



September 21, 2016
Standby Pay

INITIAL CONSIDERATION

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ISSUE STATEMENT

Standby pay is not part of basic salary (reportable compensation) used in computing LEOFF Plan 2 contributions and pensions.

OVERVIEW

Some LEOFF Plan 2 members receive standby pay while off-duty in exchange for being prepared to report to work on short notice. This payment is not considered compensation for services rendered and thus is not reportable compensation for LEOFF Plan 2.

Sometimes, payment for being in standby status is reported to DRS:

- If standby pay is paid as overtime for a reduced number of hours, for instance, one hour of overtime paid for one shift on standby; or
- If the position is in PERS.

This report discusses the current status of standby pay in LEOFF Plan 2 and PERS to help the Board determine whether to pursue the issue further.

MEMBERS IMPACTED

Many law enforcement officers and fire fighters do not receive standby pay. They are generally subject to call-up if an emergency requires more resources than available from on-duty staff. Fire fighters receiving standby pay tend to be in positions that, while required at a fire scene, are not necessarily present at the fire station 24/7. This can include fire inspectors and public information officers.

BACKGROUND & POLICY ISSUES

Standby Pay is Not Basic Salary in LEOFF

Standby pay is a nominal rate of pay provided in exchange for the employee being available to come to work quickly if called, though he or she might not be called. While on standby an employee is usually confined to a specified geographic area and prohibited from consuming

alcohol or other intoxicants. If the employee is called in, he or she usually earns overtime for periods actually worked.

The Department of Retirement Systems (DRS) excludes standby pay from basic salary because it does not consider standby pay compensation for services rendered, see RCW 41.26.030(4)(b) and WAC 415-104-393. While ready to work if called, an employee on standby is engaged in personal activities, not performing work for their employer.

Some LEOFF Members Earn Standby Pay

An informal survey of Washington fire fighters turned up the following examples of earned standby pay. Arrangements vary depending upon the local collective bargaining agreement.

When Can Fire Fighters Earn Standby Pay?

Some Washington fire fighters can earn standby pay in the following situations:

- Positions assigned to work 8 hour shifts may be required to muster after hours in the event of a fire. Those positions include:
 - Fire investigators, Fire Marshals, or Public Information Officers:
 - Battalion Chiefs and/or Deputy Chiefs
- A station that combines career and volunteer fire fighters may have a career fire fighter on standby to respond to a fire call to aid volunteers.
- If a chief is absent, a lieutenant may be designated to respond to an incident in the chief's stead and earn standby as the chief would.
- At least one jurisdiction pays standby pay to crews in fire camps while working on state mobilizations.

When Can Law Enforcement Officers Earn Standby Pay?

Law enforcement officers on special squads such as detectives may earn pay for being on standby.

How Much is Standby Pay?

The rate of pay varies. Some examples:

- Fire Fighters:
 - Reduced rate of pay – some jurisdictions pay an hourly standby wage at a reduced rate of pay such as 10% of regular pay;
 - Reduced hours – some jurisdictions pay a full overtime wage for a reduced number of hours. For instance, one employer pays one hour of overtime for a 12 hour standby shift.
- Law Enforcement Officers:
 - 4 hours pay for being on standby, additional pay if called in for more than 4 hours;
 - No standby pay but guaranteed 4 hour pay minimum if called in.

Some Standby Compensation is Reported

Whether an employee's standby pay is reportable can depend on the employer's payroll and personnel classifications:

- Standby pay paid as overtime or regular pay. If a jurisdiction tracks standby pay as a separate type of pay, it is not reported to LEOFF. If, however, the pay is paid as overtime or straight time for a reduced number of hours, the amount would be coded as reportable pay and reported to DRS.
- Standby pay to PERS employees: A LEOFF fire inspector or public information officer would not have standby pay reported. If an employer classified their fire inspectors or public information officers as PERS positions any standby pay received is reportable.

Standby Pay is Reportable Compensation in PERS

In 1995 the Legislature found standby pay should be reported in PERS, despite not being compensation for service rendered. It added the following language to the definition of PERS reportable compensation (compensation earnable):

"Compensation earnable" for plan 2 and plan 3 members also includes the following actual or imputed payments, which are not paid for personal services:

...

(vi) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

RCW 41.40.010(8)(b).

NEXT STEPS

At the juncture the Board may:

1. Direct staff to present a comprehensive review at the November Board meeting; or
2. Take no further action.

SUPPORTING INFORMATION

Appendix A: Standby pay WACs for LEOFF Plan 2 and PERS

LEOFF Plan 2

WAC 415-104-393

Standby pay is not LEOFF Plan II basic salary.

Payments to a member for time not actually worked when the member must be available to work if the need arises, are not a salary or wage for services rendered. Any such payment does not qualify as basic salary for LEOFF Plan II.

Example: Some employers provide payments to a member at less than the member's regular hourly rate in exchange for the member being available to come into work after h shift if called, although the member may not be called. Such payments, often ref as "standby pay," are not basic salary for LEOFF Plan II.

PERS Plan 2

WAC 415-108-469

Standby pay.

Some employers pay employees for being on "standby." A member is on standby when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work if the need arises, although the need may not arise. Because the member is not actually working, the member is not rendering service. However, RCW **41.40.010(8)** specifically identifies standby pay that meets the above requirements as reportable compensation. Although included in the definition of compensation earnable, time spent on standby is excluded from the definition of "service," see RCW 41.40.010(9).



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- ▶ **Standby pay is not part of basic salary (reportable compensation) used in computing LEOFF Plan 2 contributions and pensions**
- ▶ **Standby Pay is**
 - **Less than full pay for**
 - **Being available to be called in, though employee may not be called in**

STANDBY PAY IS NOT BASIC SALARY

- ▶ **Pay for being available to be called in for work is**
 - **Not considered pay for services rendered**
 - **Not reportable basic salary in LEOFF**
 - **Not used in calculating:**
 - **Contributions**
 - **Pensions**

WHO EARNS STANDBY PAY?

▶ Fire Fighters:

- Employees working 8 hour shifts required to muster for fire such as:
 - Fire investigators, Fire Marshals, or Public Information Officers
 - Battalion Chiefs and/or Deputy Chiefs
- Career fire fighters called in to supervise volunteers
- Lieutenant backfilling for absent chief
- Employees mobilized for fire camps

▶ Law Enforcement Officers: Special squad members, such as detectives

HOW IS STANDBY PAY PAID?

- ▶ **Reduced rate of pay –**
 - **Example: 10% of regular pay**
- ▶ **Full overtime rate for reduced number of hours**
 - **Example: 1 hour overtime pay for 12 hours of standby**
- ▶ **Regular rate for reduced number of hours**
 - **Example: 4 hours regular pay for 16 hours standby**

WHEN IS STANDBY PAY REPORTED?

- ▶ Overtime or regular pay rate - If standby pay is paid at overtime or regular pay rate:
 - Coded and therefore reported as overtime or regular pay.
 - Not pay for services rendered so should not be reported.

- ▶ PERS Employees. 1995 PERS law:
 - Recognizes standby pay is not for services rendered but
 - Designates it as reportable in PERS
 - If a jurisdiction has PERS fire inspectors or public information officers their standby pay is reportable

NEXT STEPS

- ▶ **Direct staff to prepare comprehensive report for November meeting**
- ▶ **Take no further action at this time**

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