



Interpretive Memorandum 2012-2

DATE: **REVISED July 20, 2022** (Originally issued December 6, 2012 and revised August 17, 2015)

TOPIC: **COMBINING PART-TIME POSITIONS AND PAYING ADDITIONAL COMPENSATION WHEN A MEMBER PERFORMS BOTH GROUP I AND GROUP II DUTIES**

PURPOSE:

The purpose of this memorandum is to discuss the membership and earnable compensation issues relating to part-time positions and Group II classification. Issues such as: can an Employer¹ combine a part-time Group I position with a part-time Group II position to create a full-time Group I or Group II Position? Also, if a Group II Member receives additional compensation for performing additional Group I type duties, is the additional compensation Earnable Compensation? This memorandum does not apply to State positions.

SUMMARY:

A. An employer may combine separate part-time Group I and Group II positions to create a full-time Group I position but not a full-time Group II position.

B. Compensation paid to a full-time Group II Member for additional Group I duties is Earnable Compensation only if: 1) there is an intrinsic nexus between the nature of the extra duties and the full-time Group II position held by the Member; and 2) such duties are included in the Member's job description for the full-time Group II position. As described below, in such cases, the additional compensation can be treated as part of the Base Compensation² in the discretion of the Employer. If there is no nexus between the additional duties and the Group II position, or the additional duties are not included in the Group II job description, the additional compensation is not part of Base Compensation and is not reportable as Earnable Compensation.

C. Employers have the discretion to combine positions and otherwise structure the duties of any full-time position, and to pay such compensation, as it determines to be appropriate; however, the Member classification for any such combined position, or the inclusion in Earnable Compensation, shall be determined within the guidelines discussed herein.

¹ Capitalized terms shall have the meanings as provided in the Interpretive Memoranda Glossary of Terms.

² See Interpretive Memorandum 2015-1 for a detailed discussion of what constitutes Base Compensation

ANALYSIS:

A. Combining Part-Time Positions. In general, an individual is eligible to be enrolled in NHRS if he or she holds a full-time position. “Permanent policemen” and “permanent firemen” are enrolled as Group II Members and all other municipal Employees are enrolled as Group I Members. Part-time positions are not eligible for enrollment. Pursuant to Ret 302.05(b)(8), “Employers may combine 2 or more part time positions in the same member class in order to attain the minimum required hours for participation.” [Emphasis added.] Thus, it is clear that part-time positions within the same Member Class may be combined to create a permanent full-time position. There is no administrative rule addressing the combination of part-time positions in different Member Classes. However, NHRS administrative policy is that a part-time Group I position may be combined with a part-time Group II position to create a full-time Group I position. There is nothing in the definition of a Group I “employee”, or in any other member classification statute, that prohibits classification of a position as a Group I “employee” position even if it may consist, in part, of duties that are Group II in nature.

For example, if an employee works 24 hours a week in the highway department and 16 hours per week as a firefighter, the two positions may be combined to create a full-time Group I position. Similarly, an Employer may combine positions where an Employee works 24 hours per week as a part-time dispatcher and 16 hours per week as a part-time certified police officer to create a full-time Group I position. In each such case, the two positions must be formally combined in a single job description, or otherwise in accordance with the Employer’s personnel policies and procedures.

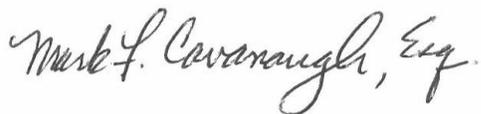
By contrast, Employers do not have the discretion to combine a part-time Group I position and a part-time Group II position in order to create a full-time Group II position. First, in order to be a Group II position, a position must be, in and of itself, a full-time position that meets the definition of “permanent policeman” or “permanent fireman” under RSA 100-A:1, VII and VIII, respectively. Second, RSA 100-A:3, IX provides that any doubts about the proper classification of a position as a Group II position shall be resolved by a 2/3 vote of the NHRS Board of Trustees; or, in the case of any newly created position held by more than one person, there must be legislation explicitly placing that position in Group II. Therefore, part-time Group I and Group II positions cannot be combined to create a Group II position, absent Board action or legislation.

B. Compensation for Additional Group I Duties. In general, when a Group II Member has a full-time position with an Employer and also receives additional compensation for a separate Group I position, such additional compensation is not Earnable Compensation because Earnable Compensation only includes compensation paid with respect to the full-time position for which the Member is enrolled. Nevertheless, in certain circumstances, a full-time Group II position may include additional duties that are, by their nature, Group I duties; and, compensation paid for such duties may qualify as Earnable Compensation, if certain conditions are met. For example, RSA 100-A:1, VII-a provides that the definition of “permanent policeman” does not include any dispatcher, mechanic, electrician, laboratory, clerical worker, or technical expert; however, the performance of such functions by a Member who otherwise meets the definition of “permanent policeman” does not disqualify the Member from Group II membership. RSA 100-A:1, VIII-a contains a similar provision applicable to definition of “permanent fireman”. It is not unusual for Group II members

to assume such ancillary functions as part of their Group II positions, especially with smaller employers. Thus, a Group II Member's job description may include these functions, and any additional compensation may be considered as part of Base Compensation; or, the Employer may continue to treat the performance of such functions as a separate part-time position, in which case the additional compensation is not reportable as Earnable Compensation.

In addition, in limited circumstances, an Employer may add other part-time Group I duties to the job description of a full-time Group II member if there is an intrinsic nexus between the Group I duties and the Group II position. For example, fire chiefs often act as emergency management directors and there is an nexus between the duties of a fire chief and an emergency management director, as both relate to public safety. Similarly, a Group II police officer may have additional duties as an animal control officer, school resource officer, or prosecutor; and, a Group II firefighter may have additional duties as an emergency medical technician. In these examples, if such duties were a separate position, the position would not be a Group II position because police or fire certification may not be required or the normal duties of the position entail only indirect, occasional, or short-term exposure, or no exposure, to the hazards of police work or firefighting.³ However, where such a nexus exists, the Employer may add the otherwise separate Group I duties to the job description of the Group II Member and designate any additional compensation as part of the Member's Base Compensation, even if such compensation is determined in a manner different from the compensation for the full-time position (i.e., by a stipend or a different hourly rate). The full-time position and the additional duties should be part of a single job description, or otherwise be memorialized in accordance with the Employer's personnel policies and procedures.

However, if the additional duties are not typical of the ancillary duties commonly performed by a Group II Member (such as the functions described in RSA 100-A:1, VII-a and VIII-a), and there is no intrinsic nexus, any additional compensation is not Earnable Compensation notwithstanding the fact that it is included in the same job description or employment contract. For example, if a fire chief or police chief is paid additional compensation to serve as a deputy or interim town manager, those duties are intrinsically Group I administrative and management duties and are not intrinsically related to the public safety functions of a police or fire chief. As such, the additional compensation is not reportable as Earnable Compensation. This is true regardless of the fact that the Member involved may have the necessary skills to perform such additional duties or, in the Employer's determination, the Member is the person best suited to assume such duties. Employers are strongly encouraged to discuss with NHRS in advance any matters relating to the combination of positions and the inclusion of Earnable Compensation in these situations.



**Approved by Mark F. Cavanaugh, Esq.
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July 20, 2022
Approval Date

³ See RSA 100-A:1, VII-a(c) and VIII-a(b).