



Interpretive Memoranda 2013-3

DATE: **REVISED September 18, 2023** (Originally issued August 5, 2013, revised February 28, 2017 and July 20, 2022)

TOPIC: **COMPENSATION FOR EXTRA AND SPECIAL DUTY (ESDP)**

PURPOSE:

The purpose of this memorandum is to discuss the proper reporting of ESDP paid to Members.

SUMMARY:

A. Compensation for “extra and special duty” (ESDP) is Earnable Compensation¹ only for Group II Members. Group I Members do not have compensation that would be considered ESDP.

B. Compensation paid to a Group II Member for services performed during their normal work shift is not ESDP, notwithstanding the fact that the Employer may be compensated by a third party for such services.

C. Compensation for extra shifts working sobriety checkpoints and similar activities, for which the Employer is reimbursed from state or federal grant funds, should be reported as Base Compensation or overtime, as the case may be, and not as ESDP.

D. ESDP is not reportable for Tier C and Tier A/C

- For the purposes of this rule only, a Member “commences service” on the first day that he or she is enrolled in NHRS by virtue of full-time employment in any position, Group I or Group II, with any participating Employer.
- If a Member changes Employers, the initial date of enrollment in NHRS, and not the first day of employment with the new Employer, determines the Member’s commencement date.
- If a Member withdraws his or her contributions and later returns to active service, his or her commencement date is the new hire date.
- Members who retire and are later restored to service, maintain their original commencement date.

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

ANALYSIS:

A. ESDP IS REPORTABLE AS EARNABLE COMPENSATION ONLY FOR GROUP II MEMBERS

It is the longstanding policy of NHRS that ESDP is Earnable Compensation only for Group II members. This policy is supported by a reasonable interpretation of the relevant statutes, most notably RSA 100-A:16, VI which provides that “[e]very employer shall report . . . all compensation of group II members that is attributable to extra or special duty. . . .” [Emphasis added]. In addition, the common usage of the term and legislative history support the conclusion that the term “extra and special duty” refers to duties performed by sworn officers (i.e., police officers and firefighters).

By contrast, there is no statutory provision that addresses employer contributions for ESDP for Group I Members and the common usage of the term “extra and special duty” does not appear to include services performed by Group I Members. Although an Employer may “lend” an Employee to another Employer, and be reimbursed for it, this is not “extra and special duty”. For example, large Town A employs a water department Employee for 5 days a week. Occasionally, Town A authorizes the Employee to perform tasks for small Town B. Town A pays the Employee for all hours worked and is reimbursed by Town B for the wages relating to duties performed for Town B. Any compensation paid by Town A for services “lent” to Town B is reportable by Town A as part of base compensation or overtime, as the case may be, it is not ESDP.

ESDP for Tier A Group II Members reported in the ESDP field. ESDP for Tier B Group II Members should be reported in the COB field. ESDP is never reported for Tier C or Tier A/C Group II Members. (See Paragraph D below).

B. ESDP IS REPORTABLE ONLY FOR WORK PERFORMED OUTSIDE OF A MEMBER’S NORMAL WORK SHIFT

It is NHRS’ longstanding practice that the use of the word “extra” indicates that ESDP was intended to include only compensation for services performed that are in addition to the Member’s regular work shifts and duties. Compensation for services performed during a Member’s regular work shift is not ESDP merely because the Employer is compensated by a third party. For example, if county deputy sheriffs are used to transport prisoners or immigration detainees during their regular shifts, the compensation they receive is not ESDP because it is not “extra”. This is true even if the county is reimbursed by the federal or state government. In such cases, compensation for a Member’s regular shift should be reported as part of Base Compensation. However, if the transport services are performed in addition to the Member’s regular shift for the day, or on the Member’s regularly scheduled day off, vacation day or holiday, then such compensation is ESDP if the Employer is reimbursed by a third party for whom the services are provided.

C. COMPENSATION WHICH IS REIMBURSED BY FEDERAL OR STATE GRANT IS NOT ESDP

Many Employers apply for federal and state grants to fund certain activities such as sobriety checkpoints and similar activities (so-called Grant Money). It is our understanding that typically an annual grant amount is approved and, during the course of the year as the activities are completed, the Employer accounts for the time and expenses and is reimbursed from the grant money by the federal or state government. In other cases, block grants may be made to the Employer prior to the services being performed. In these situations, the local police department is typically not providing services directly to the federal or state government. Moreover, it does not “bill or charge another entity” for the services as required under the definition of ESDP in RSA 100-A:1, XXXII. It is merely applying for reimbursement from available grant funds. Therefore, if the funds to pay compensation for extra shifts working on sobriety checkpoints and similar activities come from reimbursements through federal or state grants, the compensation is not ESDP and should be reported as base compensation or overtime, as the case may be.

D. ESDP IS NOT EARNABLE COMPENSATION FOR Tier C and Tier A/C GROUP II MEMBERS.

NHRS interprets RSA 100-A:1, XVII(b)(3) to mean that a Member “commences service” on the first day that he or she is enrolled in NHRS by virtue of full-time employment in any position with any participating Employer. If a Member changes Employers, or even Group status, the initial date of enrollment, and not the first day of employment with the new Employer, should be used to determine the Member’s commencement date. This applies only for the purposes of ESDP and not with respect to the use of the term “commenced service in any other context.

However, if a Member who was hired prior to July 1, 2011, terminates employment and withdraws his/her accumulated contributions pursuant to RSA 100-A:11, his/her commencement date is reset. In the event that the Member later returns to active Group II service and purchases back the prior withdrawn service, the Member’s commencement date for ESDP purposes will be the date the Member returned to NHRS-covered employment and was reenrolled, not the original commencement date that applied prior to the withdrawal of contributions. Members who retire and later are restored to service under RSA 100-A:7 maintain their original commencement date.



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**Approved by Mark F. Cavanaugh, Esq.
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Approval Date