

Omitted sections	I.R.C. 1939	I.R.C. 1986
264 .....	1502, 1522 .....	6205(b), 6413(b).
265 .....	1510, 1511 .....	3211, 3212.
266 .....	1503, 1508, 1512 .....	3502.
267 .....	1422, 1530, 1531, 1536	3501, 3503, 6011(a), 6071, 6081(a), 6091(a), 6151(a), 6313, 6601(a), (f)(1).
268 .....	1534 .....	3232.
269 .....	1426(b)(9), (10), 1428	3121(b)(9), (10), 3124.
270 .....	3802 .....	7511.
271 .....		
272 .....	1535 .....	7805(a), (c).
273 .....		

#### Statutory Notes and Related Subsidiaries

##### COMPENSATION FROM LOCAL DIVISION OF RAILWAY-LABOR-ORGANIZATION EMPLOYER TAX—UNPAID BEFORE JULY 1, 1940

Act Oct. 10, 1940, ch. 842, §27(b), 54 Stat. 1101, provided that, for the purpose of determining the amount of taxes under sections 262(a) and 263(a) of this title, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than \$3 and the taxes thereon under such sections are not paid before July 1, 1940.

#### CHAPTER 11—RAILROAD UNEMPLOYMENT INSURANCE

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#### § 351. Definitions

For the purposes of this chapter, except when used in amending the provisions of other Acts—

(a) The term “employer” means any carrier (as defined in subsection (b) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad,

or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer: *Provided, however,* That the term “employer” shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Surface Transportation Board is hereby authorized and directed upon request of the Railroad Retirement Board, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term “employer” shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies, and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act [45 U.S.C. 151 et seq.], and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and bylaws of such organizations. The term “employer” shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tippie, and the operation of equipment or facilities therefor, or in any of such activities.

(b) The term “carrier” means a railroad subject to the jurisdiction of the Surface Transportation Board under part A of subtitle IV of title 49.

(c) The term “company” includes corporations, associations, and joint-stock companies.

(d) The term “employee” (except when used in phrases establishing a different meaning) means any individual who is or has been (i) in the service of one or more employers for compensation, or (ii) an employee representative. The term “employee” shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of a carrier on or after August 29, 1935. The term “employee” includes an officer of an employer.

The term “employee” shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tippie, or the loading of coal at the tippie.

(e) An individual is in the service of an employer whether his service is rendered within or without the United States if (i) he is subject to the continuing authority of the employer to su-

pervise and direct the manner of rendition of his service, or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and (ii) he renders such service for compensation: *Provided, however,* That an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if (1) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or (2) the headquarters of such local lodge or division is located in the United States; and an individual shall be deemed to be in the service of such a general committee only if (1) he is representing a local lodge or division described in clauses (1) or (2) immediately above; or (2) all, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or (3) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case the Board may prescribe such other formula as it finds to be equitable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 per centum of his remuneration for such service no part of such remuneration shall be regarded as compensation: *Provided further,* That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof.

(f) The term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term employer as defined in subsection (a) who before or after August 29, 1935, was in the service of an employer as defined in said subsection and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act [45 U.S.C. 151 et seq.], and any individual who is reg-

ularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

(g) The term "employment" means service performed as an employee. For the purposes of determining eligibility for and the amount of benefits and the amount of contributions due pursuant to this chapter, employment after June 30, 1940, in the service of a local lodge or division of a railway-labor-organization employer or as an employee representative shall be disregarded. For purposes of determining eligibility for and the amount of benefits and the amount of contributions due pursuant to this chapter, employment as a delegate to a national or international convention of a railway labor organization defined as an "employer", in subsection (a) of this section, shall be disregarded if the individual having such employment has not previously rendered service, other than as such a delegate, which may be included in his "years of service" for purposes of the Railroad Retirement Act [45 U.S.C. 231 et seq.].

(h) The term "registration period" means, with respect to any employee, the period which begins with the first day for which such employee registers at an employment office in accordance with such regulations as the Board may prescribe, and ends with whichever is the earlier of (i) the thirteenth day thereafter, or (ii) the day immediately preceding the day for which he next registers at a different employment office; and thereafter each period which begins with the first day for which he next registers at an employment office after the end of his last preceding registration period which began with a day for which he registered at an employment office and ends with whichever is the earlier of (i) the thirteenth day thereafter, or (ii) the day immediately preceding the day for which he next registers at a different employment office.

The term "registration period" means also, with respect to any employee, the period which begins with the first day with respect to which a statement of sickness for a "period of continuing sickness" (as defined in section 352(a) of this title) is filed in his behalf in accordance with such regulations as the Board may prescribe, or the first such day after the end of a registration period which will have begun with a day with respect to which a statement of sickness for a "period of continuing sickness" (as defined in section 352(a) of this title) was filed in his behalf, and ends with whichever is the earlier of (i) the thirteenth day thereafter, or (ii) the day immediately preceding the day with respect to which a statement of sickness for a new "period of continuing sickness" (as defined in section 352(a) of this title) is filed in his behalf.

(i)(1) IN GENERAL.—The term "compensation" means any form of money remuneration, including pay for time lost but excluding tips, paid for services rendered as an employee to one or more employers, or as an employee representative, except that in computing the compensation paid to any employee, no part of any month's compensation in excess of the monthly compensation base (as defined in subdivision (2)) for any month shall be recognized. Solely for the purpose of determining the compensation received

by an employee in a base year, the term "compensation" shall include any separation allowance or subsistence allowance paid under any benefit schedule provided under section 701<sup>1</sup> of title VII of the Regional Rail Reorganization Act of 1973 [45 U.S.C. 797] and any termination allowance paid under section 702 of that Act [45 U.S.C. 797a], but does not include any other benefits payable under that title [45 U.S.C. 797 et seq.]. The total amount of any subsistence allowance payable under a benefit schedule provided pursuant to section 701<sup>1</sup> of the Regional Rail Reorganization Act of 1973 shall be considered as being compensation in the month in which the employee first timely filed a claim for such an allowance. Such term does not include remuneration for service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 1101(a)(15) of title 8 and which is performed to carry out the purpose specified in subparagraph (F) or (J) as the case may be. A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost. Compensation earned in any calendar month before 1947 shall be deemed paid in such month regardless of whether or when payment will have been in fact made, and compensation earned in any calendar year after 1946 but paid after the end of such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or, if the employee establishes, subject to the provisions of section 356 of this title, the period during which such compensation will have been earned.

(2) MONTHLY COMPENSATION BASE.—

(A) IN GENERAL.—For purposes of subdivision (1), the term "monthly compensation base" means the amount—

- (i) of \$400 for calendar months before January 1, 1984;
- (ii) of \$600 for calendar months after December 31, 1983 and before January 1, 1989; and
- (iii) computed under subparagraph (B) for months after December 31, 1988.

(B) COMPUTATION.—

(i) IN GENERAL.—The amount of the monthly compensation base for each calendar year beginning after December 31, 1988, is the greater of—

- (I) \$600; or
- (II) the amount, as rounded under clause (iii) if applicable, computed under the formula:

$$B=600 \left( 1 + \frac{A - 37,800}{56,700} \right)$$

(ii) MEANING OF SYMBOLS.—For the purposes of the formula in clause (i)—

- (I) "B" is the dollar amount of the monthly compensation base; and
- (II) "A" is the amount of the applicable base with respect to tier 1 taxes, for the calendar year for which the monthly compensation base is being computed, as determined under section 3231(e)(2) of title 26.

(iii) ROUNDING RULE.—If the monthly compensation base computed under this formula is not a multiple of \$5, it shall be rounded to the nearest multiple of \$5, with such rounding being upward in the event the amount computed is equidistant between two multiples of \$5.

(j) The term "remuneration" means pay for services for hire, including pay for time lost, and tips, but pay for time lost shall be deemed earned on the day on which such time is lost. The term "remuneration" includes also earned income other than for services for hire if the accrual thereof in whole or in part is ascertainable with respect to a particular day or particular days. The term "remuneration" does not include any money payments received pursuant to any nongovernmental plan for unemployment insurance, maternity insurance, or sickness insurance.

(k) Subject to the provisions of section 354 of this title (1) a day of unemployment, with respect to any employee, means a calendar day on which he is able to work and is available for work and with respect to which (i) no remuneration is payable or accrues to him, and (ii) he has, in accordance with such regulations as the Board may prescribe, registered at an employment office; and (2) a "day of sickness", with respect to any employee, means a calendar day on which because of any physical, mental, psychological, or nervous injury, illness, sickness, or disease he is not able to work, or, with respect to a female employee, a calendar day on which, because of pregnancy, miscarriage, or the birth of a child, (i) she is unable to work or (ii) working would be injurious to her health, and with respect to which (i) no remuneration is payable or accrues to him, and (ii) in accordance with such regulations as the Board may prescribe, a statement of sickness is filed within such reasonable period, not in excess of ten days, as the Board may prescribe: *Provided, however*, That "subsidiary remuneration", as hereinafter defined in this subsection, shall not be considered remuneration for the purpose of this subsection except with respect to an employee whose base-

<sup>1</sup> See References in Text note below.

year compensation, exclusive of earnings from the position or occupation in which he earned such subsidiary remuneration, is less than an amount that is equal to 2.5 times the monthly compensation base for months in such base year as computed under subsection (i) of this section: *Provided further*, That remuneration for a working day which includes a part of each of two consecutive calendar days shall be deemed to have been earned on the first of such two days, and any individual who takes work for such working day shall not by reason thereof be deemed not available for work on the second of such calendar days: *Provided further*, That any calendar day on which no remuneration is payable to or accrues to an employee solely because of the application to him of mileage or work restrictions agreed upon in schedule agreements between employers and employees or solely because he is standing by for or laying over between regularly assigned trips or tours of duty shall not be considered either a day of unemployment or a day of sickness.

For the purpose of this subsection, the term “subsidiary remuneration” means, with respect to any employee, remuneration not in excess of an average of \$15 a day for the period with respect to which such remuneration is payable or accrues, if the work from which the remuneration is derived (i) requires substantially less than full time as determined by generally prevailing standards, and (ii) is susceptible of performance at such times and under such circumstances as not to be inconsistent with the holding of normal full-time employment in another occupation.

(l)(1) The term “benefits” (except in phrases clearly designating other payments) means the money payments payable to an employee as provided in this chapter, with respect to his unemployment or sickness.

(2) The term “statement of sickness” means a statement with respect to days of sickness of an employee, executed in such manner and form by an individual duly authorized pursuant to section 362(i) of this title to execute such statements, and filed as the Board may prescribe by regulations.

(m) The term “benefit year” means the twelve-month period beginning July 1 of any year and ending June 30 of the next year, except that a registration period beginning in June and ending in July shall be deemed to be in the benefit year ending in such month of June.

(n) The term “base year” means the completed calendar year immediately preceding the beginning of the benefit year.

(o) The term “employment office” means a free employment office operated by the Board, or designated as such by the Board pursuant to section 362(i) of this title.

(p) The term “account” means the railroad unemployment insurance account established pursuant to section 360 of this title in the unemployment trust fund.

(q) The term “fund” means the railroad unemployment insurance administration fund, established pursuant to section 361 of this title in the unemployment trust fund.

(r) The term “Board” means the Railroad Retirement Board.

(s) The term “United States”, when used in a geographical sense, means the States and the District of Columbia.

(t) The term “State” means any of the States or the District of Columbia.

(u) Any reference in this chapter to any other Act of Congress, including such reference in amendments to other Acts, includes a reference to such other Act as amended from time to time.

(June 25, 1938, ch. 680, §1, 52 Stat. 1094; June 20, 1939, ch. 227, §§1-6, 20, 53 Stat. 845, 848; Aug. 13, 1940, ch. 664, §§1, 3, 54 Stat. 785, 786; Oct. 10, 1940, ch. 842, §§2-8, 54 Stat. 1094, 1095; Apr. 8, 1942, ch. 227, §15, 56 Stat. 210; July 31, 1946, ch. 709, §§1, 2, 301-304, 60 Stat. 722, 735, 736; Oct. 30, 1951, ch. 632, §26, 65 Stat. 691; Aug. 31, 1954, ch. 1164, pt. III, §§301-303, 68 Stat. 1041; Pub. L. 85-927, pt. II, §201, Sept. 6, 1958, 72 Stat. 1782; Pub. L. 86-28, pt. III, §301, May 19, 1959, 73 Stat. 30; Pub. L. 89-700, title II, §201, Oct. 30, 1966, 80 Stat. 1087; Pub. L. 90-257, title II, §201, Feb. 15, 1968, 82 Stat. 23; Pub. L. 90-624, §3, Oct. 22, 1968, 82 Stat. 1316; Pub. L. 94-92, title I, §1(a), (b), Aug. 9, 1975, 89 Stat. 461; Pub. L. 98-76, title IV, §§402(b), 403(b), 411(a)(1), title V, §503(b), Aug. 12, 1983, 97 Stat. 434, 436, 441; Pub. L. 100-647, title VII, §7101(a), (b), 7203(a), Nov. 10, 1988, 102 Stat. 3757, 3758, 3776; Pub. L. 104-88, title III, §324(1), (2), Dec. 29, 1995, 109 Stat. 950.)

#### Editorial Notes

##### REFERENCES IN TEXT

This chapter, referred to in introductory provisions and subsecs. (g), (l)(1), and (u), was in the original “this Act”, meaning act June 25, 1938, ch. 680, 52 Stat. 1094, which enacted this chapter and amended sections 503 and 1104 and former section 1107 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 367 of this title and Tables.

The Railway Labor Act, referred to in subsecs. (a) and (f), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§151 et seq.) of this title. For complete classification of this Act to the Code, see section 151 of this title and Tables.

The Railroad Retirement Act, referred to in subsec. (g), probably means the Railroad Retirement Act of 1937, act Aug. 29, 1935, ch. 812, as amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, which was classified principally to subchapter III (§228a et seq.) of chapter 9 of this title. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93-445, title I, Oct. 16, 1974, 88 Stat. 1305. The Railroad Retirement Act of 1974 is classified generally to subchapter IV (§231 et seq.) of chapter 9 of this title. For complete classification of these Acts to the Code, see Tables.

The Regional Rail Reorganization Act of 1973, referred to in subsec. (i)(1), is Pub. L. 93-236, Jan. 2, 1974, 87 Stat. 985, as amended. Section 701 of title VII of the Regional Rail Reorganization Act of 1973 [45 U.S.C. 797] was repealed by Pub. L. 99-509, title IV, §4024(c), Oct. 21, 1986, 100 Stat. 1904, effective on the sale date (Apr. 2, 1987). Title VII of the Regional Rail Reorganization Act of 1973 is classified generally to subchapter VII (§797 et seq.) of chapter 16 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

##### AMENDMENTS

1995—Subsec. (a). Pub. L. 104-88, §324(1), substituted “Surface Transportation Board is hereby authorized and directed upon request of the Railroad Retirement

Board” for “Interstate Commerce Commission is hereby authorized and directed upon request of the Board”.

Subsec. (b). Pub. L. 104-88, §324(2), added subsec. (b) and struck out former subsec. (b) which read as follows: “The term ‘carrier’ means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act.”

1988—Subsec. (i). Pub. L. 100-647, §7101(a), designated existing provisions as par. (1), inserted par. heading, substituted “, except that in computing the compensation paid to any employee, no part of any month’s compensation in excess of the monthly compensation base (as defined in subdivision (2)) for any month shall be recognized” for “: *Provided, however,* That in computing the compensation paid to any employee, no part of any month’s compensation in excess of \$300 for any month before July 1, 1954, or in excess of \$350 for any month after June 30, 1954, and before the calendar month next following the month in which this chapter was amended in 1959, or in excess of \$400 for any month after the month in which this chapter was so amended and before January 1984, or in excess of \$600 for any month after 1983, shall be recognized”, and added par. (2).

Subsec. (k). Pub. L. 100-647, §7203(a), which directed amendment of second par. of subsec. (k) by substituting “\$15” for “\$10”, was executed by making the substitution for “ten dollars” as the probable intent of Congress.

Pub. L. 100-647, §7101(b), substituted “an amount that is equal to 2.5 times the monthly compensation base for months in such base year as computed under subsection (i) of this section” for “\$1,500”.

1983—Subsec. (i). Pub. L. 98-76, §503(b), inserted “and before January 1984, or in excess of \$600 for any month after 1983”.

Pub. L. 98-76, §403(b), inserted after first sentence “Solely for the purpose of determining the compensation received by an employee in a base year, the term ‘compensation’ shall include any separation allowance or subsistence allowance paid under any benefit schedule provided under section 701 of title VII of the Regional Rail Reorganization Act of 1973 and any termination allowance paid under section 702 of that Act, but does not include any other benefits payable under that title. The total amount of any subsistence allowance payable under a benefit schedule provided pursuant to section 701 of the Regional Rail Reorganization Act of 1973 shall be considered as being compensation in the month in which the employee first timely filed a claim for such an allowance.”

Subsec. (j). Pub. L. 98-76, §402(b), struck out “(i) the voluntary payment by another, without deduction from the pay of an employee, of any tax or contribution now or hereafter imposed with respect to the remuneration of such employee, or (ii)” after “‘remuneration’ does not include”.

Subsec. (k). Pub. L. 98-76, §411(a)(1), substituted “\$1,500” for “\$1,000”.

1975—Subsec. (h). Pub. L. 94-92, §1(a), inserted “for a period of continuing sickness (as defined in section 352(a) of this title)” after “a statement of sickness” wherever appearing and incorporated “and ends with the thirteenth day thereafter” in provision reading “and ends with whichever is the earlier of (i) the thirteenth day thereafter,” and inserted cl. (ii) thereafter.

Subsec. (k). Pub. L. 94-92, §1(b), substituted in second sentence “ten” for “three” dollars.

1968—Subsec. (i). Pub. L. 90-624 excluded remuneration for services performed by nonresident alien individuals temporarily in the United States as participants in a cultural exchange or training program.

Subsec. (k). Pub. L. 90-257, §201(a), amended definitions of “day of sickness” so as to remove reference to a day in a maternity period and inserted references to a day of sickness for female employees when, because of pregnancy, miscarriage, or the birth of a child, she is unable to work or working is injurious to her health and raised from \$750 to \$1,000 the amount specified in the subsidiary remuneration provision.

Subsec. (l). Pub. L. 90-257, §201(b), redesignated subsec. (l) defining “benefits” as subsec. (l)(1). Former subsec. (l)(1) redesignated (l)(2).

Subsec. (l)(1). Pub. L. 90-257, §201(b), redesignated as subsec. (l)(1) former subsec. (l) defining “benefits”.

Subsec. (l)(2). Pub. L. 90-257, §201(b), redesignated as subsec. (l)(2) former subsec. (l)(1) defining “statement of sickness” and struck out reference to statement of maternity sickness. Former subsec. (l)(2) defining “maternity period” was struck out.

1966—Subsec. (i). Pub. L. 89-700, §201(a), substituted “section 356 of this title” for “section 358 of this title.”

Subsec. (k). Pub. L. 89-700, §201(b), substituted “\$750” for “500”.

Subsecs. (s), (t). Pub. L. 89-700, §201(c), struck out “, Alaska, Hawaii,” after “States”.

1959—Subsec. (i). Pub. L. 86-28, §301(a), increased, for any month after May 1959, from \$350 to \$400 the maximum amount of monthly compensation to be used in computing benefits.

Subsec. (k). Pub. L. 86-28, §301(b), substituted “\$500” for “\$400”.

1958—Subsec. (k). Pub. L. 85-927, §201(a), substituted “first” for “second” and “second” for “first” in second proviso of first paragraph, and substituted “three dollars” for “one dollar” in second paragraph.

Subsec. (q). Pub. L. 85-927, §201(b), inserted “in the unemployment trust fund”.

1954—Subsec. (g). Act Aug. 31, 1954, §301, provided that compensation for service by an individual as a delegate to a convention of a national railway labor organization shall be disregarded in determining eligibility for benefits, if he has no previous creditable service.

Subsec. (i). Act Aug. 31, 1954, §302, increased, after June 30, 1954, from \$300 to \$350 the maximum amount of monthly compensation to be used in computing benefits.

Subsec. (k). Act Aug. 31, 1954, §303 (part), substituted “\$400” for “\$150”.

1951—Subsec. (k). Act Oct. 30, 1951, inserted last proviso of first par.

1946—Subsec. (e). Act July 31, 1946, §1, changed opening par. to include professional or technical services when integrated into staff of employer or other personal services the rendition of which is integrated into the employer’s operations and added clause at end of first proviso excluding compensation of less than 10% of remuneration.

Subsec. (h). Act July 31, 1946, §301, changed definition of registration period to cover days of sickness as well as days of unemployment.

Subsec. (i). Act July 31, 1946, §2, changed definition of compensation to remuneration “paid” instead of “payable” and inserted provisions relating to presumption that a payment is compensation; payments for time lost and with respect to personal injury; and payments after the end of a calendar year earned during that year.

Subsec. (j). Act July 31, 1946, §302, inserted reference to maternity insurance and sickness insurance.

Subsec. (k)(2). Act July 31, 1946, §303, inserted cl. (2) defining day of sickness.

Subsec. (l). Act July 31, 1946, §304, expanded definition of benefits to include payment with respect to sickness and added pars. (1) and (2), defining statement of sickness, statement of maternity sickness, and maternity period.

1942—Subsec. (e). Act Apr. 8, 1942, amended first proviso.

1940—Subsec. (a). Act Aug. 13, 1940, §1, excluded from definition of employer companies engaged in mining coal, supplying coal not beyond the mine tippie, and the operation of equipment or facilities therefor.

Subsec. (d). Act Aug. 13, 1940, §3, excluded from definition of employee individuals engaged in mining coal, preparation of coal, handling (other than rail movement by standard locomotives) of coal not beyond the mine tippie, or the loading of coal at the tippie.

Subsec. (l). Act Oct. 10, 1940, §6, redesignated subsec. (m) as (l). Former subsec. (l) redesignated (n) by act Oct. 10, 1940, §8.

Subsec. (m). Act Oct. 10, 1940, §7, redesignated subsec. (n) as (m). Former subsec. (m) redesignated (l) by act Oct. 10, 1940, §6.

Subsec. (n). Act Oct. 10, 1940, §8, redesignated former subsec. (l) as (n), and amended provisions generally. Former subsec. (n) redesignated (m) by act Oct. 10, 1940, §7.

Subsec. (g). Act Oct. 10, 1940, §2, inserted provisions relating to employment after June 30, 1940, in service of a local lodge, etc.

Subsec. (h). Act Oct. 10, 1940, §3, substituted provisions defining "registration period" for provisions defining "half month".

Subsec. (j). Act Oct 10, 1940, §4, inserted provisions relating to earned income other than for services for hire to definition of "remuneration".

Subsec. (k). Act Oct. 10, 1940, §5, inserted in cl. (i) "accrues" after "or", inserted provisions relating to "subsidiary remuneration", and substituted provisions relating to working days which include part of each of two consecutive calendar days, for provisions relating to work shifts which include part of two consecutive calendar days.

1939—Subsec. (d). Act June 20, 1939, §1, designated second paragraph as subsec. (e).

Subsec. (e). Act June 20, 1939, §§1, 2, designated second paragraph of subsec. (d) as (e) and inserted proviso relating to an individual not deemed a citizen or resident of the United States. Former subsec. (e) redesignated (f).

Subsec. (f). Act June 20, 1939, §§2, 3, redesignated former subsec. (e) as (f). Former subsec. (f), which defined "part-time worker", was struck out.

Subsec. (h). Act June 20, 1939, §4, substituted provisions authorizing Board to define "half-month" for provisions defining "half-month" as a period of any fifteen consecutive days, with no day to be included in more than one period for any individual.

Subsec. (i). Act June 20, 1939, §5, struck out comma after "money".

Subsec. (k). Act June 20, 1939, §6, struck out proviso relating to calendar days for part-time workers.

Subsec. (n). Act June 20, 1939, §20, inserted provisions relating to inclusion within "benefit year" half-months containing days of unemployment.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

##### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title VII, §7101(f), Nov. 10, 1988, 102 Stat. 3759, provided that: "The amendments made by this section [amending this section and sections 352, 354, and 362 of this title] shall take effect upon the date of the enactment of this Act [Nov. 10, 1988]."

Pub. L. 100-647, title VII, §7203(b), Nov. 10, 1988, 102 Stat. 3776, provided that: "The amendment made by this section [amending this section] shall take effect on July 1, 1988."

##### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 402(b) of Pub. L. 98-76 applicable to compensation paid for services rendered after June 30, 1983, see section 402(c) of Pub. L. 98-76, set out as a note under section 231 of this title.

Amendment by section 403(b) of Pub. L. 98-76 effective Aug. 13, 1981, see section 403(c) of Pub. L. 98-76, set out as a note under section 231 of this title.

Pub. L. 98-76, title IV, §411(b), Aug. 12, 1983, 97 Stat. 436, provided that: "The amendments made by this section [amending this section and sections 353 and 354 of this title] shall apply to compensation paid for services rendered after December 31, 1983."

Pub. L. 98-76, title V, §503(c), Aug. 12, 1983, 97 Stat. 441, provided that: "The amendments made by this sec-

tion [amending this section and section 358 of this title] shall apply to compensation paid for services rendered after December 31, 1983."

##### EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94-92, title I, §2, Aug. 9, 1975, 89 Stat. 464, provided that:

"(a) The amendment made by section 1(a) of this Act [amending this section] shall be effective with respect to days of sickness in registration periods beginning after June 30, 1975.

"(b) The amendment with respect to qualifying conditions made by section 1(f) [amending section 353 of this title] shall be effective for services rendered after December 31, 1973.

"(c) The amendments made by sections 1(b), 1(c), and 1(d)(1) of this Act [amending this section and section 352 of this title] shall be effective with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 1975: *Provided, however*, That the amount of benefits paid for days of unemployment or days of sickness in a registration period beginning after June 30, 1975, and prior to the date of enactment of this Act [Aug. 9, 1975] shall, if paid to an employee who is covered by a nongovernmental plan for unemployment or sickness insurance and who has been paid benefits under such plan for one or more days within the registration period, be reduced by the amount, if any, by which the benefits paid to him under the nongovernmental plan would have been reduced if this Act [amending this section, sections 231m, 352, 353, 358, 360, 361 of this title, and sections 1402 and 3231 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under this section and sections 231 and 231m of this title, and section 1402 of Title 26] had been enacted prior to July 1, 1975, so that the employee will receive, the full amount of the combined benefits that he would have received under the Railroad Unemployment Insurance Act [this chapter] and the nongovernmental plan if the benefit increases provided by this Act had been enacted prior to said date. The amount of each such reduction in the benefits paid under the amendment made by section 1(c)(2) of this Act [amending section 352 of this title] shall be paid over by the Board to the insurer of the nongovernmental plan or to the employer if a self-insurer. Reductions in benefits and payments to insurers and employers hereunder shall be made on claims filed with the Board by such insurers and employers within thirty days after the date of enactment of this Act [Aug. 9, 1975].

"(d) The amendments made by sections 1(d)(2) and 1(e) of this Act [amending section 352 of this title] shall be effective with respect to days of unemployment in registration periods beginning after June 30, 1975.

"(e) The amendments made by sections 1(g), 1(h), 1(i)(1), and 1(j) of this Act [amending sections 358, 360, and 361 of this title] shall be effective with respect to compensation paid for services rendered after December 31, 1975.

"(f) The amendment made by section 1(i)(2) of this Act [amending section 360 of this title] shall be effective on the date of enactment of this Act [Aug. 9, 1975]."

##### EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90-624, §4(b), Oct. 22, 1968, 82 Stat. 1317, provided that: "The amendments made by section 3 [amending this section] shall apply with respect to service performed after December 31, 1967."

Amendment by section 201(a)(1) of Pub. L. 90-257 effective as of July 1, 1968, and amendment by section 201(a)(2) of Pub. L. 90-257 effective with respect to base years beginning in calendar years after December 31, 1966, see section 208 of Pub. L. 90-257, set out as a note under section 352 of this title.

##### EFFECTIVE DATE OF 1959 AMENDMENT

Pub. L. 86-28, pt. III, §309, May 19, 1959, 73 Stat. 33, provided that: "The amendments made by section

301(b) [amending this section] shall be effective with respect to days in registration periods beginning after June 30, 1959. The amendments made by sections 302, 303(a), and 305 [amending sections 352 and 354 of this title] shall be effective with respect to benefits accruing in general benefit years which begin after the benefit year ending June 30, 1958, and in extended benefit periods which begin after December 31, 1957. The amendment made by section 304 [amending section 353 of this title] shall be effective with respect to base years after the base year ending December 31, 1957. The amendments made by clauses (4) and (5) of section 306 [amending section 358 of this title, increasing the contribution rates for compensation paid after May, 1959] and clause (1) of section 307 [amending section 358 of this title, increasing the contribution rate from 3 to 3¼ percent] shall be effective as of the first day of the calendar month next following the month in which this Act was enacted [May, 1959], and shall apply only with respect to compensation paid for services rendered in calendar months after the month in which this Act was enacted [May, 1959].”

#### EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85-927, pt. II, §207, Sept. 6, 1958, 72 Stat. 1783, provided that:

“(a) The amendments made by section 201(a) [amending this section] shall be effective with respect to registration periods in benefit years after the benefit year ending on June 30, 1958.

“(b) The amendments made by section 202 [amending section 354 of this title] shall be effective with respect to days in benefit years after the benefit year ending on June 30, 1958.

“(c) The remaining amendments made by this part [amending this section, sections 358, 361, 362 of this title, and section 1104 of Title 42, The Public Health and Welfare] shall be effective, except as otherwise indicated therein, on the date of the enactment of this Act [Sept. 6, 1958].”

#### EFFECTIVE DATE OF 1954 AMENDMENT

Act Aug. 31, 1954, ch. 1164, pt. IV, §§401, 402, 68 Stat. 1042, provided that:

“SEC. 401. The amendments made by this Act [enacting section 228s-1 of this title, amending this section, sections 228a, 228b, 228c, 228e, 352, 353, and 358 of this title, sections 3201, 3202, 3211, 3221, and 3231 of Title 26, Internal Revenue Code, and sections 1500, 1501, 1510, 1520, 1532 of the Internal Revenue Code of 1939] shall be effective July 1, 1954, except as otherwise provided.

“SEC. 402. The provisions of sections 1, 205, and 301 of this Act [amending this section, section 228a of this title, and section 1532 of the Internal Revenue Code of 1939] shall be effective with respect to compensation paid on and after April 1, 1954.”

#### EFFECTIVE DATE OF 1951 AMENDMENT

Act Oct. 30, 1951, ch. 632, §28, 65 Stat. 691, provided that: “The provisions of sections 26 and 27 of the Act [amending sections 350 and 354 of this title] shall become effective with respect to registration periods beginning on and after January 1, 1952.”

#### EFFECTIVE DATE OF 1946 AMENDMENTS

Amendment by sections 1 and 2 of act July 31, 1946, effective July 31, 1946, see section 401 of act July 31, 1946.

Amendment by sections 301 to 304 of act July 31, 1946, effective as of 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 1942 AMENDMENT

Act Apr. 8, 1942, ch. 227, §15, 56 Stat. 211, provided in part that: “The amendment in this section [amending this section] shall operate in the same manner and have the same effect as if it had been part of the Railroad Unemployment Insurance Act [this chapter] when that Act was enacted on June 25, 1938: *Provided, how-*

*ever,* That no interest or penalties shall accrue or be deemed to have accrued for the failure to make returns under, or pay contributions levied by, section 8 of said Railroad Unemployment Insurance Act [section 358 of this title] with respect to the compensation of employees of any local lodge or division of a railway-labor-organization employer earned prior to July 1, 1940, and with respect to the compensation of employees of any general committee of a railway-labor-organization employer earned prior to the enactment of this amendment if, with respect to any such local lodge or division (1) the headquarters of such a local lodge or division was not located in the United States or (2) all, or substantially all, the individuals constituting the membership of such a local lodge or division were employees of an employer not conducting the principal part of its business in the United States; and if, with respect to any such general committee (1) the individuals represented by such a general committee were employees of an employer not conducting the principal part of its business in the United States, or (2) the service to such a general committee was rendered outside the United States, or (3) the office or headquarters of the individual rendering service to such a general committee was not located in the United States and if such returns are made and such contributions are paid by such a local lodge or division or by such a general committee within the time allowed for making returns and paying contributions with respect to the first calendar quarter beginning after the enactment of this amendment.”

#### EFFECTIVE DATE OF 1940 AMENDMENT

Act Oct. 10, 1940, ch. 842, §1, 54 Stat. 1094, provided: “That the provisions of this act [amending this section, sections 228a, 228i, 352 to 355, 356, 361, and 362 of this title, and section 1532 of former Title 26, Internal Revenue Code of 1939, and enacting provisions set out as notes under this section and section 262 of this title] shall take effect on November 1, 1940, except that sections 2, 11, 25, 26, and 27 [amending sections 228a, 228i, 351, and 352 of this title and section 1532 of former Title 26 and enacting provisions set out as a note under section 262 of this title] shall be effective as of July 1, 1940, and sections 19 and 20 [amending section 355 of this title] shall become effective upon the approval of this act: *Provided, however,* That—

“(a) A half-month which has begun prior to November 1, 1940, in accordance with the Railroad Unemployment Insurance Act [this chapter] and regulations thereunder, and which includes such date, shall continue, and benefits with respect thereto shall be computed and paid as if this act had not been enacted;

“(b) All benefit years current on October 31, 1940, shall terminate (1) on October 31, 1940, or (2) on the last day of a half-month which includes October 31, 1940 and November 1, 1940, whichever is later, and, for the purposes of section 2(c) of the Railroad Unemployment Insurance Act [section 352(c) of this title], as amended by this act, all benefits paid for unemployment in half-months begun subsequent to June 30, 1940, and prior to November 1, 1940, shall be deemed to have been paid for unemployment within the benefit year ending June 30, 1941;

“(c) Benefits for unemployment in the first registration period, beginning after October 31, 1940, of an employee who has, subsequent to June 30, 1940, completed a waiting period under section 3(b) of the Railroad Unemployment Insurance Act [section 353(b) of this title], shall be determined and computed as though such registration period were a subsequent registration period in the same benefit year.”

#### EXCLUSION FROM WAGES AND COMPENSATION OF FUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTH CARE BENEFITS PROVIDED BY EMPLOYERS

For purposes of this chapter, the term “compensation” shall not include the amount of any refund re-

quired under section 421 of Pub. L. 100-360 [42 U.S.C. 1395b note], see section 10202 of Pub. L. 101-239, set out as a note under section 1395b of Title 42, The Public Health and Welfare.

### § 352. Benefits

#### (a) Days for which benefits payable; determination of amount

(1)(A) PAYMENT OF UNEMPLOYMENT BENEFITS.—

(i) GENERALLY.—Except as otherwise provided in this subparagraph, benefits shall be payable to any qualified employee for each day of unemployment in excess of 4 during any registration period within a period of continuing unemployment.

(ii) WAITING PERIOD FOR FIRST REGISTRATION PERIOD.—Benefits shall be payable to any qualified employee for each day of unemployment in excess of 7 during that employee's first registration period in a period of continuing unemployment if such period of continuing unemployment is the employee's initial period of continuing unemployment commencing in the benefit year.

(iii) STRIKES.—

(I) INITIAL 14-DAY WAITING PERIOD.—If the Board finds that a qualified employee has a period of continuing unemployment that includes days of unemployment due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which such employee was last employed, no benefits shall be payable for such employee's first 14 days of unemployment due to such stoppage of work.

(II) SUBSEQUENT DAYS OF UNEMPLOYMENT.—For subsequent days of unemployment due to the same stoppage of work, benefits shall be payable as provided in clause (i) of this subparagraph.

(III) SUBSEQUENT PERIODS OF CONTINUING UNEMPLOYMENT.—If such period of continuing unemployment ends by reason of clause (v) but the stoppage of work continues, the waiting period established in clause (ii) shall apply to the employee's first registration period in a new period of continuing unemployment based upon the same stoppage of work.

(iv) DEFINITION OF PERIOD OF CONTINUING UNEMPLOYMENT.—Except as limited by clause (v), for the purposes of this subparagraph, the term "period of continuing unemployment" means—

(I) a single registration period that includes more than 4 days of unemployment;

(II) a series of consecutive registration periods, each of which includes more than 4 days of unemployment; or

(III) a series of successive registration periods, each of which includes more than 4 days of unemployment, if each succeeding registration period begins within 15 days after the last day of the immediately preceding registration period.

(v) SPECIAL RULE REGARDING END OF PERIOD.—For purposes of applying clause (ii), a period of continuing unemployment ends when an employee exhausts rights to unemployment benefits under subsection (c) of this section.

(vi) LIMIT ON AMOUNT OF BENEFITS.—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 351(j) of this title) 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.

(B) PAYMENT OF SICKNESS BENEFITS.—

(i) GENERALLY.—Except as otherwise provided in this subparagraph, benefits shall be payable to any qualified employee for each day of sickness after the 4th consecutive day of sickness in a period of continuing sickness but excluding 4 days of sickness in any registration period in such period of continuing sickness.

(ii) WAITING PERIOD FOR FIRST REGISTRATION PERIOD.—Benefits shall be payable to any qualified employee for each day of sickness in excess of 7 during that employee's first registration period in a period of continuing sickness if such period of continuing sickness is the employee's initial period of continuing sickness commencing in the benefit year. For the purposes of this clause, the first registration period in a period of continuing sickness is that registration period that first begins with 4 consecutive days of sickness and includes more than 4 days of sickness.

(iii) DEFINITION OF PERIOD OF CONTINUING SICKNESS.—For the purposes of this subparagraph, a period of continuing sickness means—

(I) a period of consecutive days of sickness, whether from 1 or more causes; or

(II) a period of successive days of sickness due to a single cause without interruption of more than 90 consecutive days which are not days of sickness.

(iv) SPECIAL RULE REGARDING END OF PERIOD.—For purposes of applying clause (ii), a period of continuing sickness ends when an employee exhausts rights to sickness benefits under subsection (c) of this section.

(2) The daily benefit rate with respect to any such employee for such day of unemployment or sickness shall be in an amount equal to 60 per centum of the daily rate of compensation for the employee's last employment in which he engaged for an employer in the base year, but not less than \$12.70: *Provided, however,* That for registration periods beginning after June 30, 1975, but before July 1, 1976, such amount shall not exceed \$24 per day of such unemployment or sickness, that for registration periods beginning after June 30, 1976, but before July 1, 1988, such amount shall not exceed \$25 per day of such unemployment or sickness, that for registration periods beginning after June 30, 1988, but before July 1, 1989, such amount shall not exceed \$30 per day of unemployment or sickness, and that