



# Memorandum

**To:** Advisory Board (via e-mail); All General Chairmen (via e-mail); All State Legislative Board Chairmen (via e-mail)  
**Cc:** Stephen J. Bruno, Director of Regulatory Affairs (via e-mail); National Division Executive Staff (via e-mail); John Bentley, Editor (via e-mail); Kathleen N. Policy, Legislative, Political & Regulatory Coordinator (via e-mail)  
**From:** Thomas A. Pontolillo, Assistant to the President and Director of Research  
**Date:** July 15, 2009  
**Re:** New HOS Laws re Deadheading and Starts

Over the past couple of days I have received a number of inquiries concerning the above-referenced subject, and it appears that the various railroads' understandings may differ. This is a complex subject, so I'm not surprised that there are differences of opinion. The interpretations below, although not sourced because of time constraints, reflect Brother Bruno's and my understanding of the interpretations published by FRA a couple of weeks ago.

1. Deadheading to a duty assignment or from the home terminal to the away-from-home terminal, regardless of how paid, is a start, except for the scenario identified in Item #2 below.
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. Therefore, the "start clock" resets under this scenario.
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, and the employee will require 72 hours off upon being released from duty.

Simply stated, pay status is irrelevant. What counts is (1) whether the deadhead is to or from a duty assignment, and (2) for deadheads from a duty assignment whether it happens on the 7<sup>th</sup>

consecutive day. There is a conflict in logic between Items 3 and 4, in our minds, which we intend to address in comments to FRA later this month.

Also, regarding deadheading from the away-from-home terminal to the home terminal, please keep in mind that there may be limbo time cap implications under the following situations:

- If the deadhead is preceded by 10 hours of undisturbed off duty time, only deadheading time past the 12<sup>th</sup> hour applies toward the cap.
- If the deadhead is preceded by an interim release at least 4 hours, but less than 10 hours, long, then only deadheading time past the 12<sup>th</sup> hour of the aggregate of service plus deadheading applies toward the cap (e.g., if the trip out takes 8 hours and is followed by (1) a 4-hour break and (2) a 5-hour deadhead home, there is only one hour excess limbo time that is applied toward the cap).
- If the deadhead begins less than 4 hours from release at the away-from-home terminal (or if there is no release and the deadhead begins on arrival at the away-from-home terminal), then the time is calculated on a continuous basis, and all time deadheading after the 12<sup>th</sup> hour after the time on duty at the home terminal applies toward the cap.

Lastly, FRA's Office of Chief Counsel advised me earlier today that anyone who reports for duty after 2359 today will require 10 hours' off duty, undisturbed, in order to work a full 12 hours in their first duty tour after that time.

Please feel free to distribute this in any manner you deem appropriate. We will do our best to keep you apprised of any other developments as they may occur.