



Interpretive Memorandum No. 2015-1

DATE: **REVISED August 2, 2022** (Originally issued August 17, 2015)

TOPIC: **EARNABLE COMPENSATION: “FULL BASE RATE OF COMPENSATION” AND “COMPENSATION OVER BASE”**

PURPOSE:

The purpose of this memorandum is to describe how NHRS interprets the terms “full base rate of compensation as determined by the employer” (Base Compensation) and, Compensation Over Base (COB), as those terms are used in the definition of Earnable Compensation¹ in RSA 100-A:1, XVII.

SUMMARY:

- A.** NHRS will generally defer to an Employer’s designation of what types of compensation are included in Base Compensation. This gives the Employer a certain amount of discretion in determining what constitutes Base Compensation. However, NHRS reserves the right to make the final administrative determination if it disagrees with the Employer’s designation.
- B.** A Member should have a full week of Base Compensation for each work week, including paid time off such as vacation, sick and holiday pay.
- C.** If a type of compensation is not part of Base Compensation and is not listed in RSA 100-A:1, XVII, it is not earnable compensation.
- D.** Certain types of compensation are specifically enumerated in RSA 100-A:1, XVII as being COB for Nonvested Members and cannot be designated as Base Compensation. In addition, certain types of compensation are excluded from Earnable Compensation for Nonvested Members.

ANALYSIS:

A. Employer Discretion for Base Compensation. The definition of Earnable Compensation under RSA 100-A:1, XVII(a) and (b)(1) provides, in pertinent part, that Earnable Compensation shall mean “the full base rate of compensation paid, as determined by the employer, . . .”. It is the policy of NHRS to allow each Employer the discretion to determine what constitutes Base Compensation subject to the limitations expressed in this memorandum. In doing so, NHRS recognizes that this may result in similar types of compensation being included by one Employer and excluded by another Employer.

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

Notwithstanding such discretion, NHRS is the governmental entity granted the responsibility to interpret RSA 100-A and, to the extent that an Employer's characterization is deemed to be contrary to applicable law, NHRS reserves the right to make the final determination as to what constitutes Base Compensation in the absence of a New Hampshire Supreme Court decision clarifying the same.

Finally, the concept of Base Compensation for NHRS purposes might not coincide with the concept of base compensation for other purposes such as federal or state labor laws; an Employer's personnel policy and accounting practices; or, the terms of a collective bargaining agreement, although an Employer may be guided by these rules in determining what to include in Base Compensation for NHRS purposes. Any final determination of what constitutes Base Compensation is guided solely by the terms of RSA 100-A:1, XVII, as interpreted herein.

B. Compensation for the Normal Workweek or Normal Work Shifts. Most permanent, full-time Employees and Teachers work five days a week while other employees, such as Group II Members and staff at the county nursing homes, may work a fixed number of shifts per week, or a rotating type schedule. The compensation received for these regular workdays and workshifts should always be reported as Base Compensation, including compensation paid for a period of absence covered with vacation or sick pay, compensatory time, floating holiday pay, or combinations thereof. All such pay must be reported to NHRS as part of Base Compensation notwithstanding the fact that the Employer may code such pay in a different manner for accounting or payroll purposes.

C. Compensation Listed in RSA 100-A:1, XVII. In addition to Base Compensation, the statute lists several types of compensation that are included in the definition of Earnable Compensation. For Vested Members, these listed types of compensation should be reported as Base Compensation², except for ESDP which should be reported in the ESDP field. For Nonvested Members, some of the listed types are included in the definition of COB, and should be reported as COB for Nonvested Members³. In addition several of the listed types are specifically excluded from the definition of Earnable Compensation for Nonvested Members.⁴

1. Overtime Pay. Overtime is reportable as Base Compensation for Vested Members and as COB for Nonvested Members.⁵ For NHRS purposes, overtime includes compensation paid for all hours worked in excess of what the Employer considers to be full-time, regardless of whether it is considered overtime under federal law or whether it is paid as straight time or at an enhanced pay rate. In addition, if a Member is granted compensatory time in lieu of overtime and later "cashes in" the compensatory time, the amount cashed in should also be reported as overtime. However, if a Member uses the compensatory time to take additional time off from work, the amount paid for the day off should be reported as Base Compensation because this is compensation for a normal workday or work shift, similar to a floating holiday or vacation day.

² In the DRS reporting system, this is referred to as "base salary".

³ See RSA 100-A:1, XVII(b)(1), 2nd sentence.

⁴ See RSA 100-A:1, XVII(b)(4)

⁵ As a matter of administrative convenience, the DRS reporting systems permits Employers to report COB types of compensation in the COB field for Vested and Nonvested Members and the NHRS pension processing system will automatically move such amounts to the base salary field for the Vested Members.

2. *Holiday and Vacation Pay.*⁶ If a Member does not work on a holiday or takes a vacation day, the amount paid for that day should be reported as Base Compensation because it is compensation for part of their regularly scheduled work days. However, if a Member is paid extra to work on a holiday that falls within a normal workweek or shift, his or her normal daily pay (or shift pay) should be reported as Base Compensation and the extra pay is “holiday pay” that should be reported as COB for Nonvested Members. If a Vested Member is paid for unused holiday or vacation time, this payment should be reported as Base Compensation. Compensation for unused holiday or vacation pay is not Earnable Compensation for Nonvested Members.

3. *Sick Pay.*⁷ If a Member does not work within a normal workweek or work shift because of an illness or injury and is paid for that time from accrued sick days, the compensation should be reported as Base Compensation. If a Vested Member is paid compensation for unused sick time, typically upon retirement, that amount is Earnable Compensation reportable as Base Compensation. Compensation for unused sick time is not Earnable Compensation for Nonvested Members.

4. *Annual Attendance Stipend or Bonus.* Effective September 10, 2019, the definition of Earnable Compensation was amended to include “annual attendance stipends and bonuses”. Such amounts, including perfect attendance bonuses, payments for non-use of sick time and similar payments, should be reported as Base for Vested Members and COB for Nonvested Members.

5. *Longevity Pay.* Both annual and end-of-career longevity pay is reportable as Base Compensation for Vested Members. For Nonvested Members, only annual longevity pay is Earnable Compensation, which should be reported as COB. End-of-career longevity pay is not Earnable Compensation for Nonvested Members because it is specifically excluded under RSA 100-A:1, XVII(b)(4).

6. *Severance Pay.* Severance pay is reportable as Base Compensation for Vested Members but is excluded from Earnable Compensation for Nonvested Members under RSA 100-A:1, XVII(b)(4). Severance pay is Earnable Compensation only if it is legitimate back pay that is expressly attributable to specific past pay periods or is payable pursuant to a formal severance plan or contract. In some cases, compensation is labelled as severance pay or back wages but is in actuality a settlement of other claims against the Employer. Compensation that is paid in settlement of claims not relating to legitimate back pay, or pursuant to a severance plan or contract, is not Earnable Compensation for any Member. All settlement agreements should be forwarded to NHRS in advance for review.

⁶ See Interpretive Memorandum 2015-3 for a detailed discussion of Holiday and Vacation Pay.

⁷ See Interpretive Memorandum 2015-4 for a detailed discussion of Sick Pay

7. Workers' Compensation Supplemental Pay.⁸ Supplemental pay paid by an Employer while a Member is receiving workers' compensation, (which is not accrued sick or vacation time or compensation for part-time work) is reportable as Base Compensation for Vested Members and as COB for Nonvested Members.

8. Extra and Special Duty Pay.⁹ Extra and Special Duty Pay (ESDP) is never Base Compensation. It is reportable in the ESDP field for Vested Members and as COB for Nonvested Members. ESDP is specific to Group II Members only and is not reportable for Group I Members. ESDP is not Earnable Compensation for Group II Members who first commenced their service with any NHRS participating Employer on or after July 1, 2011.

9. Cost of Living Bonuses. A cost of living bonus is a one-time payment to a Member that is different from a cost of living adjustment, which becomes part of a Member's Base Compensation going forward. Cost of living bonuses should be reported as Base Compensation for Vested Members and as COB for Nonvested Members.

10. Additional Pay for Extracurricular and Instructional Activities.¹⁰ Additional pay for extracurricular and instructional activities is Earnable Compensation for all Members who are Teachers, paraprofessionals, and other educational support staff of the public elementary and secondary schools. Effective September 10, 2019, "additional pay for instructional activities" is also Earnable Compensation for full-time faculty of the community college systems. In either case, such compensation is reportable as Base Compensation for Vested Members and COB for Nonvested Members.

11. Military Differential Pay. Military Differential Pay is compensation paid by the Employer to supplement a Member's military pay if the military pay is less than the Member's regular pay and is reportable as Base Compensation for Vested Members and COB for Nonvested Members.

12. Non-cash Compensation. Non-cash compensation for meals and living quarters is Earnable Compensation but only to the extent includible in the taxable income of the Member. If it is not taxable, it is not Earnable Compensation. It is reportable as Base Compensation for Vested Members and COB for Nonvested Members.

13. Teacher Development Pay.¹¹ Teacher development pay that is not part of the contracted annual salary is reportable as Base Compensation for Vested Members and COB for Nonvested Members.

⁸ See Interpretive Memorandum 2019-1 for a detailed discussion of Workers' Compensation.

⁹ See Interpretive Memorandum 2013-3 for a detailed discussion of ESDP.

¹⁰ See Interpretive Memorandum 2015-2 for a detailed discussion of additional pay for extracurricular and instructional activities and teacher development pay.

¹¹ Id.

D. Other Compensation Not Listed in Statute.

1. **Stipends.** Employers pay a wide variety of stipends to Members who perform extra duties.¹² In general, Employers may designate stipends as Base Compensation if the stipend is not a type of compensation listed in the definition of Earnable Compensation (e.g., additional pay for extracurricular and instructional activities). NHRS is more likely to agree with an Employer's designation if (1) the stipend is paid to all similarly situated employees and is treated as Base Compensation for all Members that receive the stipend; and (2) the description and amount of the stipend is either (a) contained in a collective bargaining agreement, (b) is the subject of a separate agreement or contract between the Member and the Employer, or (c) is memorialized in a written policy of the Employer. The fact the stipend will be paid, and amount of a stipend, is known, at the beginning of the budget year, or at the time a new policy is implemented, is favorable. A stipend can be part of Base Compensation even if the identity of the Members who will actually be paid is not known in advance (e.g., stipend is paid to Members that agree to work extra shifts or be on standby by or call-in duty, as the need arises). NHRS is less likely to agree that a stipend is Base Compensation if (1) the fact that it will actually be paid and amount thereof is not known at the beginning of the budget year, except in cases of unforeseen circumstances (e.g., COVID) or if a new policy is implemented mid-year; or, (2) the amount of the stipend is discretionary and is more in the nature of a performance or incentive bonus, especially if it is not compensation for a specific task or activity (See 2. below).

Employers are free to determine that stipends are not part of Base Compensation and NHRS is not likely to challenge any such determination. However, if an Employer determines that a particular type of compensation is not Base Compensation, that compensation will only be Earnable Compensation if it is a type of compensation that is expressly listed in RSA 100-A:1, XVII. In this regard we note that most stipends paid by schools are considered to be "additional pay for extracurricular and instructional activities".

Notwithstanding the foregoing, when a stipend is paid to a particular employee for duties relating to a separate part-time position, the duties must be added to the job description for the Member's full-time position, or otherwise memorialized in accordance with the Employer's personnel policies and procedures in order for the stipend to be considered Earnable Compensation.¹³

2. **Bonuses/Merit Pay.** Base Compensation does not include compensation that, at the beginning of the calendar or fiscal year, is variable or indeterminate because the amount of compensation is a reward for extraordinary performance or requires a discretionary determination by an Employer, such as awarding a performance bonus, merit pay, or any similar compensation. In addition, compensation that is calculated and/or awarded as a percentage of a base salary is never Base Compensation.

¹² See Interpretive Memorandum 2015-2 for a detailed discussion of stipends.

¹³ See also, Interpretive Memorandums 2012-2 and 2013-4 for more detailed discussion of compensation for separate part-time positions and duties.

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Handwritten signature of Mark F. Cavanaugh, Esq. in cursive script.

**Approved by Mark F. Cavanaugh, Esq.
Associate Counsel and Compliance Officer**

8-2-2022

Approval Date