Settlement Agreements and Salary
Procedural Guidelines Relating to Agreements that Pay Back Wages

Wage or employment disputes, disciplinary actions, allegations of discrimination, suspensions, or involuntary separations from public employment sometimes result in settlement agreements, awards, or court orders. For purposes of this document, all of these will be referenced as settlement agreements. These agreements may grant a current or former public employee retroactive wages, restored benefits, damages, etc., which may or may not be salary under laws governing the Public Employees Retirement Association (PERA).

Note: Payments awarded by a court or an arbitrator to a person who has been determined to have been wrongfully discharged from PERA-covered employment are not considered in this document. Refer to Minnesota Statutes 356.50.

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For amounts that are paid under settlement agreements to be considered "salary" for PERA purposes, the following procedural guidelines should be followed. These guidelines are not all inclusive and in some instances, PERA may request additional detail.

1. The agreement should specify the amount to be paid as wages for specified earnings period(s) before any applicable tax or pension deductions. For PERA, awards of back wages should be computed as if the employee had been continuously employed throughout the disputed period unless there will be a period of unpaid suspension or leave. When possible, indicate the associated hours of service performed by the person or the hours that would have been performed if the employee had not been suspended or terminated.

2. Agreements that include the payment of wages should indicate what the payment represents, such as:
   a. Retroactive wages for a period of suspension, unpaid leave of absence, or a period in which services were not rendered by an employee due to an involuntary termination that has not been deemed a wrongful discharge.
   b. Additional wages for work performed, but not previously reported to PERA.
   c. Additional wages for service performed and previously reported to PERA.

3. The agreement should specify if the employee will accrue any vacation or sick leave hours for the disputed period and if the employer is to pay towards any insurance coverage for the employee.

4. The agreement should include a provision allowing disclosure of the settlement agreement to PERA representatives so they may determine if the payment qualifies as salary upon which pension deductions are to be taken. (Note: Disclosure of the settlement details to PERA does not make the data public.)

5. If the parties choose to end an existing employer-employee relationship, the agreement should specify the date of termination of service. Similarly if a person is to be reinstated after having been suspended or dismissed, the agreement should specify the original termination date and the date of reinstatement.

Payments Not Reportable to PERA
For a settlement amount to be considered as qualifying for PERA coverage, it must reasonably fall under PERA’s definition of "salary." Under Minnesota law, compensation awarded under a settlement agreement must be determined by PERA representatives to
be PERA-eligible salary before pension deductions may be withheld.

Generally, the following payments will not be considered PERA-eligible salary:

- A payment for penalties, attorney fees, or interest.
- A payment for unused vacation or sick leave hours or for severance pay.
- A payment that is not associated with an applicable earnings period(s).
- A payment that results in wages exceeding those normally earned in an equivalent earnings period without explanation. The agreement should not artificially inflate wages that would have been reported to PERA if there had not been a dispute.
- A payment covering one or more periods after the date in which the employer-employee relationship has been severed under the settlement agreement.
- A payment resulting in contributions over the limits in Section 415 of the Internal Revenue Code or in salary exceeding the limits set in Minnesota Statutes 356.611.
- A payment resulting from an employer's failure to hire a person. This does not exclude wages related to failure to promote an employee.

Remitting PERA Contributions

If the payment made is determined to be salary that must be reported to PERA, the employee deductions and employer contributions are due within 14 days of the date the settlement award is issued by the employer. The employer may pay the employer and employee amounts through the next Salary Deduction Report due after the effective date of the settlement agreement.

Once full payment has been made, PERA will credit the member's account with salary, contributions, and service for the appropriate period(s). Where applicable, a member's account will be returned to active status by removing the disputed termination. In the case of a PERA retiree or disabilitant, PERA will recalculate any benefit payments that have been paid after the termination date.