



NHRS

New Hampshire Retirement System

Interpretive Memorandum No. 2019-1

DATE: July 30, 2019

POLICY TOPIC: SERVICE CREDIT AND COMPENSATION ISSUES RELATING TO MEMBERS RECEIVING WORKERS' COMPENSATION INDEMNITY BENEFITS

PURPOSE:

The purpose of this memorandum is to discuss the various service credit and earnable compensation issues relating to members who are receiving workers' compensation indemnity benefits (WCIB).

ANALYSIS & CONCLUSIONS:

A. General Overview. WCIB are weekly payments paid pursuant to RSA 281-A by an employer's insurance carrier which are intended to replace some portion of the lost wages of employees who have a work-related injury or illness. Typically, this is approximately 60% of an employee's regular wages. Because WCIB are not paid by the employer, they are not "earnable compensation" as that term is defined in RSA 100-A:1, XVII. Thus, for reasons explained more fully below, a member receiving WCIB typically does not receive sufficient earnable compensation and does not work full-time for a sufficient number of days in a month to otherwise qualify for service credit for that month under NHRS Administrative Rules Ret 307.02(g) & (h). However, RSA 100-A:4, III(b) provides that a member is entitled to up to one year of service credit while in receipt of WCIB, notwithstanding the fact that a member would otherwise have insufficient earnable compensation or work-days in a month to earn service credit per the statutory provisions and administrative rules cited above.

If an employer pays wages, or a member uses vacation or sick time, to supplement the WCIB, these 'supplemental wages' are earnable compensation that must be reported to NHRS. If a member returns to work on a part-time basis and also receives WCIB, earnable compensation is calculated on a proportional basis as described below.

B. Service Credit Issues

RSA 100-A:4, III(a) provides that the NHRS Board of Trustees “shall fix and determine . . . how much service in any year is the equivalent to one year of service, but in no case shall it allow credit for a period of absence without pay of more than a month’s duration, . . .”

Ret 307.02(g) provides in relevant part that “[t]o receive service credit for subsequent months [other than the first, second or last month of employment], the member shall, for the month for which service credit is sought, have attributable earnable compensation that is at least equal to 50% of the member’s average monthly earnable compensation over the member’s previous 6 months of credited service.”

Ret 307.02(h) provides that “Notwithstanding the requirements of . . . (g) above, a member shall receive service credit for any month of service in which the member receives earnable compensation for at least 50% of the regularly required work days for that position.”

Thus, a member who is absent from full time work and is in receipt of WCIB equal to 60% of his or her regular wages would typically not meet either of these 50% thresholds and would not be eligible for service credit, even if he or she receives supplemental wages.

However, RSA 100-A:4, III(b) provides that “[n]otwithstanding the provisions of subparagraph (a) or any other law to the contrary, any member who receives a weekly award under the provisions of RSA 281-A from the commissioner of labor, for injury arising out of and in the course of employment, shall be entitled to creditable service for said period not in excess of one year. To receive creditable service, a member shall file a department of labor memo of payment of disability compensation form, with the board of trustees, verifying the first and last payment of disability compensation for each new unrelated injury.”

Therefore, a member who provides the requisite proof of an award of WCIB can receive up to one year of creditable service despite not having worked or been paid enough in certain months to meet the 50% thresholds under Ret 307.02(g) & (h).

C. Earnable Compensation Issues

Earnable compensation is defined under RSA 100-A:1, XVIII as consisting of the member’s “full base rate of compensation paid” plus certain other types of compensation expressly listed in the statute. WCIB are paid by an insurance company and, therefore, cannot be considered as part of the full base rate of compensation paid by the employer. In addition, WCIB are not otherwise listed in the definition of earnable compensation. Therefore, WCIB are not earnable compensation, are not reportable to NHRS, and are not subject to the payment of employer or member contributions.

NHRS staff have encountered situations where an employer pays a member his or her full normal wages and the member then signs over the insurance company's check for WCIB to the employer. Despite the fact that the employer is paying the member directly, NHRS interpretation of the law is that such direct payment of wages by the employer is a proxy for the receipt of WCIB; and, the amount equivalent to the amount of the WCIB payments is not earnable compensation and should not be reported to NHRS. On the other hand, supplemental wages paid voluntarily by the employer in excess of the WCIB are considered earnable compensation that should be reported as "compensation over base".¹ By contrast, if a member uses vacation or sick time to supplement his or her WCIB, such wages should be reported as base compensation.

D. Returning to Work Part-Time

In some situations, a member may return to work on a part-time basis when his or her medical condition improves and still receive WCIB for the days, or partial days, when he or she does not work. In these cases, the amount of earnable compensation that is reportable to NHRS is calculated on a proportional basis. For example, if a member's regular wage is \$1,000 per week and he or she returns to work for 2 days (or 40%) of the normal workweek, the wages paid for the 2 days (\$400) is earnable compensation reportable to NHRS. The \$360 in WCIB (i.e., 60% of \$600 for the other 3 days) is not earnable compensation.

If an employer pays supplemental wages, they are also reportable as earnable compensation. In the example, the supplemental wages would be \$240 (\$600 in normal wages for 3 days - \$360 in WCIB already paid = \$240). Therefore, of the \$1,000 received by the member from both sources \$640 (\$400 as base compensation + \$240 as compensation over base) is reportable as earnable compensation and \$360 is not.


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Approval Date

¹ NHRS makes no determination whether the practice of "handing over" a workers' compensation check to the employer complies with state wage law or federal tax law regarding the withholding of income and employment taxes.