employee has **no option** to remain in the service of their employer, the termination of the employment is considered involuntary, regardless of whether the employee does or does not receive a separation or dismissal allowance.

However, an employee who **chooses** a separation allowance instead of keeping their seniority rights to railroad employment would, for railroad retirement purposes, generally be considered to have voluntarily terminated railroad service and, consequently, would not maintain a current connection under the exception provision.

6. Is it always advantageous to maintain a current connection?

Not always. While a current connection is generally advantageous for railroad retirement purposes, the costs of maintaining a current connection could outweigh its value, depending on individual circumstances. There may be other financial or personal factors involved besides railroad retirement eligibility and/or the preservation of a current connection and these will vary from individual to individual.

7. Are separation and dismissal allowances subject to railroad retirement payroll taxes?

Yes. Under the Railroad Retirement Tax Act, which is administered by the Internal Revenue Service, payments of compensation, including most buyouts, are subject to tier I, tier II, and Medicare

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taxes on earnings up to the annual maximum earnings bases in effect when the compensation is paid. This is true whether payment is made in a lump sum or periodically.

To the extent that a separation allowance does not yield additional tier II railroad retirement service credits, a lump sum, approximating part or all of the railroad retirement tier II payroll taxes deducted from the separation allowance, will be paid upon retirement to employees meeting minimum service requirements or their survivors. This lump sum applies to separation allowances made after 1984.

If an employee receives a dismissal allowance, they receive service credits for the tier II taxes deducted from the dismissal allowance payments. Consequently, such a lump sum would not be payable.

If an employee has an option about how a buyout is to be distributed, they should consider the impact of both payroll taxes and income tax on the payments. Employees with questions in this regard should contact the payroll department of their railroad employer and/or the Internal Revenue Service.

8. Would an employee be able to receive unemployment or sickness benefits paid by the RRB after accepting a separation allowance?

Not necessarily. An employee who accepts a separation allowance cannot receive unemployment or sickness benefits for roughly the period it would have taken to earn the amount of the allowance at their straight-time rate of pay. This is true whether the allowance is paid in a lump sum or installments. For example, if an employee's salary was \$5,000 a month without overtime pay and the allowance was \$20,000, they would be disqualified from receiving unemployment or sickness benefits for approximately four months.

9. Can an employee receive unemployment benefits after their separation allowance disqualification period has ended?

Yes, in certain instances. An employee who has not obtained new employment by the end of the disqualification period and is still actively seeking work may be eligible for unemployment benefits at that time. The employee must meet all the usual eligibility requirements, including the availability for work requirement. An employee can establish his or her availability for work by demonstrating a willingness to work and making significant efforts to obtain work. In judging the employee's willingness to work, the RRB considers, among other factors, the reason the employee accepted the separation allowance and the extent of their work-seeking efforts during the disqualification period.

10. How would the acceptance of a dismissal allowance affect an employee's eligibility for unemployment or sickness benefits?

Payments made under a dismissal allowance would be considered remuneration under the RUIA and the employee would not be eligible for unemployment or sickness benefits during the period the dismissal allowance is being paid. The employee may, of course, be eligible for benefits after the end of this period if they are still actively seeking work or are unable to work because of illness or injury.

11. Where can someone get more specific information on how a buyout affects RRB benefits?

Employees with questions about how a buyout affects RRB benefits can call an agency field office toll-free at 1-877-772-5772. RRB field offices also offer in-person service. While persons seeking in-

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office assistance are encouraged to schedule an appointment with their local field office by calling the agency's toll-free number, those without appointments will not be refused service. However, they may be asked to schedule an appointment for a later time if there is no immediate availability. Individuals should bring a photo ID when visiting a field office. Office addresses can be found by visiting RRB.gov and clicking on **Field Office Locator** or by calling 1-877-772-5772. RRB field offices are generally open Monday through Friday from 9:00 a.m. to 3:00 p.m., except for federal holidays. Individuals can also **send a secure message** to their local RRB field office by accessing Field Office Locator and clicking on the link at the bottom of their local office's page.

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