

Impact of Rail Safety Improvement Act (RSIA) 2008

BLET UP Southern Region

Version 4, July 31, 2009

This is a synopsis of the changes in the Hours of Service Act scheduled for implementation on July 16, 2009 under the Rail Safety Improvement Act of 2008 (RSIA). It is in no way intended to be a substitute for the provisions in the actual law nor the Federal Railroad Administration's interpretation of the same. Both of those documents should be attached in their entirety to this electronic communication and should be available online shortly at www.ble-t.org. Assembling this information was a very challenging task. Much of the law is subject to FRA's interpretation of the provisions in the RSIA. FRA has been moving at a snails pace in putting out information. As of the writing of this synopsis, two weeks before scheduled implementation, several issues remain unresolved concerning how FRA intends to apply the provisions of the law. You will therefore note that this document is labeled **Version 4** because FRA has made certain last minute changes in their interpretation. We are certain there will be further interpretations and clarifications to follow which will be distributed as information becomes available.

Effective July 16, 2009

1. Time off duty between work events will have to be a minimum of 10 hours undisturbed rest (UDR) regardless of your time on duty on **ALL** assignments.
 - a. This provision applies to all assignments (yard, TSE, local, work train and freight assignments) at both the home and away from home terminals. It is a function of the new law so there is no longer any option to reduce to 8 hours undisturbed at the away from home terminal.
 - b. In the event the previous tour of duty exceeds 12 hours, the minimum UDR period before next performing service will be extended on a minute by minute basis for all limbo time incurred.
IE – An on duty period of 12' 46" would mandate a rest period under the law of 10' 46" before the employee could legally resume service under the law.
IE – An engineer on a regular assigned TSE has an assigned start time of 1500 hours daily. The engineer works the shift and is delayed transporting back to the terminal with a total duty time of 13' 30". The engineer is required to have 11' 30" UDR rest period prior to his next tour of duty. This would put the engineer rested for 1600 hours. Not being rested for the assignment would be handled as it currently is today. If the engineer is instructed by management to show up at 1600 then a basic day penalty should be filed for starting the TSE outside the assigned start time. If no instructions are received, an extra man should be called and the engineer is due lost earnings under Article 26.
 - c. The employee **cannot** voluntarily waive their right to any mandatory UDR provisions under the law. Employees cannot be disturbed by any contact initiated by the railroad during this minimum 10 hour UDR rest period or when the sum of on duty time and limbo time exceeds 12 hours mandating additional rest beyond the 10 hour minimum by calls from management about auto downloads, car handling, pickling, etc except in cases of emergency. The employee has an unfettered right to initiate calls to the Carrier, make voluntary requests for return calls, pages, text messages or other requests for information from Union Pacific during this rest period and the Carrier may respond to these requests. However, the Carrier cannot initiate any other contact for any other purpose during this 10 hour UDR. Should an employee's rest be improperly disturbed, (either during the 10 hour UDR, 4 hour interim release or the additional rest mandated beyond a 12 hour duty period) then the rest clock will have to be restarted. Contact initiated by the railroad beyond the initial 10 hour UDR period following covered service but within the 10 hour period prior to duty remains unresolved by FRA at this time and they are soliciting comments from all parties on how that should be handled. More info will be provided as it becomes available.
 - d. Employees still have the right to any additional contractual rest entitlement.
Engineers have the right to kick for 12 hours undisturbed rest under the 1996 On Property Agreement when
 1. their tour of duty is 12 hours or
 2. if there has not been a rest period of 12 hours or more in the previous 5 calendar days

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- e. If an employee is called to report for duty at a particular time, but is notified of his or her release from that call prior to the time the employee is scheduled to report for duty, then the employee has not accrued any time on duty, and has the full time remaining to work without having to receive another statutory off-duty period. The employee has not initiated an on-duty period. This is true whether or not the employee has yet arrived at the location at which he or she was to report for duty, so long as the employee is notified of the release prior to the time he or she was to report.
- f. If an employee reports for duty at the time that he or she is scheduled to report, and then is released at a time after that, the period from the report time until the release time is time on duty, by which amount of time the time remaining for that employee to work before a statutory off-duty period is required must be reduced, and the employee has initiated an on-duty period for the purpose of the 6- or 7-day limitation.

IE – An employee receives a call to report for duty at 0300 hours. The employee is then informed by a manager at 0315 that the call has been busted. The employee is subsequently required to again report for duty at 0615. Since the employee did not receive an interim release of at least 4 hours, the employee may only work until 1500.

IE – An employee receives a call to report for duty at 0300 hours. The employee is then informed by a manager at 0315 that the call has been busted. The employee is subsequently required to again report for duty at 0715. Since the employee received an interim release of at least 4 hours, the employee may work for 11 hours and 45 minutes, or until 1900.

IE – An employee receives a call to report for duty at 0300 hours. The employee is then informed by a manager at 0315 that the call has been busted. The employee is subsequently called at 1315 to report for duty at 1515. Since the employee has received 10 hours UDR, the employee may work the full 12 hours.

- 2. Employees can only work a maximum of 276 hours per month on any assignment, including on duty hours, limbo time, and time spent in other mandatory service for the Carrier (activities that the railroad not only requires the employee to perform but also requires the employee to complete immediately or to report at an assigned time and place to complete, without any discretion in scheduling on the part of the employee)
 - a. The 276 hour cap has only been reached by less than 1% of the operating employees in any calendar month for the past 6 months.
 - b. Time in other mandatory service for the Carrier as defined above will be included in the 276 hour cap. Employees will have to report actual time in this type service on a tie up screen like a regular work event. The calendar days spent in this other mandatory service will **not** count toward the consecutive calendar starts referenced below.
 - c. The total hours accumulated for the month, number of consecutive days worked and total amount of limbo time for the month will be displayed on each employee's tie up screen each time they complete their hours of service report in the computer.
 - d. An employee who reaches the 276 hour maximum cap at the home terminal will be held for legal rest until 0000 hours on the 1st of the following calendar month.
 - IE** - if an employee reaches his 276 cap at the home terminal on the 27th of any given month, they would not be subject to a call to duty until 0000 hours on the 1st subject to the provisions of the BLET Auto Mark Up Interpretation Article II.
 - e. An employee who reaches the 276 hour cap at the away from home terminal can be held at the away from home terminal until the 1st of the month or deadheaded back to the home terminal for release. The deadhead home would be without being fined by FRA. The Carrier has assured us that they do not intend to hold crews at the AFHT in this scenario for extended or unreasonable periods. They cannot be worked on a train back to the home terminal beyond their 276 hour cap.
 - f. The 276 hour cap resets at 0000 hours on the first day of a new month.

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IE – An employee has 270 hours worked toward the cap on the last day of the month. The employee is called for 1800 hours out of the home terminal. The employee then would have worked 276 hours for the month and the 276 hourly cap for the next month begins at 0000 hours on the 1st day of the following month. The tour of duty would split 6 hours on each of the respective months involved.

- g. The counting of the 276 hour cap does not begin until July 16, 2009, therefore it will be almost impossible for anyone to be in danger of reaching the cap in July of 2009.**
- h. There was much discussion regarding the handling of employees who approach or reach the 276 hour maximum. During our last meeting on June 24, 2009 Union Pacific indicated that they wanted to maximize the work opportunity for all employees but there will be a threshold eventually identified that once reached, will trigger a manual review of availability for duty under the law. FZ status will be used by CMS to denote an employee being manually selected for rest to comply with the law. If you are denied a work opportunity due to approaching the 276 hour limit, you should contact your local chairman so that we can review your situation.**

3. Effective July 16, 2009 employees cannot exceed 40 hours limbo time during any calendar month. All limbo time (time over 12 hours waiting on transportation or deadheading) will begin counting on July 16, 2009.

- a. Employees who reach the maximum limbo time allotment of 40 hours in a calendar month will continue to be called to service. The railroad will be required to get them off the train and to the terminal within 12 hours.
- b. Effective October 16, 2009 the maximum limbo time allowed will be reduced to 30 hours per month. For that month only, the limbo time cap is 20 hours for the period from October 1 through October 15, and 15 hours for the period from October 16 through October 31.
- c. These monthly limits do not apply if the train carrying the employee is directly delayed by casualty, accident, act of God, derailment, major equipment failure that keeps the train from moving forward, or other delay from unforeseeable cause.
- d. All limbo time should be reported and the Carrier will be responsible for reporting any exceptions to the FRA as it stands right now.
- e. All time spent awaiting transportation and deadheading beyond 12 hours will count as limbo time.

4. Effective July 16, 2009 employees will be mandated to have rest period after 6 or 7 consecutive calendar day starts according to the following:

- a. Employees who end their 6 consecutive calendar day starts will be mandated by the new law to have 48 hours rest prior to commencing another covered start.
 - IE** - if an employee had a start each day Monday – Saturday with a tie up time of 1500 hours Saturday then under the RSIA they would have a rest period until 1500 hours Monday (48 hours) before being allowed to resume service.
- b. Employees who have reached 6 consecutive calendar day starts at the away from home terminal will be allowed to work back to the home terminal on the 7th day but will be required to have 72 hours rest at the home terminal prior to being allowed to resume service.
- c. Employees who are observing a 10 hour UDR, 48 hour or 72 hour rest period mandated under the law assigned to a rotating pool or extra board will as in the past continue to hold their position on the pool or extra board while working their way up the board and holding first out until rested for their duty assignment **per Letter of Understanding Dated July 10, 2009.**
- d. Employees observing either 48 or 72 hour rest under the law will be placed in FR status by the computer to denote that the employee has been automatically identified for the appropriate period of rest under the law.

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- e. The 10 hours UDR mandated after every tour of duty occurs on the front end of either the 48 or 72 hour rest period mandated by the law under the FRA's current interpretation
- f. The only way any employee can work 7 consecutive calendar day starts is when the 7th consecutive calendar day start occurs **out of the away from home terminal, or when returning from an outside assignment from a temporary remote home terminal. A 7th start CANNOT be initiated out of the employee's home terminal under any circumstances under the law.**
1. A break in the 6 – 7 day start cycle occurs with one or more of the following events:
A calendar day start is missed either at the home or away from home terminal.
 2. Employee attends instructional training (rules class, simulator training, safety training, etc) before the 6th consecutive calendar day start.
 3. Employee deadheads out of the away from home terminal on the 6th consecutive calendar day to the home terminal and does not perform subsequent service during that 6th calendar day.
IE: An employee has a calendar day start Sunday – Thursday (5 consecutive calendar day starts) and is deadheaded from his away from home terminal on Friday (6th consecutive calendar day). The employee performs no other covered service on Friday. The employee has a break in the calendar day cycle and by law will be rested and available for service on Saturday. The employee could be called for service on Friday after observing the minimum mandatory statutory rest period at the home terminal which would trigger the 6th consecutive calendar day start and a 48 hour rest period under the law or a 7th consecutive start out of the AHT whichever is applicable.
- g. The below interpretations from the FRA were received on July 13, 2009 and make some changes to the previous deadhead interpretation. Deadheading is now applicable to the 6 – 7 day consecutive day start cycle as follows:
1. Deadheading to a duty assignment or from the home terminal to the away-from-home terminal, regardless of how paid, **IS NOT A START, if you receive a full 10 hours UDR at the AHT prior to seeing covered service.**
IE – An employee is called to deadhead from the home terminal to the AHT and receives 10 hours UDR before being called to work back to the HT. This is NOT a consecutive calendar day start.
 2. Deadheading from the home terminal to the away-from-home terminal, regardless of how paid, **IS NOT A START** if you are then deadheaded back from the away-from-home terminal to the home terminal without having performed any service at or out of the away-from-home terminal
 3. Deadheading from the away-from-home terminal to the home terminal, regardless of how paid, **IS NOT A START**, unless an on-duty period has been initiated in each of the six calendar days prior to reporting for the deadhead.
IE – An employee has worked 5 consecutive calendar day starts ending up at the away from home terminal. The employee is subsequently deadheaded from the away from home terminal to the home terminal. This is NOT a consecutive calendar day start.
 4. Deadheading from the away-from-home terminal to the home terminal, regardless of how paid, **IS A START** if an on-duty period has been initiated in each of the six calendar days prior to reporting for the deadhead.
IE – An employee has worked 6 consecutive calendar day starts ending up at the away from home terminal. The employee is subsequently deadheaded from the away from home terminal to the home terminal. This is a 7th consecutive calendar day start.
 5. An employee who deadheads out of the away from home terminal on the 7th consecutive calendar day start is required to have 72 hours rest before again beginning service out of the home terminal under the law.
IE - An employee has a calendar day start Sunday – Friday (6 consecutive calendar days) and is deadheaded from his away from home terminal on Saturday (7th consecutive calendar day). The employee is **required by law to have a rest period of 72 hours at the home terminal.**
- h. Employees who are assigned to 6 or 7 day local, TSE or work train assignment will be required to observe the mandated statutory rest period after 6 or 7 consecutive calendar day starts.

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IE - An employee is on a 6 day per week local assignment bulletined to work Monday – Saturday and works that assignment on the assigned days. The employee must observe the mandatory 48 hour rest period provided in the law before again resuming service. In this instance, the employee could work a maximum schedule of 6-2 and 5-1 on alternating weeks.

IE - An employee is on a 7 day per week local assignment bulletined to work Monday – Sunday and works that assignment 6 consecutive calendar days Monday - Saturday. The employee must observe the mandatory 48 hour rest period provided in the law before again resuming service. In this instance, the employee could work a maximum schedule of 6-2.

IE - An employee is on a 6 day per week local assignment bulletined to work Monday – Saturday with layovers on alternating days at the away from home terminal. The employee works that assignment on the assigned days. The employee must observe the mandatory 48 hour rest period provided in the law upon tie up on Saturday before again resuming service. In this instance, the employee could work a maximum schedule of 6-3 and 4-1 schedule on alternating weeks.

IE - An employee is on a 7 day per week local assignment bulletined to work Monday – Sunday with alternating layover days at the away from home terminal. The employee works that assignment 6 consecutive calendar days beginning out of the home terminal on Monday through Saturday. The employee must observe the mandatory 48 hour rest period provided in the law before again resuming service. In this instance the employee would resume service on the following Tuesday out of the home terminal. The employee could work a maximum schedule of 6 – 2.

- i. Only one start will be counted for each calendar day; however, there can be only one start on the 6th consecutive day.

Question - An employee is working a through freight assignment with a layover at the away from home terminal for rest. The employee worked consecutive calendar day starts Monday – Thursday (4 calendar day starts). The employee is called to deadhead out of the HT on Friday for 600 hours tying up at 900 hours at the AHT. The employee is called on his legal rest out of the AHT for 2100 on Friday tying up back at the home terminal on Saturday morning at 0900 hours. The employee is subsequently called for service for 0001 hours on Sunday. Is the employee in the above scenario legally rested for the 0001 hour call to service on Sunday?

Answer – Yes. The employee actually made 2 starts on Friday and did not have a calendar day start on Saturday. Since the employee did not have a calendar day start on Saturday (the 6th calendar day) the rest cycle is reset.

- j. We remain in dispute with Union Pacific on the handling of statutorily mandated rest following a 6th or 7th consecutive calendar day start on guaranteed extra boards and pools. Our position is that any rest cycle mandated by law should be treated as it has historically been handled under the Hours of Service Act. There should be no deduction in guarantee for observing rest mandated by the Hours of Service Act. Union Pacific’s position is that such time results in a deduction in guarantee. As of the drafting of this synopsis, the National Carrier’s Conference Committee on behalf of all its railroad members has filed suit against the BLET and UTU in a Dallas court in an attempt to prevent this issue from being escalated to “major dispute” status. More information on this legal action will be provided as this issue develops. **In the interim period, it is recommended that you document any guarantee shortages via the claims appeal process through your Local Chairman until resolution is reached on this issue.**