

## HOS FAQ (11/18/08)

***Disclaimer:*** *The responses to questions concerning the new Hours of Service provisions provided in this document represent the understanding and interpretation of the Brotherhood of Locomotive Engineers and Trainmen only, and are subject to clarification, correction, and/or revision upon the Federal Railroad Administration (“FRA”) publishing formal interpretations of applicable statutory provisions. They pertain only to “train employees” (i.e., operating craft employees), and not to any other employees governed by the Hours of Service Act (e.g., signalmen and train dispatchers).*

### **1. Recordkeeping**

These questions pertain to general recordkeeping requirements.

#### **1.1. Will Carrier track the time/days requirements?**

Yes, both the statute and FRA regulations at 49 CFR Part 228 will continue to require carriers to maintain Hours of Service records. Section 108(f)(1) of the legislation requires the FRA to update its regulations to accommodate the changes within 180 days after enactment, and Section 108(f)(2) authorizes FRA to utilize the RSAC process for this purpose; FRA also will be able to adjust its regulations later on if necessary. Since the majority of the changes will not take effect for nine months (*see* § 108(g)), the new regulations and procedures will be established in advance of the changes.

#### **1.2. How will employees know how many “limbo” time hours are charged to them?**

As with the current Hours of Service requirements, you will continue to report both your time on duty and your limbo time on a daily basis. The revised FRA regulations — and carrier Hours of Service documents — will have to provide a means of tracking monthly limbo time, whether paper or electronic records are used.

#### **1.3. How will the employee know on any day of the month how many hours have been accumulated toward the 276 hours?**

The revised FRA regulations — and carrier Hours of Service documents — will have to provide a means of tracking the cumulative hours that apply toward the 276-hour cap, whether paper or electronic records are used.

#### **1.4. Who is the keeper of the records?**

The carrier, as they are required to do at present.

#### **1.5. Is there an appeal process if hours/days are dispute?**

There should be no dispute in reportable Hours of Service or the number of consecutive days if the regulations are properly written and the carrier forms and records are properly designed and

maintained . In the event you are denied work because of a carrier error in keeping Hours of Service records, that denial would be handled under the applicable collective bargaining agreement.

## **2. Six and two (or 6 & 48) and seven and three (or 7 & 72)**

This set of questions pertains to the 6 & 2 (or 6 & 48) and 7 & 3 (or 7 & 72) provisions of the new law.

### **2.1. What does 6 & 2 mean?**

The new law states that if you have initiated an on-duty period each day for six consecutive days, when you complete the sixth start you must have at least 48 consecutive hours off duty at your home terminal — which may not mean two full calendar days — before you can report for duty or be required to report for duty again. If you are released from duty at the away-from-home terminal at the end of the sixth tour of duty, you can work a seventh consecutive day to return home, but then must have at least 72 consecutive hours off duty before you can report for duty or be required to report for duty again..

### **2.2. I'm on an Extra Board for 6 days, but only work twice during that period of time. Does the law intend that those days available for service are counted as days toward 6 consecutive days and force the employee to take 48 hours off?**

The rest requirement is triggered by **initiating** an on-duty period each day for six consecutive days. The count is reset to zero on any calendar day in which you do not initiate an on-duty period. Being available for service does not count, unless you actually initiate an on-duty period on a given day. For example, if you are called for duty tours that begin on Monday, Tuesday, Wednesday, Thursday, and Friday, you lay-in on Saturday, and then are called for a duty tour that begins on Sunday, the Sunday tour is considered as Day #1 for purposes of the 6 & 2.

### **2.3. Will six consecutive days with a time slip in for each day, regardless of service, force 48 hours off?**

Initiating a tour of duty for six consecutive days will trigger the rest requirement, regardless of which class of service you work or how long you work. The only exceptions are for intercity passenger service and commuter service, which are not covered by these changes.

### **2.4. What about a combination of service including 3 days on a regular assignment, and 3 days in Company service?**

First, it should be noted that “Company service” is impacted by Hours of Service requirements only when it fulfills a condition of employment, as is the case today. That being said, we do not know at this time how FRA will construe the 6 & 2 and 276-hour cap provisions and must request an interpretation from them. However, our preliminary opinion is as follows. If the Company service is unconnected to a duty tour (*i.e.*, is separated by a qualified rest period), then that day will count toward the 6 consecutive days. If the Company service is commingled with

either the preceding or the subsequent duty tour, then it does not count as a separate initiation of a duty period.

**2.5. What about a local freight assignment that works on 6 consecutive days. After those 6 starts, is the employee parked for 48 hours?**

Yes; you must have at least 48 consecutive hours off after completing the sixth consecutive start.

**2.6. An Engineer works every day Monday through Friday. 2359 Friday finds the Engineer at the away-from-home terminal. The Engineer is off at the away-from-home terminal for 28 hours and works home Sunday without providing service on Saturday. Does this reset the 6-day quota or does the Engineer get two days off?**

Someone who initiates a duty tour for six consecutive days may not work until he/she has had at least 48 consecutive hours off duty at the home terminal. Since this Engineer initiated a tour of duty on only five consecutive days, the lay-in on Saturday resets the consecutive day “clock” to zero.

**2.7. Same scenario, the Engineer works into the away-from-home terminal on the sixth day. He/she spends the 7<sup>th</sup> day away without working and is called on the 8<sup>th</sup> day to work home. Can he/she work home and how much rest will he/she be required to have?**

See response to FAQ 2.6.

**2.8. An Engineer works every day Monday through Saturday. 2359 Saturday finds the Engineer at the away-from-home terminal. The Engineer is off at the away-from-home terminal for 28 hours and works home Monday without providing service on Sunday. Does this reset the 6-day quota or does the Engineer get two days off?**

Someone who initiates a duty tour for six consecutive days may not work until he/she has had at least 48 consecutive hours off duty at the home terminal. An exception is provided, whereby someone who completes the 6<sup>th</sup> consecutive duty tour at the away-from-home terminal may work a 7<sup>th</sup> consecutive day only to return to the home terminal, at which time he/she would have to have at least 72 consecutive hours off duty. The statute is silent as to what happens when the engineer “lays in” on the 7<sup>th</sup> day at the away-from-home terminal, and the FRA ultimately will have to interpret how the law will apply.

However, our understanding of the law is that the consecutive-day “clock” resets to zero on any day that someone does not initiate a duty tour. This reset should occur whether someone is at the home terminal or not, and it is our opinion that “laying-in” and not initiating a duty tour on the 7<sup>th</sup> day while at the away-from-home terminal resets the clock to zero. Alternatively, the FRA could conclude that the railroad would be required to deadhead the Engineer home on the 7<sup>th</sup> day, rather than allow the lay-in.

**2.9. Same scenario, the Engineer works into the away-from-home terminal on the sixth day. He/she spends the 7<sup>th</sup> day away without working and is called on the 8<sup>th</sup> day to work home. Can he/she work home and how much rest will he/she be required to have?**

*See response to FAQ 2.8.*

**2.10. A crew is bulletined for a 6-day work train, Monday through Saturday. They are required by the Act to have 2 days off and return to work on Tuesday. Do they get paid for Monday or not?**

The answer to this question depends upon what collective bargaining agreement provisions, if any, govern compensation on a given property for someone who is restricted from working because of the requirements of the Hours of Service Act.

**2.11. An Engineer is holding a pool job and has worked Monday through Friday. After performing service on Friday, he/she is notified that he/she has been displaced to the extra board. He/she gets called to work on Saturday off the extra board. Is he/she required to have 2 days off or can he work for another 7 days?**

Assuming that a tour of duty was initiated each day Monday through Friday — which is not always the same as working on each of those days — the answer to the question depends upon when the tour of duty for which he/she is called on Saturday begins. If the tour of duty begins on Saturday, that will be the 6<sup>th</sup> consecutive day during which a duty tour was initiated, and the minimum 48-hour off duty at the home terminal period kicks in at the completion of that duty tour. If, however, a Saturday call was made with a Sunday reporting time, then the consecutive-day “clock” resets to zero because no duty tour was initiated on Saturday, and the Sunday duty tour is the first start under the new cycle.

**2.12. Reverse scenario, an extra board employee has worked 7 days and gets notified he/she has been awarded a pool turn. Can he/she work an additional six days without rest?**

Not until the minimum number of consecutive hours off duty — in this case 72 because 7 consecutive on duty periods were initiated.

**2.13. How does the 6 and 2 work with jobs that have a six day work week; 7 and 3 and a seven day work week?**

The statute includes a provision for the Secretary of Transportation (FRA) to waive the 6 & 2 and 7 & 3 requirements if a collective bargaining agreement provides for a different arrangement and it is deemed consistent with safety. However, even if these assignments didn't conflict with the 6 & 2 and 7 & 3 provisions of the new law, they could — depending on their hours — run afoul of the 276-hour monthly cap. In that case they will need to be reconfigured to be brought into line with that section of the law, which may involve collective bargaining between the involved carrier and the BLET General Committee having jurisdiction.

**2.14. Is the 6 and 2 ... 7 and 3 based on actual starts, i.e., go to work 6 (or 7) days in a row on consecutive calendar days?**

Yes, what counts is how many consecutive days a duty tour is **initiated**.

Example #1. A train employee works the following schedule: Monday and Tuesday — 7:59 a.m. until 3:59 p.m.; Wednesday and Thursday — 3:59 p.m. until 11:59 p.m.; and Friday and Saturday — 11:59 p.m. until 7:59 a.m. the following day. Because the employee initiated a tour of duty on six consecutive days, after being released from duty at 7:59 a.m. on Sunday morning he/she cannot report or be required to report for duty for 48 hours, or until 7:59 a.m. on Tuesday.

Example #2. A train employee works the following schedule: Monday and Tuesday — 7:59 a.m. until 3:59 p.m.; Wednesday and Thursday — 3:59 p.m. until 11:59 p.m.; Friday — 11:59 p.m. until 7:59 a.m. on Saturday. He/she next reports for duty at 12:01 a.m. on Sunday. Because the employee did not initiate a tour of duty on Saturday, his/her consecutive day “clock” is reset, and the Sunday tour of duty is the first day of the next cycle.

**2.15. If on the 6<sup>th</sup> day an employee is waiting a call (this call would make six consecutive days worked ... requiring two days off) and the employee is called to deadhead at 9:00 p.m. that evening to his/her away from home terminal; they tie up at the AFHT at 2:00 a.m. on the seventh day; they await a call to return home on the seventh day with no call coming until the eighth day to work home ... how many days off is the employee entitled to?**

See response to FAQ 2.6.

**3. 276 hour monthly cap.**

This section pertains to the cap of 276 hours per calendar month, which includes on-duty time, limbo time, and any other time spent in mandatory service for the carrier (e.g., rules and other training classes, medical examinations, etc.).

**3.1. I arrive at my home terminal and the trip pushes me to the 276 hours maximum hours, or exceeds it. How many days off, or hours off, will I be required to spend undisturbed?**

You cannot report for duty — or be required to report for duty — prior to 12:01 a.m. on the first day of the next calendar month. If, however, you reach the cap **and** either the 6 & 48 or the 7 & 72 also comes into play, then you cannot report for duty — or be required to report for duty — prior to the later of 12:01 a.m. on the first day of the next calendar month or the expiration of the 48- or 72-hour rest period.

**3.2. I arrive at my away-from-home terminal and the trip pushes me to the 276 hours maximum hours, or exceeds it. Under the law the Carrier cannot contact me or**

**deadhead me to my home terminal. How many days off, or hours off, will I be required to spend undisturbed before being sent home?**

We do not know at this time how FRA will construe the changes and must request an interpretation from them. Technically, the railroad would be in violation of the law if it deadheads you home after you have reached the cap, but the clear intent of the law is that all extended rest — except that triggered by limbo time — be taken at the home terminal. Therefore, construing the law narrowly and fining a railroad under these circumstances would, in our opinion, be contrary to the intent of the law. How this situation will be handled will be decided before the changes take effect.

**3.3. An Engineer has 275 hours against him/her on the 28<sup>th</sup>. Since the average run time is 10 hours, can the Carrier hold him/her out of service until the first of the month?**

We believe that the carrier not only can do so, but that it is likely to do so. The carrier may not either require or allow train employees to (1) go on duty, (2) remain on duty, (3) wait for deadhead transportation, (4) be in deadhead transportation from a duty assignment to the place of final release, or (5) be in any other mandatory service for the carrier in any calendar month where the employee has spent a total of 276 hours: (A) on duty; (B) waiting for deadhead transportation, or in deadhead transportation from a duty assignment to the place of final release; or (C) in any other mandatory service for the carrier have more than 276 hours per month. Therefore, if the carrier called an Engineer to work in this situation, it would have to release him/her after one hour in order to avoid violating the law.

#### **4. Undisturbed Rest**

These questions pertain to undisturbed rest between duty tours.

**4.1. Does the 10 hours undisturbed rest rule apply to anyone no matter how long worked?**

Yes, except that someone whose combined duty time and limbo time exceeds 12 hours must receive additional time off duty equal to the number of hours by which such sum exceeds 12 hours. For example, someone with a duty tour that included 12 hours of service plus 2 hours of limbo time would receive 12 hours (10 “normal” hours + 2 hours for the excess limbo time) undisturbed rest.

**4.2. Amended 49 USC Section 21103(c)(4)(B) states that “the railroad carrier and its officers and agents shall provide the employee with additional time off duty” equivalent to the number of hours that service time plus limbo time exceeds 12 hours. Is that extra time off duty mandatory, or rather, an option that the employee could accept or decline if they do so desire?**

Although the statute does use the word “provide,” we do not believe it was the intent of Congress to permit a covered employee the ability to decline this additional time off duty.

## 5. Eligibility to work

This question pertains to when, generally, someone is eligible to go to work.

### 5.1. When do the mandatory rest cycles begin? By that I mean what date, day, hour, etc?

Mandatory rest must be provided under the following circumstances:

- Ten hours of undisturbed rest must be provided between tours of duty, except that when the sum of duty time and limbo time exceeds 12 hours, the 10 hours of undisturbed rest must be increased by the number of hours the combined time exceeds 12 hours. See also Q&A 4.1.
- Whenever someone initiates a duty tour on six consecutive calendar days, he/she must be provided at least 48 consecutive hours off duty at the home terminal. If the sixth duty tour ends at an away-from-home terminal, he/she may initiate a duty tour on the 7<sup>th</sup> consecutive day in order to return to the home terminal, but upon return must be provided at least 72 consecutive hours off duty at the home terminal.
- For work covered by a “7 & 3” or other work/rest cycle collective bargaining agreement that complies with the law, FRA regulations, or a FRA waiver, as provided in the agreement.
- For the remainder of the calendar month when the total of on-duty time, limbo time, and other time spent in mandatory service for the carrier exceeds 276 hours.

## 6. Call and Release

These questions pertain to situations in which an engineer is called for service and is released without actually working.

### 6.1. An Engineer accepts a call to work by the Carrier but the employee receives a call before leaving his place of rest notifying him that his call is broken, or the job is cancelled. Does this man require 10 hours rest?

The FRA currently considers this a “call and release.” Since no covered service was provided no HOS report is required. Therefore, a new period of 10 hours’ undisturbed rest is not required.

### 6.2. Same scenario but 1 minute before the on-duty time, the call is broken, or the job is cancelled. Does this man require 10 hours rest?

The FRA currently considers this a “call and release.” The time spent traveling from the place of rest to the on-duty point is considered limbo time. If this limbo time occurs after the statutory off-duty period (i.e., 8 or 10 hours at present), then the railroad has the following options: (1) the employee may be released to begin a new statutory off-duty period; (2) the employee may be allowed to begin duty at the original report-for-duty time and immediately be given a qualifying interim release of at least four hours; and (3) the railroad may maintain the original report-for-duty time and utilize the employee in service for which he or she is qualified.

However, if any or all of this limbo time does occur during the statutory off-duty period, then a new period of rest is required. Since the rest period between duty tours will be a minimum of 10 hours undisturbed when the changes become effective, the limbo time would not occur during the period of rest between two duty tours, unless the Engineer is told prior to going off duty that he/she must report again at the expiration of 10 hours off duty. However, if someone under the “6 & 2” provision is called at 46 hours to report at 48 hours, and then is released prior to the on-duty time, FRA may view the limbo time as having occurred during the period of rest. Ultimately, FRA’s interpretation of the “6 & 2” and “7 & 3” provisions will govern.

**6.3. Same scenario but after being on duty in the depot for 1 minute, the call is broken. Does this man require 10 hours rest?**

The FRA does not currently consider this a “call and release.” Rather, FRA considers this an “early release from duty.” In this scenario, the following options are available:

- A new report-for-duty time is issued to take effect within four hours of the release, which will continue the employee in continuous on-duty status calculated from the original report-for-duty time.
- A new report-for-duty time is issued to take effect on or after 4 hours but not more than 9 hours and 59 minutes from the release, which will constitute a valid interim release and continue the employee in aggregate on-duty status calculated from the original report for duty time.
- A release of ten hours or more until the employee is required to report for duty again qualifies as a statutory off-duty period that resets the employee’s subsequent on-duty availability to the maximum 12 hours.