

FACT SHEET

Back Pay Awards in Wrongful Discharge Cases

When the court, an arbitrator, or authorized panel determines that a public employee has been wrongfully discharged, actions are often taken to make the individual “whole” by awarding compensation in an amount equal to what would have been paid had the person remained employed.

Under Minnesota Statutes §356.50 a person is entitled to obtain allowable service credit under PERA for the uncovered period caused by the wrongful discharge when:

- a court, arbitrator, or a board, commission, or panel acting under the Veterans Preference Act, has determined that a wrongful discharge from employment occurred;
- the person is awarded back pay with respect to that discharge; and
- the award does not include an amount for any lost or interrupted PERA coverage.

Notifying PERA

Under Minnesota law, any compensation that is awarded under a settlement agreement (which includes wrongful discharge settlements) must be determined by PERA staff to be eligible salary before any pension withholdings are made by the employer. The

employer must notify PERA of the situation by sending a copy of the signed settlement agreement or order and attaching a letter providing background information.

The purpose of notifying our agency before making any payroll decisions relating to settlement or back-pay awards is to ensure that we have an opportunity to explain relevant options or requirements to all parties.

In wrongful discharge situations, employers may not be familiar with all aspects of the process and may not be aware that:

1. the employee has the option to obtain PERA service credits for the discharge period. If the employee payment is made, the employer must pay the PERA employer contributions for the applicable period and interest.
2. the PERA contributions due are calculated using the unpaid gross salary of the individual for the period, which will include any unemployment compensation, workers’ compensation, or wages from other sources that may have reduced the actual back-pay amount that is payable from the employer.

3. a discharge that is overturned could affect individuals who are being paid a PERA retirement benefit. If the individual is reinstated into public service, it is likely that we must suspend the retirement benefits that had been approved based on the employment discharge date and collect the overpayments that have been made.

Guidelines

Court orders or arbitration awards covering wrongful discharges should meet certain conditions. These guidelines are not all inclusive, and in some instances, PERA may request additional detail from the employer.

1. The document should specify the amount to be paid as back wages¹ and should be stated as gross salary for the period in question before subtracting unemployment compensation, workers' compensation, or wages from other sources. Further, the award should not include an amount for any lost or interrupted PERA coverage.
2. The order is to identify the specific earnings period and identify if there is any period of unpaid suspension or leave. In most instances, the period begins with the date of the discharge and ends with the date the person is to be reinstated into public service. If the individual is not reinstated, the document should

specify if a new termination date has been established.

Payments Not Reportable to PERA

The following payments are not salary upon which PERA service credit may be given:

- Any payment for damages, penalties, attorney fees, or interest.
- Any payments for unused vacation or sick leave hours or severance.
- A payment that represents the value of benefits lost.
- A payment for actual or constructive services rendered or deemed to have been rendered after termination of employment.
- A payment that results in an annual salary exceeding the limits defined in Section 401(a)(17) of the Internal Revenue Code.

Member Payment

An individual who was wrongfully discharged has the option to purchase service credit for the period of lost employment provided the person has not earned credits with another Minnesota public pension system during that period. To obtain the PERA credit, the individual must pay the employee contribution amounts based on the unpaid gross salary for the discharged period.

The voluntary member payment, which is based on the contribu-

tion rate(s) in effect for the period of lost service, must be made within 60 days of either the receipt of the back pay or a billing from the retirement fund, whichever is later. Payment is made in the form of a personal check from the individual.

Employer Payment

If the individual makes the voluntary member payment, the employer must pay the employer contributions based on the amount on which the member contribution was determined. The employer must also pay interest on both the member and employer contribution amounts at the rate of 8.0 percent from July 1, 2015 to June 30, 2018 and 7.5 percent thereafter, expressed monthly, between the dates the contributions would have been paid to the date of actual payment. The employer payment must be made within 30 days of the date in which PERA receives the member's payment.

¹ For PERA pension purposes, back wages for the disputed period should be computed as if the employee had not been wrongfully discharged.