

road Retirement Act of 1937 [section 228a(f) of this title], and who has after June 30, 1957, and before April 1, 1959, exhausted (within the meaning prescribed by the Railroad Retirement Board by regulation) his rights to unemployment benefits, shall be paid unemployment benefits for days of unemployment, not exceeding sixty-five, which occur in registration periods beginning on or after June 19, 1958, and before July 1, 1959, and which would not be days with respect to which he would be held entitled otherwise to receive unemployment benefits under the Railroad Unemployment Insurance Act [this chapter], except that an employee who has filed, and established, a first claim for benefits under the Temporary Unemployment Compensation Act of 1958 [42 U.S.C. 1400 et seq.] may not thereafter establish a claim under this subsection, and an employee who has registered for, and established a claim for benefits under this subsection may not thereafter establish a claim under the Temporary Unemployment Compensation Act of 1958. Except to the extent inconsistent with this subsection, the provisions of the Railroad Unemployment Insurance Act [this chapter] shall be applicable in the administration of this subsection."

#### INTERCHANGE OF INFORMATION BETWEEN SECRETARY OF LABOR AND RAILROAD RETIREMENT BOARD

Pub. L. 86-28, pt. III, §303(c), May 19, 1959, 73 Stat. 31, provided that: "The Secretary of Labor, upon request shall furnish the Board information deemed necessary by the Board for the administration of the provisions of subsection (b) hereof [set out above], and the Board, upon request, shall furnish the Secretary of Labor information deemed necessary by the Secretary for the administration of the Temporary Unemployment Compensation Act of 1958 [section 1400 et seq. of Title 42, The Public Health and Welfare]."

### § 353. Qualifying condition

An employee shall be a "qualified employee" if the Board finds that his compensation with respect to the base year will have been not less than 2.5 times the monthly compensation base for months in such base year as computed under section 351(i) of this title, and, if such employee has had no compensation prior to such year, that he will have had compensation with respect to each of not less than five months in such year.

(June 25, 1938, ch. 680, §3, 52 Stat. 1097; June 20, 1939, ch. 227, §10, 53 Stat. 845; Oct. 10, 1940, ch. 842, §13, 54 Stat. 1097; July 31, 1946, ch. 709, §308, 60 Stat. 737; May 15, 1952, ch. 290, §2, 66 Stat. 73; Aug. 31, 1954, ch. 1164, pt. III, §303, 68 Stat. 1041; Pub. L. 86-28, pt. III, §304, May 19, 1959, 73 Stat. 31; Pub. L. 88-133, title III, §301(a), Oct. 5, 1963, 77 Stat. 222; Pub. L. 90-257, title II, §203, Feb. 15, 1968, 82 Stat. 24; Pub. L. 94-92, title I, §1(f), Aug. 9, 1975, 89 Stat. 463; Pub. L. 98-76, title IV, §411(a)(2), Aug. 12, 1983, 97 Stat. 436; Pub. L. 100-647, title VII, §7202(a), Nov. 10, 1988, 102 Stat. 3776.)

#### AMENDMENTS

1988—Pub. L. 100-647 inserted "with respect to the base year" after "his compensation" and substituted "2.5 times the monthly compensation base for months in such base year as computed under section 351(i) of this title" for "\$1,500 with respect to the base year".

1983—Pub. L. 98-76 substituted "\$1,500" for "\$1,000".

1975—Pub. L. 94-92 substituted "five" for "seven" months.

1968—Pub. L. 90-257 substituted "\$1,000" for "\$750".

1963—Pub. L. 88-133 increased from \$500 to \$750 the amount of compensation in a base year required to qualify for benefits and provided that if employee has

had no compensation prior to such year he will have had compensation with respect to each of not less than 7 months in such year.

1959—Pub. L. 86-28 substituted "\$500" for "\$400".

1954—Act Aug. 31, 1954, substituted "\$400" for "\$300".

1952—Act May 15, 1952, substituted "\$300" for "\$150" to conform to the new table of daily benefit rates as set out in section 352 of this title.

1946—Act July 31, 1946, changed section to relate to compensation paid instead of compensation earned during a year.

1940—Act Oct. 10, 1940, reorganized structure by striking out designations for subsecs. "(a)" and "(b)" and, as so restructured, provisions of former subsec. (a) became entire section and defined "qualified employee" and provisions of former subsec. (b), which related to the employee's waiting period, were omitted.

1939—Subsec. (b), Act June 20, 1939, substituted provisions relating to half-months as the waiting period, for provisions relating to fifteen consecutive days of unemployment or two half months.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title VII, §7202(b), Nov. 10, 1988, 102 Stat. 3776, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1988]."

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-76 applicable to compensation paid for services rendered after Dec. 31, 1983, see section 411(b) of Pub. L. 98-76, set out as a note under section 351 of this title.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-92 effective for services rendered after Dec. 31, 1973, see section 2 of Pub. L. 94-92, set out as a note under section 351 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-257 effective with respect to base years beginning in calendar years after December 31, 1966, except that with respect to the base year in calendar year 1967 such amendments not to be applicable to an employee whose compensation with respect to that base year was not less than \$750 but was less than \$1,000, see section 208 of Pub. L. 90-257, set out as a note under section 352 of this title.

#### EFFECTIVE DATE OF 1963 AMENDMENT

Pub. L. 88-133, title III, §301(b), Oct. 5, 1963, 77 Stat. 222, provided that: "The amendment made by subsection (a) [amending this section] shall be fully effective with respect to base years after 1963. With respect to the base year 1963, they shall be applicable only to an employee concerning whom the Railroad Retirement Board finds that his compensation in that portion of the calendar year 1963 preceding the first day of the calendar month next following the month of enactment of this Act [October 1963] will have been less than \$500."

#### EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-28 effective with respect to base years after the base year ending Dec. 31, 1957, see section 309 of Pub. L. 86-28, set out as a note under section 351 of this title.

#### EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 31, 1954, effective July 1, 1954, see section 401 of act Aug. 31, 1954, set out as a note under section 351 of this title.

#### EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act May 15, 1952, effective with respect to benefit years beginning on and after July 1, 1952, see section 3 of act May 15, 1952, set out as a note under section 352 of this title.

## EFFECTIVE DATE OF 1946 AMENDMENT

Amendment by act July 31, 1946, effective July 1, 1947, see section 403 of act July 31, 1946, set out as a note under section 352 of this title.

## EFFECTIVE DATE OF 1940 AMENDMENT

For effective date of amendment by act Oct. 10, 1940, see section 1 of act Oct. 10, 1940, set out as a note under section 351 of this title.

**§ 354. Disqualifying conditions****(a-1) Day of unemployment or day of sickness**

There shall not be considered as a day of unemployment, or as a day of sickness, with respect to any employee—

(i) any of the seventy-five days beginning with the first day of any registration period with respect to which the Board finds that he knowingly made or aided in making or caused to be made any false or fraudulent statement or claim for the purpose of causing benefits to be paid;

(ii) any day in any period with respect to which the Board finds that he is receiving or will have received annuity payments under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], or insurance benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.], or unemployment, maternity, or sickness benefits under an unemployment, maternity, or sickness compensation law other than this chapter, or any other social-insurance payments under any law: *Provided*, That if an employee receives or is held entitled to receive any such payments, other than unemployment, maternity, or sickness payments, with respect to any period which include days of unemployment or sickness in a registration period, after benefits under this chapter for such registration period will have been paid, the amount by which such benefits under this chapter will have been increased by including such days as days of unemployment or as days of sickness shall be recoverable by the Board: *Provided further*, That, if that part of any such payment or payments, other than unemployment, maternity, or sickness payments, which is apportionable to such days of unemployment or days of sickness is less in amount than the benefits under this chapter which, but for this paragraph, would be payable and not recoverable with respect to such days of unemployment or days of sickness, the preceding provisions of this paragraph shall not apply but such benefits under this chapter for such days of unemployment or days of sickness shall be diminished or recoverable in the amount of such part of such other payment or payments;

(iii) if he is paid a separation allowance, any of the days in the period beginning with the day following his separation from service and continuing for that number of consecutive fourteen-day periods which is equal, or most nearly equal, to the amount of the separation allowance divided (i) by ten times his last daily rate of compensation prior to his separation if he normally works five days a week, (ii) by twelve times such rate if he normally works six days a week, and (iii) by fourteen

times such rate if he normally works seven days a week;<sup>1</sup>

**(a-2) Day of unemployment**

(i)(A) subject to the provisions of subdivision (B) hereof, any of the days in the period beginning with the day with respect to which the Board finds that he left work voluntarily, and continuing until he has been paid compensation of not less than \$1,500 with respect to time after the beginning of such period and before 1989 or, if any part of such compensation is paid in a calendar year after 1988, not less than an amount that is equal to 2.5 times the monthly compensation base for months in such calendar year, as computed under section 351(i) of this title;

(B) if the Board finds that he left work voluntarily with good cause, the provisions of subdivision (A) shall not apply, with respect to him, to any day in a registration period if such period does not include any day which is in a period for which he could receive benefits under an unemployment compensation law other than this chapter, and he so certifies. Such certification shall, in the absence of evidence to the contrary, be accepted subject to the penalty provisions of section 359(a) of this title;

(ii) any of the thirty days beginning with the day with respect to which the Board finds that he failed, without good cause, to accept suitable work available on such day and offered to him, or to comply with instructions from the Board requiring him to apply for suitable work or to report, in person or by mail as the Board may require, to an employment office;

(iii) subject to the provisions of subsection (b) of this section, any day with respect to which the Board finds that his unemployment was due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which he was last employed, and the Board finds that such strike was commenced in violation of the provisions of the Railway Labor Act [45 U.S.C. 151 et seq.] or in violation of the established rules and practices of a bona fide labor organization of which he was a member.

**(b) Participation, interest, or financial assistance in labor dispute**

The disqualification provided in subsection (a-2)(iii) of this section shall not apply if the Board finds that—

(i) the employee is not participating in or financing or directly interested in the strike which causes the stoppage of work: *Provided*, That payment of regular union dues shall not be construed to constitute financing a strike or direct interest in a strike within the meaning of this and the following paragraphs; and

(ii) he does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed in the establishment, premises, or enterprise at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute: *Provided*, That if separate types of work are commonly conducted in separate departments of a single enterprise, each such department shall, for the purposes of this subsection, be

<sup>1</sup> So in original. The semicolon probably should be a period.