



NHRS

New Hampshire Retirement System

COVID-19 Guidance for Participating Employers

Below are answers to some frequently asked questions (FAQ) from NHRS-participating employers concerning COVID-19-related issues including employer reporting of compensation, withholding and remittance of contributions, NHRS enrollment, member eligibility for service credit, benefits that require a member to be considered “in service,” and working after retirement. This FAQ may be updated as circumstances warrant.

NHRS recognizes that there may be unique situations not addressed in this FAQ. If you have questions regarding a situation not addressed below, please contact NHRS for further guidance.

Please send inquiries on earnable compensation, service credit, and working after retirement to: mark.cavanaugh@nhrs.org or call (603) 410-3592.

Please send inquiries on employer reporting or payments to: gerard.murphy@nhrs.org, (603) 410-3656, or heather.fritzky@nhrs.org, (603) 410-3540.

Contributions and Earnable Compensation

NEW-added 2/19/21 Are hourly wages paid for assisting with the administration of COVID vaccinations for which a municipality will be reimbursed by the State of New Hampshire earnable compensation?

Yes. The State has recently established a program for COVID 19 Vaccination Aid provided to municipalities, pursuant to an Emergency Management Directive (EMD) executed by the State and a participating municipality, under which the State will reimburse the municipality for “personnel expenditures” incurred by the municipality relating to its employees (which, for purposes of this FAQ, includes any NHRS members) who assist in administering COVID vaccinations.

NHRS understands that: 1) the municipalities set the hourly rate of pay in accordance with applicable personnel policies and collective bargaining agreements; 2) the State will reimburse the municipality for the actual “personnel expenditures”, including wages, fringe benefits, administrative costs, etc.; 3) both Group I and Group II members may be approved to participate in the program; 4) the vaccination duties may be performed during the employees’ regular shifts or as extra hours in addition to their regularly scheduled work hours; 5) the duties may be performed at approved dispensing vaccine sites set up by the State or at other locations established by the municipality and approved by the State such as public housing, nursing homes, etc.; and, 6) the EMD is retroactively effective to January 15, 2021, upon the signature of both parties, and the end date is September 30, 2021, unless terminated earlier by the state.

NHRS has determined that, in order to treat these payments consistently regardless of NHRS member group, these payments should be reported to NHRS as earnable compensation, but not as “extra or special duty pay”. If the duties are performed during an employee’s regularly scheduled work hours, the wages should be reported as part of base compensation. If the duties are performed in addition to regularly scheduled work hours, the wages should be reported as overtime. In each case, the actual amount paid to an employee should be reported regardless of how the hourly rate is determined or whether such rate is different from an employee’s normal rate of pay.

Should additional compensation paid to first responders under the state’s First Responder COVID-19 Stipend Program be reported as earnable compensation?

No. The First Responder COVID-19 Stipend Program announced by the Governor on May 4, 2020, funds weekly stipends for full-time, part-time, on-call, or volunteer first responders. The program runs from May 4, 2020, to June 30, 2020. (https://prd.blogs.nh.gov/dos/hsem/?page_id=8466)

NHRS has determined that these payments are not “earnable compensation” for NHRS purposes. The payments are made under the First Responder COVID-19 Stipend Program pursuant to a statewide policy and are temporary payments designed to support first responders who remain at work during the COVID-19 pandemic. For these reasons, and to assure that these payments are treated consistently for NHRS purposes by all participating employers, NHRS has determined that the payments are not “base compensation”. In addition, the payments are not one of the other types of compensation otherwise expressly included in the definition of “earnable compensation” under NHRS law. Therefore, any payments made pursuant to the First Responder COVID-19 Stipend Program are not “earnable compensation” and these payments are not reportable to NHRS.

Pursuant to RSA 100-A:1, XVII, compensation is “earnable compensation” only if it is “base compensation” or one of the other types of compensation expressly described in that statutory provision. Generally, the employer has the discretion to determine what “base compensation” is, especially where such compensation is a matter of policy established by the employer. However, NHRS has the authority to make any final administrative determination of what “base compensation” is under the laws governing it. See Interpretive Memorandum 2015-1 at <https://www.nhrs.org/docs/default-source/interpretive-memos/im-2015-1-base-compensation.pdf>.

Employers have been directed by the state Department of Labor to include COVID-19 stipends as part of an employee’s hourly rate of pay for the purposes of determining the employee’s hourly rate of overtime pay. Is the additional overtime based on the higher hourly rate earnable compensation?

Yes. Overtime is earnable compensation reportable to NHRS as compensation over base at whatever the applicable overtime hourly rate is – whether or not that rate is calculated by including the stipend in the “regular rate of pay.”

Note: Even if the stipends are included in determining the employee's "regular rate of pay" for the purposes of determining the overtime rate under the FLSA rules; this does not change the fact that, for NHRS purposes, the stipends themselves are not earnable compensation.

Should additional compensation paid to certain health care workers under the state's Long Term Care Stabilization Program be reported as earnable compensation?

No. The Long Term Care Stabilization Program announced by the Governor on April 16, 2020, provides funding to eligible employers to enable them to pay additional compensation of \$300 per week to certain health care workers pursuant to Emergency Order #31. This payment was further extended to employees of the New Hampshire Veterans Home and the John H. Sununu Youth Services Center under Emergency Order #45 effective May 18, 2020.

NHRS has determined that these payments are not "earnable compensation" for NHRS purposes. The payments are made under the Long Term Care Stabilization Program pursuant to a statewide policy and are temporary payments designed to incentivize health care workers to remain at work during the COVID-19 pandemic. For these reasons, and to assure that these payments are treated consistently for NHRS purposes by all participating employers, NHRS has determined that the payments are not "base compensation". In addition, the payments are not one of the other types of compensation otherwise expressly included in the definition of "earnable compensation" under NHRS law. Therefore, any payments made pursuant to the Long Term Care Stabilization Program are not "earnable compensation" and these payments are not reportable to NHRS.

Pursuant to RSA 100-A:1, XVII, compensation is "earnable compensation" only if it is "base compensation" or one of the other types of compensation expressly described in that statutory provision. Generally, the employer has the discretion to determine what "base compensation" is, especially where such compensation is a matter of policy established by the employer. However, NHRS has the authority to make any final administrative determination of what "base compensation" is under the laws governing it. See Interpretive Memorandum 2015-1 at <https://www.nhrs.org/docs/default-source/interpretive-memos/im-2015-1-base-compensation.pdf>.

Should NHRS contributions be made on paid sick leave and paid expanded family and medical leave (FMLA) under the federal Families First Coronavirus Response Act (FFCRA)?

If compensation for paid sick leave and paid expanded FMLA is paid through the employer, NHRS contributions should be made for members taking the sick or FMLA leave.

How should federally mandated paid sick leave provisions paid through the employer be reported as earnable compensation for NHRS purposes?

Paid sick leave and paid expanded family and medical leave paid by an employer under FFCRA are earnable compensation for NHRS and should be treated the same as regular sick pay. This is reportable as base compensation for the week in which the member takes the sick or FMLA days.

If a member who is receiving a percentage of his or her salary under FFCRA uses additional accrued leave time to supplement the FFCRA sick leave, is the accrued leave payment reportable as earnable compensation?

Yes. Accrued leave time taken is reportable as base compensation for the week in which the member takes the time off.

Are any federal benefits not paid through the employer earnable compensation for NHRS purposes?

No. Payments made directly to individuals by the federal government under the Coronavirus Aid, Relief, and Economic Security Act (CARES ACT) are not earnable compensation for NHRS as they are not compensation paid by the employer.

Are any state-funded benefits not paid through the employer earnable compensation for NHRS purposes?

No. Payments made directly to individuals by the state, such as unemployment benefits, are not earnable compensation for NHRS as they are not compensation paid by the employer.

Service Credit/Membership Status

How is eligibility for service credit determined?

Under RSA 100-A and provisions of the Internal Revenue Code, in order to accrue service time for benefit purposes, NHRS must receive both employer and employee contributions, which are required to fund benefit payments.

NHRS administrative rules generally require that in order for a member to receive service credit for a month, he or she must have earnable compensation of at least 50% of the average earnable compensation paid in the prior six months of creditable service, or must work at least 50% of the work days in that month.

When is a member considered "in service"?

A member shall be "in service" if, as a result of employment with a NHRS participating employer, the member is both receiving earnable compensation and earning NHRS creditable service. However, a member who is on FMLA leave shall be considered to be "in service" regardless of whether he or she has received earnable compensation or service credit. Members not being compensated directly by the employer, either on non-FMLA leave or furlough, will not be "in service" if they have not already earned service credit for the month as described in the previous question. Note: In order for a member to be eligible for ordinary death benefits under RSA 100-A:9, a member must be "in service".

If an employee is furloughed in response to COVID-19, what is his/her NHRS status?

NHRS considers a furloughed employee as one who does not work and does not receive compensation, but is not terminated and remains eligible for employer-funded benefits; therefore such an employee is still considered an NHRS member and would not be eligible to withdraw his or her accumulated contributions. However, because a furloughed

employee will typically not be receiving wages during the furlough, he/she is not “in service” and will not earn service credit for the period on furlough.

If an employee is laid off or terminated in response to COVID-19, what is his/her NHRS status?

A laid off or terminated employee would be considered an “inactive” NHRS member as he/she is no longer employed, no contributions are being submitted on his/her behalf, and no service credit is being earned. However, a terminated employee who keeps his/her contributions with NHRS will retain his/her service credit earned up to termination. In the event the employee is subsequently rehired by the same or another participating employer, he/she would accrue additional service credit and would have the benefit of credit previously earned, provided that the member has not withdrawn his or her accumulated contributions.

If a part-time employee has to work full-time hours as a result of the COVID-19 outbreak, does the part-time employee have to be enrolled as an NHRS member and contribute to the retirement system?

No, not unless the part-time employee has been hired to work in a permanent position and is regularly scheduled to work full-time hours. A temporary increase in work hours for a part-time position is not considered regularly scheduled as full-time. Note: If a part-time teacher works a regular full-time schedule for 18 weeks, enrollment would become mandatory in week 19 under NHRS administrative rules.

Working After Retirement

NEW-added 6/15/21 What is the status of the emergency exceptions on retiree hours worked?

With the expiration of Gov. Sununu’s COVID-19 state of emergency order (Executive Order 2021-10) on June 11, all hours worked by NHRS retirees for participating employers on or after June 12, 2021, will count toward the annual statutory limits on retiree work hours.

The governor initially declared the state of emergency on March 13, 2020, and it had been extended without interruption for approximately 15 months. All hours worked by NHRS retirees for participating employers during the state of emergency did not count toward the annual limits on retiree work hours.

Additionally, the expiration of the state of emergency nullifies the Governor’s emergency order (Emergency Order 35) waiving the statutory 28-day separation from service requirement for new retirees. The waiver allowed new retirees, effective April 24, 2020, to commence part-time employment with NHRS-participating employers immediately upon retirement with no waiting period.

The 28-day separation from service requirement is in effect for new retirees, effective July 1, 2021, and thereafter. This means July 1, 2021, retirees must wait 28 days to begin working on a part-time basis for any NHRS-participating employer.

RSA 100-A: 1, XXXIV, states that “no retired member shall be employed on a part-time basis by any participating employer for a period of 28 days from the member’s effective date of retirement.” The “effective date of retirement” is always the first day of a month (e.g. July 1, August 1, etc.).

For more information on the laws governing post-retirement employment, see: [https://www.nhrs.org/faqs/faq-part-time-employment-of-nhrs-retirees-\(effective-1-1-19\)](https://www.nhrs.org/faqs/faq-part-time-employment-of-nhrs-retirees-(effective-1-1-19))

Employer Reporting

Are NHRS employer reporting/contribution deadlines impacted?

No. Employer reporting deadlines and procedures are unchanged. Employers should continue to report active member data no later than the 15th of each month and remit contributions no later than the 25th of the month. This is particularly important with respect to NHRS maintaining sufficient cash flow for funding monthly benefit payments.

Will NHRS waive fines if an employer is unable to submit its monthly reports on time?

The current reporting and payment deadlines – the 15th of the month for reporting and the 25th of the month for payments – remain in effect. However, NHRS is aware of the special circumstances around COVID-19 and will work with employers on their submissions. While there are statutory provisions for requesting waivers and NHRS has some flexibility, we urge any employers who anticipate potential reporting and payment issues to reach out to us in advance. Contact: gerard.murphy@nhrs.org, (603) 410-3656, or heather.fritzky@nhrs.org, (603) 410-3540.

The New Hampshire Retirement System (NHRS) is governed by New Hampshire RSA 100-A, the rules and regulations promulgated by the NHRS Board of Trustees, and Federal laws including the Internal Revenue Code. NHRS also implements policies adopted by the Board of Trustees. These laws, rules, regulations and policies are subject to change. Even though the goal of NHRS is to provide information that is current, correct and complete, NHRS does not make any representation or warranty as to the current applicability, accuracy or completeness of any information provided in this publication. This publication is intended to provide general information only and should not be construed as a legal opinion or as legal advice. Members are encouraged to address specific questions regarding NHRS with an NHRS representative. In the event of any conflict between this publication and the laws, rules and regulations which govern NHRS, the laws, rules and regulations shall prevail.