



Interpretive Memorandum 2013-2

DATE: REVISED AUGUST 17, 2015 (Originally issued May 30, 2013)

POLICY TOPIC: TERMINAL PAY FOR UNCLASSIFIED EMPLOYEE AS EARNABLE COMPENSATION

QUESTIONS/SCENARIO:

A participating Employer has requested clarification regarding the treatment of terminal pay for a State Employee who is leaving her position as an unclassified employee and starting a new position as a classified employee. The Employee is already a Member of NHRS and will continue to be a Member after the change in position. The Employee did not attain vested status prior to January 1, 2012.

CONCLUSION:

For Members not vested prior to January 1, 2012, "terminal pay" under RSA 94:9 is not Earnable Compensation under RSA 100-A:1, XVII.

RSA 94:9 provides as follows:

"Any full-time state official or employee other than those in the state classified system who retires, resigns, dies in office, or is terminated as a result of not being reappointed, shall receive upon such cessation of employment 3 days' salary for each year of employment in nonclassified or unclassified service. The governor is authorized to draw warrants for the sums necessary to make the payments hereunder which shall be a charge against the general fund or such special fund as may be appropriate." [Emphasis added]

In the current scenario, the Member is resigning her position as an unclassified employee notwithstanding the fact that she will continue to be employed by the state as a classified employee. Because she is resigning, she qualifies for terminal pay under RSA 94:9. The terminal pay is in the nature of severance or longevity pay in that it is additional compensation paid upon termination as a reward for past services rendered.

RSA 100-A:1, XVII(b)(4) provides that, for Nonvested Members, Earnable Compensation shall not include, among other things, "severance pay or end of career

additional longevity pay". Therefore, the terminal pay is not Earnable Compensation because it is severance or end of career longevity pay as that term is used in RSA 100-A:1, XVII(b)(4).

For Vested Members, terminal pay is Earnable Compensation because severance or longevity pay is included in the definition of Earnable Compensation for Vested Members. [See RSA 100-A:, XVII(a)]

STATUTORY REFERENCE: RSA 100-A:1, XVII(b)(4) & RSA 94:9



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Approval Date