



Interpretive Memorandum No. 2015-3

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

TOPIC: COMPENSATION FOR HOLIDAYS AND VACATION DAYS

PURPOSE:

The purpose of this memorandum is to discuss the proper way to report compensation paid to Members¹ for holidays and vacations.

SUMMARY:

A. Compensation paid to a Member for a day on which the Member does not work due to a holiday or vacation day is part of the Member's Base Compensation² for his or her normal workdays or work shifts.

B. Compensation which is additional compensation paid to a Member for actually working on a holiday that is above and beyond his or her Base Compensation is "holiday pay" which should be reported as Base Compensation for Vested Members and Compensation Over Base for Nonvested Members.

C. Compensation a Member receives in lieu of "holiday pay", and which is payable to all similarly situated Members, regardless of whether they actually work on holidays, can be reported as Base Compensation as determined by the Employer. If the Employer determines that it is not Base Compensation, then it is not Earnable Compensation.

D. Pay for unused holiday and vacation time is Earnable Compensation for Vested Members, reportable as Base Compensation. Pay for unused holiday and vacation time is not Earnable Compensation for Nonvested Members.

ANALYSIS

A. Compensation for Holidays and Vacation Days Taken are Base Compensation. RSA 100-A:1, XVII(a) defines the term Earnable Compensation for Vested Members and expressly includes the term "holiday and vacation pay". In contrast, RSA 100-A:1, XVII(b)(1) defines Earnable Compensation for Nonvested Members and does not expressly include "holiday and vacation pay". However, NHRS

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".

does not interpret the omission of the term to exclude compensation paid for days when a Nonvested Member does not work due to a holiday or vacation day during a normal work week or shift. To exclude regular compensation that is paid for holidays and vacation days would unfairly reduce the Base Compensation for Nonvested Members. A Member who works in a full-time permanent position typically receives a set salary or hourly rate for 5 days of work per week or for the normal number of work shifts. This is the core of what is called Base Compensation. If a Member is granted holiday or vacation day which allows them to not work on certain days and still get paid, the Member does not receive additional compensation in excess of the regular compensation for the normal workweek or work shifts. He or she merely does not have to work on certain days. Thus, at a minimum, each Member will have Base Compensation for 5 days each workweek (or the normal number of work shifts) even if he or she does not actually work on all of the workdays (or for all of the work shifts) because of holidays and/or vacation days. If a Member does not work on a holiday or takes a vacation day within a normal workweek or shift, the amount paid for that day should be reported as "Base Compensation" for all Members.

B. Additional Compensation Paid for Actually Working is "Holiday Pay". By contrast, if a Member is paid to actually work on a holiday, the Member's regular amount of compensation is reported as Base Compensation and any amounts paid in addition to the base rate of pay for the day, is "holiday pay", the difference between the normal day's pay and the total amount paid represents additional compensation over and above the normal day's pay. Such "holiday pay" is reported as Base Compensation for Vested Members and Compensation Over Base for Nonvested Members.

If a Member is granted additional day(s) off for working on a holiday, the additional day is treated the same as a vacation day. If the Member uses the additional day off to cover a later day not working, then the compensation for that day should also be reported as part of Base Compensation. By contrast, if the Member does not use the additional time off and, instead, "cashes out" the additional time, then any such compensation is pay for unused vacation time which is Earnable Compensation only for Vested Members.

C. Compensation in Lieu of "Holiday Pay" May Be Part of Base Compensation. Some Employers offer additional compensation in lieu of "holiday pay". This is more common with Group II Members. Instead of keeping track of who works holidays and paying overtime or double time, certain collective bargaining agreements provide that all Members in the bargaining unit receive 10-12 extra days of pay each year. In some cases, this is paid in semi-annual installments. In other cases, it is paid as the holidays occur. In all cases, this amount is paid regardless of whether the Member actually works on holidays. The Employer may designate this type of compensation as part of Base Compensation. If the Employer does not consider it part of Base Compensation, then the compensation is not Earnable Compensation for any Members because it is not a type of compensation listed in RSA 100-A:1, XVII. It is not additional pay for working on a holiday (i.e., "holiday pay") and it is not pay for unused holiday time. It is merely an amount of additional pay over and above Base Compensation and, as such, is not listed in the definition of Earnable Compensation.

D. Compensation for Unused Holiday and Vacation Pay. RSA 100-A:1, XVII(b)(4) provides that pay for unused sick and vacation time is excluded from the

definition of Earnable Compensation for Nonvested Members. Pay for unused sick and vacation time is Earnable Compensation only for Vested Members. Unused vacation time includes vacation days, floating holidays and extra days granted for working on holidays. It does not include compensatory time for working overtime. If compensatory time is cashed in, the compensation is reportable as overtime.³

EXAMPLES

Example 1. Member A works for Employer X and is granted two weeks of vacation which he or she uses during the first two weeks of July. The compensation for those 10 days would be reported as part of “Base Compensation”.

Example 2. Member A works for the Town of X which designates 11 days during the year that are holidays when the Town offices are not open. Member A does not work on any of the 11 designated holidays. Compensation for those 11 days should be reported as part of Base Compensation.

Example 3. The Town of X designates 11 days during the year that are holidays when the Town offices are not open. However, on each holiday one Member must work as the dispatcher for the police department. The Member receives double time for working on the holiday; he or she works for 8 hours and gets paid for 16. In this situation, 8 hours should be reported as Base Compensation for all Members and 8 hours should be reported as Base Compensation for Vested Members and Compensation Over Base for Nonvested Members.

Example 4. The Town of X designates 11 days during the year that are holidays when the Town offices are not open. However, the police department operates 365 days per year and, on any particular holiday, a regular contingent of police officers are required to work. Instead of keeping track of whether the holiday is an officer’s regular work day or a scheduled day off, and instead of paying double time, the Town grants 11 days off that a police officer can take at any time with advance notice. Member A takes June 10th off and covers it with one of the additional 11 days granted to him. The compensation for that day should be reported as Base Compensation for all Members. If any days are later “cashed out”, this compensation is pay for unused vacation time, reportable only for Vested Members.

Example 5. The County of X designates 11 days during the year that are holidays on which the general County offices are closed. However, the County nursing home is open 365 days of the year. The collective bargaining agreement for Members working at the nursing home provides that all full-time Members are granted 8 hours of “holiday time” upon the occurrence of each designated holiday. The Member can either take the holiday off or work the holiday and save the day off for later. In addition, the Member can ask to be paid an additional 8 hours of compensation instead of taking the holiday off or saving it for later use. If the Member does not use the day off by the following January, the Member is paid an extra 8 hours of compensation. Thanksgiving Day, Christmas Day, and New Year’s Day are designated as “major” holidays and the other 8 days are designated as “minor” holidays. If a Member works a major holiday, he or she is paid at twice the regular

³ See Interpretive Memorandum 2015-1, page 2.

hourly rate. If a Member works a minor holiday, he or she is paid at the regular hourly rate. Reporting of this compensation is as follows:

- Member A takes Memorial Day off and is paid at her regular hourly rate. Compensation for that day should be reported as Base Compensation.
- Member B works on Memorial Day and is paid at her regularly hourly rate which should be reported as Base Compensation. She is also awarded 8 hours of holiday time which she uses to take June 10th off. Compensation for June 10th should be reported as Base Compensation, like a regular vacation day.
- Member C works on New Year's Day and is paid at twice her regular hourly rate. In this situation, the first 8 hours should be reported as Base Compensation and the second 8 hours should be reported as Base Compensation for Vested Members and Compensation Over Base for Nonvested Members.
- Member D does not use 3 days of her holiday time and, the next January, is paid 24 hours at her regular hourly rate. This is pay for unused vacation time which is Earnable Compensation only for Vested Members.

Example 6. The collective bargaining agreement for police officers in Town X designates 10 days as "paid holidays". In lieu of payment for each holiday, each officer is paid an additional 10 days compensation with 50% payable in July and 50% payable in January. Officers receive this pay regardless of whether they actually work on a holiday. Officers are scheduled to work holidays based on the regular work schedule and are not paid extra for working on a holiday. Town X may designate the additional pay as part of Base Compensation if it wants to. If Town X chooses not to designate it as Base Compensation, then it is not Earnable Compensation at all because it does not fit into any of the types of compensation listed in RSA 100-A:1, XVII.



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