



Interpretive Memorandum No. 2015-3

DATE: AUGUST 17, 2015

POLICY TOPIC: HOLIDAY AND VACATION PAY

QUESTIONS/SCENARIO:

What is the proper way to report holiday and vacation pay?

CONCLUSIONS:

Compensation a Member receives for a day which is a holiday and on which the Member does not work should be reported as part of Base Compensation.

Compensation a Member receives for a day on which the Member does not work and uses a vacation day is vacation pay which should be reported as part of Base Compensation.

Compensation which is additional compensation a Member receives for working on a holiday that is above and beyond his or her Base Compensation is holiday pay which should be reported as Compensation Over Base.

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.

Pay for unused holiday and vacation time should be reported as "Compensation Over Base" for Vested Members. Pay for unused holiday and vacation time is not Earnable Compensation for Nonvested Members.

Additional compensation for working on a holiday can only be designated as overtime if it constitutes overtime pay under federal labor laws (i.e., it is payment for working in excess of 8 hours in a day or 40 hours in a week).

ANALYSIS

RSA 100-A:1, XVII(a) defines the term Earnable Compensation for Vested Members and expressly includes the term "holiday and vacation pay". RSA 100-A:1, XVII(b)(1) defines Earnable Compensation for Nonvested Members and does not expressly include "holiday and

vacation pay". However, the New Hampshire Retirement System ("NHRS") does not interpret the omission of the term to exclude "holiday and vacation pay" for Nonvested Members where such pay is for a day on which the Member does not work and covers the day with holiday or vacation time. 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.¹ If a Member is granted holiday or vacation time 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 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 they do not actually work on all of the workdays (or for all of the work shifts) because of holidays and/or vacations. 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".

By contrast, if a Member is paid extra to work on a holiday that falls within a normal workweek (or work shifts), the difference between the normal day's pay and the total amount paid represents additional compensation over and above the normal day's pay. The additional compensation should be reported as "Compensation Over Base" for all Members.

If a Vested Member receives pay for unused holiday or vacation time, this should be reported as Base Compensation. Pay for unused holiday or vacation time is not Earnable Compensation for Nonvested Members.

If a Member is granted additional days off (such as floating holidays) and the Member uses the additional day off to cover a day not working, then the compensation for that day should also be reported as part of Base Compensation as it is part of the compensation for the normal workweek and the Member has not received any additional compensation. By contrast, if the Member does not use the additional time off and, instead, is paid additional compensation by the employer, then the additional compensation for unused holiday or vacation days is Earnable Compensation only for Vested Members.²

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, the collective bargaining agreement provides that all Members in the collective bargaining unit receive 0-12 extra days of pay each year. This amount is paid regardless of whether the Member actually works holidays. If a Member does work a holiday, he or she is paid at his or her regular hourly rate. Because the amount of additional compensation is known at the beginning of the year and is payable to all similarly situated Members regardless of whether they actually work on a holiday, the employer may designate the compensation as part of Base Compensation. Alternatively, the employer may designate it as Compensation Over Base. In that event, the compensation is not Earnable Compensation for any Members

¹ See Interpretive Memorandum 2015-1 for a detailed discussion of what constitutes "Base Compensation" and an employer's discretion to determine whether additional types of compensation can also be included in "Base Compensation"

² See Interpretive Memorandum 2015-4 for additional discussion regarding perfect attendance bonuses and similar compensation for not using floating holidays.

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 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 does not come within the definition of Earnable Compensation.

EXAMPLES

Example 1. Member A works for Employer X and is granted two weeks of vacation which he 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 as 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 Compensation Over Base.

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 officers regular work day or a scheduled day off, and instead of paying double time, the Town grants 11 days off that the 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.

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 hospital 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 eight 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 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 awarded 8 hours of holiday time

which she uses to take June 10th off. Compensation for June 10th should be reported as Base Compensation.

- Member C works on New Year’s Day and is paid at twice her regular hourly rate. In this situation, 8 hours should be reported as Base Compensation 8 hours should be reported as Compensation Over Base.
- 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 holiday 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 work on a holiday. Officers are scheduled to work holidays based on the regular work schedule rules and are not paid extra for working on a holiday. Compensation for those days should be reported as Base Compensation. Although, the additional compensation paid in July and January is called “holiday pay” under the collective bargaining agreement, it is paid regardless of whether the officer works on the holidays. If an officer works on a designated holiday, he or she is paid the regular hourly rate. Thus, the so-called “holiday” pay is not additional pay for working on a holiday. In this situation, Town X may designate the additional pay as 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.

STATUTORY REFERENCES: RSA 100-A:1, XVII

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Approval Date