



## **NHRS INTERPRETIVE MEMORANDA**

### **August 17, 2015**

The New Hampshire Retirement System (NHRS) is issuing Interpretive Memoranda on a variety of subjects relating to the interpretation of its controlling statute, RSA 100-A, *et. seq.* These memoranda are intended to serve as a guide for participating employers in administering the enrollment of Members, reporting Earnable Compensation, and remitting contributions to NHRS. In some cases, the memoranda address narrow questions and factual situations that have arisen out of employer audits or in response to specific inquiries from an employer. In other cases, the memoranda contain a broader discussion of more general areas of statutory interpretation, especially as it relates to the definition of Earnable Compensation.

Over the past several years, there have been many changes to RSA 100-A which have been challenged in the courts. NHRS has been waiting for resolution of those cases before issuing additional guidance. In the past few months, the New Hampshire Supreme Court has issued opinions that have upheld many of those changes. Consequently, NHRS has determined that it is now appropriate to issue more detailed guidance in several areas. In general, with respect to the definition of Earnable Compensation, NHRS will be allowing participating employers more discretion in determining what constitutes Earnable Compensation. NHRS recognizes that, in some instances, this may result in definitions of Earnable Compensation that may differ from one employer to another, particularly as it relates to what constitutes Base Compensation.

In addition, this new guidance may mean that certain types of compensation that were excluded from Earnable Compensation under prior guidance may now be included depending on how the employer designates the compensation. This guidance on Earnable Compensation is intended to have prospective application. Employers that determine that certain types of compensation are now included which had been excluded under prior guidance or employer policy; the employer may change its determination on a prospective basis. In those cases, NHRS will not be requiring retroactive contribution adjustments. Similarly, if as a result of a past audit, contributions adjustments had been made by NHRS, those adjustments will not be reversed solely because the type of compensation is now includable as Earnable Compensation under the new guidance.

This guidance includes an Index of Interpretive Memoranda and a Glossary of Defined Terms. The Defined Terms are used in each of the memoranda and are designed to assure consistency and aid in readability.

NHRS welcomes feedback from participating employers. If you have any questions, editorial comments, or suggestions for additional topics, please contact Mark F. Cavanaugh, Associate Counsel and Compliance Officer.

## NHRS INTERPRETIVE MEMORANDUM GLOSSARY OF DEFINED TERMS

The following Defined Terms are used in the Interpretive Memorandum. Their purpose is solely to assure consistent usage and assist in readability by eliminating the need for multiple statutory references. These Defined Terms are not intended to serve as precise legal definitions. For statutory definitions of certain terms, See RSA 100-A:1.

NHRS reserves the right to make an administrative determination of the meaning of any term and the application of any provision of RSA 100-A, *et. seq.* to the facts of any particular situation, subject to the rights of Members to appeal to the NHRS Board of Trustees and/or seek recourse with the New Hampshire Supreme Court.

<b>Term</b>	<b>Definition</b>	<b>References</b>
Base Compensation	The “full rate of base compensation”	RSA 100-A:1, XVII(a) and (b)(1)
Compensation Over Base	Earnable Compensation which is not included in Base Compensation	RSA 100-A:1, XVII(b)(1)
Earnable Compensation	Compensation for which contributions must be made and which is counted in determining a Member’s annuity benefit at retirement	RSA 100-A:1, XVII
Employee	Member enrolled as an Employees as defined in statute	RSA 100-A:1, V
Employer	An employer which participates in NHRS as defined in the statute	RSA 100-A:1,IV
Member	Any person included in membership of the retirement system, as provided in RSA 100-A:3	RSA 100-A:1, X
Nonvested Member	A Member who was not vested prior to January 1, 2012	RSA 100-A:1, XVII(b)(1)
Permanent Policeman	Member enrolled as a Permanent Policeman as defined in statute	RSA 100-A:1,VII
Permanent Firefighter	Member enrolled as a Permanent Fireman as defined in statute	RSA 100-A:1,VIII
Retiree	A retired Member receiving a monthly annuity	None
Teacher	Member enrolled as a Teacher as defined in statute	RSA 100-A:1,VI
Vested Member	A Member who was vested prior to January 1, 2012	RSA 100-A:1, XVII(a)(1)