



## Interpretive Memorandum No. 2015-4

**DATE:** **AUGUST 16, 2019** (Originally issued August 17, 2015)

**POLICY TOPIC:** **ADDITIONAL COMPENSATION FOR NON-ABUSE OF SICK TIME, PERFECT ATTENDANCE, AND SIMILAR BONUS LEAVE PROGRAMS.**

### QUESTIONS/SCENARIO:

The personnel policies and collective bargaining agreements of participating employers often contain provisions pursuant to which a Member may earn additional compensation as a reward for not using all of his or her allotted sick time and/or floating holidays. These provisions have many varied titles and structures for awarding such compensation. For example, the compensation is variously referred to as “Bonus Pay”, “Non-Abuse of Sick Pay”, “Personal Leave Bonus”, “Perfect Attendance Bonus”, and “Sick Leave Incentive” (hereinafter collectively referred to as “Annual Attendance Stipend or Bonus”). In some cases, the Member receives additional personal leave days based on the amount of sick time he or she uses. In other cases, the Member receives cash compensation for not using floating holidays. Sometimes the Member can elect in advance to convert any cash compensation into additional time off. In some cases, if the additional days are not used within a certain time limit, the days are “cashed out” by the employer. Finally, some provisions award additional cash compensation or time off if a Member has perfect attendance (i.e., he or she uses no sick days or floating holidays)

No matter the title or structure of these provisions, they all share a common element, which is that the Member is eligible to receive either additional time off or cash compensation if he or she meets certain requirements with respect to attendance and the use of sick time or floating holidays. It is important to note that this does not include situations where the Member is awarded additional sick days that can only be taken in the event of an illness or injury. The subject of this memorandum is additional compensation awarded for attendance, either as a cash bonus or as additional vacation days or personal leave days that can be taken at any time.

## CONCLUSION:

Whether such compensation is Earnable Compensation will depend on the following factors:

1. Is the compensation payable in cash or in additional time off?
2. Can the Member elect to convert any cash compensation into additional time off instead of taking the cash payment?
3. Did the Member use the additional time off?
4. Is additional time cashed in either after the passage of time (i.e., in the next fiscal year) or at termination of employment?

Effective September 10, 2019, Annual Attendance Stipends or Bonuses paid as cash awards are Earnable Compensation that should be reported for all Members. Prior to that date, additional cash compensation awarded for not using sick time or floating holidays, and attendance bonuses, were not Earnable Compensation.

If the compensation is payable in additional days off, either by election of the Member or by default, two outcomes are possible. First, if the Member takes the additional time off, then compensation paid with respect to that time off should be reported as Base Compensation in the same manner as regular vacation time or floating holidays are reported.<sup>1</sup> However, if the additional days are cashed in, either after the passage of time (such as at the end of the fiscal year) or upon termination of employment, then that additional compensation is compensation for unused vacation time which is Earnable Compensation only for Vested Members. Cash compensation for unused vacation time is not Earnable Compensation for members not vested prior to 1/1/12 (NonVested Members).

## ANALYSIS

RSA 100-A:1, XVII(a) provides that, for Vested Members, Earnable Compensation shall mean “the full base rate of compensation paid, as determined by the employer, plus . . . holiday and vacation pay . . .”.

RSA 100-A, XVII, (b)(1) provides that, for NonVested Members, Earnable Compensation shall mean “the full base rate of compensation paid, as determined by the employer . . .”. In addition RSA 100-A, XVII, (b)(4) provides that, for NonVested Members, “[e]arnable compensation shall not include . . . pay for unused sick or vacation time.” Under prior law, Annual Attendance Stipends or Bonuses were not Earnable Compensation because they are not Base Compensation and were not otherwise included in the definition of Earnable Compensation. Effective September 10, 2019, RSA 100-A:1, XVII(b)(1) will be amended to expand the definition of Earnable

---

<sup>1</sup> See Interpretive Memorandum 2015-1 for a detailed analysis of what constitutes Base Compensation.

Compensation to include Annual Attendance Stipends or Bonuses.<sup>2</sup> Thus, any such payments made on or after September 10, 2019, should be reported for all Members.

The legislation enacting the amendment specifically states:


*"The general court intends that this act revise the definition of earnable compensation for the New Hampshire retirement system to include annual cash payments in the form of an attendance stipend or bonus paid pursuant to a collective bargaining agreement, personnel policy, or other agreement applicable to substantially all employees, the amount of which is determined by reference to the amount of sick days an employee used in the calendar or fiscal year. . . ."*

NHRS will be interpreting the phrase "substantially all employees" to include employees that are members of the same bargaining unit or other groups of similarly situated employees. However, ad hoc, one-off stipends or bonuses awarded to individuals will not fall within the definition of Annual Attendance Stipends or Bonuses and, therefore, are not Earnable Compensation.

By contrast, if instead of cash compensation a Member is awarded additional time off for good attendance and uses the additional time off, then the Member has not earned any additional compensation. The Member merely is allowed to take an additional day off. In this case, the employer should report the pay for the additional days off as Base Compensation in the same manner as regular vacation days are reported.

If, because the Member does not utilize the additional time off within a certain timeframe, the additional days are cashed out by the employer, then the Member does have additional compensation. Such compensation is pay for unused vacation days. As such, it is Earnable Compensation for Vested Members but not for NonVested Members.

**STATUTORY REFERENCES:** RSA 100-A:1, XVII

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

  
Approval Date

<sup>2</sup> Chapter Law 214, HB 468, 2019.