



North Dakota Public Employees Retirement System
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MEMO #2003-1

To: Authorized Agents & Personnel/Payroll Officers
Date: April 2003
RE: **PROCEDURAL CHANGE FOR REPORTING SALARY**

During a recent review of the North Dakota Century Code and the North Dakota Administrative Code by our legal counsel, the following procedures now apply for seasonal employees who work less than 12 months a year.

1. If salary is paid over a time period greater than an employee's actual physical time at work, a formal salary agreement/contract between employer and employee must be in place and documented on the employer's records. If this salary arrangement is not formalized, then an employer must report total eligible salary during the time period an employee is physically at work only.

Example: Employee works 9 months a year but is paid on a 12 month pay cycle. If this salary arrangement is not formalized by an agreement/contract, the employee's eligible salary must be reported to PERS over 9 months and not 12 months. The employer must determine the total eligible salary over the 12 months and divide by 9 months and report to PERS the adjusted amount.

2. If salary is paid over a 12 month period for a 9, 10, or 11 month seasonal employee and the salary arrangement is formalized by agreement/contract, then the salary must be remitted to PERS for the agreed contract period.

Example: An employee returns to work during the 2003-2004 school year. The employee begins work in August 2003 and works until the end of May 2004 and the employee's salary arrangement is under contract/agreement for a 12 month pay cycle. Then the employee's salary must be reported to PERS for the contract period from July 1, 2003 through June 30, 2004.

Exception: A new employee begins employment during the 2003-2004 school year. The employee begins work in August 2003 and works until the end of May 2004 and the employee's salary arrangement is under contract/agreement for a 12 month pay cycle. Then the employee's first year's salary must be reported to PERS for August, 2003 through June 30, 2004.

3. If at the end of a school year an employee receives a lump sum salary in a month for excess eligible salary for the preceding school year, the salary must be annualized over the agreed contract period or time period physically at work depending on if a salary arrangement is in place or not.

Example: An employee returns to work during the 2003-2004 school year. The employee begins work in August 2003 and works until the end of May 2004 and the employee's salary arrangement is under contract/agreement for a 12 month pay cycle. However, the employer remits 3 months of pay in June to fulfill total salary arrangement. Then the employer must provide PERS a written report stating the excess pay amount and if the employer is under a salary agreement/contract or not. If the employee is under a formal salary agreement, PERS will annualize the excess pay over the current contract year (July 1, 2003-June 30, 2004). However, if the employee is NOT under a formal salary agreement, PERS will distribute the excess pay over the employee's actual physical time at work (August 2003 – May 2004).

For items 1 - 3, if a formalized salary agreement/contract is in place, you do not have to submit a copy to PERS. However, at different intervals, PERS may send a form to verify the salary arrangement.

The following sections are not new procedures and are listed as a reminder:

4. Seasonal employees who are granted unpaid and paid leave of absences after "work period" is completed for the season must remit retirement contributions on the approved paid leave of absence even if preceded by an unpaid leave of absence.

An unpaid, but employer-approved, leave of absence sandwiched between active service and paid leave is not a break in service that invokes the non-crediting of service under N.D.A.C. section 71-02-03-01.2. There is no definition of "continuous service." However, N.D.A.C. section 71-02-01-01(7) defines "continuously employed" to mean "any period of employment uninterrupted by voluntary or involuntary termination or discharge. A member who has taken a leave of absence approved by the member's employer, not to exceed a year unless approved by the executive director, and returns to employment shall be regarded as continuously employed for the period." Thus, since the leave was employer-approved and did not exceed a year, the member in question was continuously employed, which employment should be interpreted as "continuous service." As such, 71-02-03-01.2 would require service credit be given for the leave taken. Contributions should be delivered to PERS for the paid leave.

5. Under N.D.C.C. section 54-52-01(20), "Wages" and "salaries" means the member's earnings in eligible employment under this chapter reported as salary on the member's federal income tax withholding statements plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement incentive pay, severance pay, medical insurance, workers' compensation benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between the member and participating employer. Bonuses may be considered as salary under this section if reported and annualized pursuant to rules adopted by the board.
6. The following applies to all members regarding adjustments for bonuses, profit sharing, and contributions paid in a month other than month earned:
- A. Participating employers shall report bonuses or profit-sharing amounts paid when remitting the contribution associated with the bonus. Recruitment and retention bonuses under North Dakota Century Code section 54-06-31 are not eligible for consideration as salary and no contributions associated with those types of bonuses shall be submitted.
 - B. Bonuses or profit-sharing amounts paid by a participating employer other than pursuant to North Dakota Century Code section 54-06-31 will be prorated equally as actual compensation paid over the term of the intended bonus or profit-sharing period.
 - C. Upon receiving notice, contributions received in a month other than the month earned will be assigned to the appropriate month.
7. Any vested employer contributions (PEP) will not be retroactively increased. Vested employer contributions (PEP) are based on an employee's contribution each month to a deferred compensation plan, the monthly reported salary, and a vesting schedule.

If you have any questions, please contact our office at (701) 328-3900 or toll free at 1-800-803-7377.