



September 27, 2023  
Holiday Payments

## INITIAL CONSIDERATION

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## ISSUE STATEMENT

The current administrative interpretation of when holiday pay is considered earnable compensation has created a situation where members may be treated differently based on their employer's payroll system, not on the days they work.

## OVERVIEW

For LEOFF 2 members holiday pay that is tied to a specific holiday date can be cashed out and considered basic salary. However, holiday pay that is personal or floating (not tied to a specific holiday) is not considered basic salary if cashed out. Some employer's payroll systems track these two types of holiday pay, while others do not.

While DRS has advised employers to keep track of the two types of holiday pay for reporting purposes, they recognize that isn't possible for all employers, so they have allowed those employers to use the "first in, first out" accounting method to accommodate these employers' reporting limitations.

## BACKGROUND AND POLICY ISSUES

For an employee's wages to be subject to retirement system contributions and included in the calculation of their retirement benefit, they must meet the definition of 'basic salary' in LEOFF 2.<sup>1</sup> DRS determines basic salary based upon the nature of the payment made to an employee, not the name given to it. To determine if a payment is basic salary, DRS considers: what the payment is for; and, whether the reason for the payment brings it within the statutory definition of basic salary.

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<sup>1</sup> Basic Salary is often referred to as "pensionable income", "earnable compensation", or "reportable compensation".

LEOFF 2 basic salary is a payment that is a salary or wage earned during a calendar month for personal services rendered by a member to an employer. Certain payments that aren't for personal services rendered by a member also qualify if there are specific provisions in the laws identifying them as basic salary. Other payments not specifically identified in the rules qualify as basic salary only if the payments are for services rendered.

Below is the LEOFF Basic Salary Chart from WAC 415-104-299:

Type of Payment	LEOFF 1 Basic Salary?	LEOFF 2 Basic Salary?
Additional Duty Pay	Yes - WAC <b>415-104-3205</b>	Yes - WAC <b>415-104-360</b>
Allowances (i.e. uniform)	No - WAC <b>415-104-3404</b>	No - WAC <b>415-104-390</b>
Basic Monthly Rate	Yes - WAC <b>415-104-3200</b>	Yes - WAC <b>415-104-360</b>
Cafeteria Plans	No - WAC <b>415-104-3303</b>	Yes - WAC <b>415-104-367</b>
Deferred Wages Attached to Position	Yes - WAC <b>415-104-3201(1)</b>	Yes - WAC <b>415-104-363(1)</b>
Deferred Wages not attached to a Position	No - WAC <b>415-104-3306</b>	No - WAC <b>415-104-363(2)</b>
Disability Payments	No - WAC <b>415-104-340</b>	No - WAC <b>415-104-380</b>
Education Attainment Pay	No - WAC <b>415-104-3301</b>	Yes - WAC <b>415-104-375</b>
Employer taxes/contributions	No - WAC <b>415-104-3401</b>	No - WAC <b>415-104-383</b>
Fringe Benefits, including insurance	No - WAC <b>415-104-3402</b>	No - WAC <b>415-104-385</b>
Illegal Payments	No - WAC <b>415-104-3403</b>	No - WAC <b>415-104-387</b>
Leave Cash Outs/Severance	No - WAC <b>415-104-3304</b>	No - WAC <b>415-104-401</b>
Longevity	Yes - WAC <b>415-104-311</b>	Yes - WAC <b>415-104-375</b>
Overtime	No - WAC <b>415-104-3305</b>	Yes - WAC <b>415-104-370</b>
Paid Leave	Yes - WAC <b>415-104-3203</b>	Yes - WAC <b>415-104-373</b>
Payments in Lieu of Excluded Items	No - WAC <b>415-104-350</b>	No - WAC <b>415-104-405</b>
Performance Bonuses	No - WAC <b>415-104-3302</b>	Yes - WAC <b>415-104-377</b>
Retroactive Salary Increase	Yes - WAC <b>415-104-3202</b>	Yes - WAC <b>415-104-365</b>
Reimbursements	No - WAC <b>415-104-3404</b>	No - WAC <b>415-104-390</b>
Retirement or Termination Bonuses	No - WAC <b>415-104-3406</b>	No - WAC <b>415-104-395</b>
Shift Differential	Yes - WAC <b>415-104-3204</b>	Yes - WAC <b>415-104-379</b>
Special Salary or Wages	No - WAC <b>415-104-330</b>	Yes - WAC <b>415-104-375</b>
Standby Pay	No - WAC <b>415-104-3405</b>	No - WAC <b>415-104-393</b>
Tuition/Fee Reimbursement	No - WAC <b>415-104-3404</b>	No - WAC <b>415-104-390</b>
Workers' Compensation	Not Applicable	No - WAC <b>415-104-380</b>

Due to the nature of their positions, LEOFF members are often required to work on recognized holidays. If a LEOFF member works on a holiday or takes a day off using a personal/floating holiday that is considered basic salary. Many LEOFF employers create holiday leave banks for these employees and if an employee works the holiday, it is considered a regular workday. Holiday leave banks typically allow for all employees to get the same amount of holiday pay days whether they work those holidays or not. Later, the employee may use hours from the holiday leave bank to take a day off and/or cash out all or some of the hours in the future. Cash

outs for recognized holidays are considered overtime (not leave cash outs) and overtime is basic salary for LEOFF 2. Meanwhile, cash outs for personal holidays are considered leave cash outs and not basic salary for LEOFF 2.

DRS Employer Notice, 22-012, explains to employers how to treat holiday leave bank pay for purposes of reporting basic salary to DRS. DRS tells employers that leave in the holiday leave bank must be tied to a specific holiday date and that personal or floating holidays are not tied to a specific date and are not considered recognized holidays for the purposes of holiday leave bank cash outs.

However, not all employers have payroll systems that identify whether the holiday leave in the bank is tied to a specific holiday date or not. DRS has made the policy decision to handle this by allowing employers whose payroll systems do not identify the different types of holiday leave in the bank to use what they call the “First in, First Out” method. An example of how this works would be a member has 88 hours of holiday pay in their holiday bank tied to specific holidays and 8 hours of holiday day pay in their bank not tied to a specific holiday. The employer would allocate the first 88 hours of holiday pay as basic salary and the last 8 hours cashed out as not basic salary.

## SUPPORTING INFORMATION

Appendix A: DRS Employer Notice 22-012

# DRS Notice 22-012, Holiday Leave Banks

Posted on October 6, 2022

DRS Email 22-012

Date: October 6, 2022

Applies to: Cities, Counties, and Political Subdivisions

Subject: DRS Notice 22-012, Holiday Leave Banks

This notice is provided to clarify the rules for reporting data to DRS regarding holiday leave banks.

Certain employees whose duties entail providing essential or emergency services (such as firefighters, police officers, correctional officers, 911 dispatchers, etc.) are

often required to work on recognized holidays. Some employers create holiday leave banks for these employees and if an employee works the holiday, it is considered a regular workday. Later, the employee may use hours from the holiday leave bank to take a day off and/or cash out all or some of the hours in the future.

First, we will answer some FAQs (frequently asked questions) on this topic; then, we will present scenarios based on an example of a holiday leave for 10 standard state holidays, plus a federal holiday (Christmas Eve).

## **FAQs**

### **What are recognized holidays for purposes of this email notice?**

- Holidays recognized by either the State of Washington, the federal government, or formalized by an organization; **and** tied to a specific date.
- If an employer utilizes a holiday leave bank; the employer must identify the recognized holidays associated with the hours that are added to the holiday leave bank.

### **Are personal or floating holidays considered recognized holidays for purposes of holiday leave bank cash outs?**

No. Personal or floating holidays are not tied to a specific date and are not considered recognized holidays for the purposes of holiday leave bank cash outs.

### **Is a cash out of a personal or floating holiday treated the same way as a cash out of holiday leave?**

- A cash out of a personal or floating holiday is considered a cash out of leave and is not reportable for most DRS plans (leave cash outs are reportable only for certain TRS 1 and PERS 1 members).

- A cash out of a recognized holiday from a holiday leave bank is considered overtime.

If employees are allowed to cash out hours from a holiday leave bank; do not include non-recognized holidays *in the holiday leave bank*. Don't combine these different types of leave into the same bank because each type of leave must be treated differently if cashed out.

### **How are holiday leave bank hours used as leave different than holiday leave bank hours cashed out?**

- **Used as leave:** If hours from the bank are used as leave, report the hours used and compensation earned to DRS just as you would for any other leave used, such as vacation or sick leave.
- **Cashed out:** When an employee receives an additional payment because he or she works on a recognized holiday, the payment is considered overtime. Therefore, if an employee cashes out hours from the holiday leave bank, treat it as a *deferred* payment of overtime and report it as regular earnings using status code A. Report no service (hours) because you should have already reported the hours when the employee worked the holiday(s).

### **Are cash outs of a holiday leave bank considered reportable compensation?**

*Cash outs for recognized holidays are considered overtime;* therefore, it depends upon whether overtime is considered reportable compensation for the employee's retirement system/plan. Overtime is considered reportable compensation for members of:

- LEOFF Plan 2 [\*\*WAC 415-104-370\*\*](#)
  - All PERS Plans [\*\*RCW 41.40.10\(8\)\*\*](#)
  - PSERS Plan 2 [\*\*WAC 415-106-220\*\*](#)

## How should employers report cash outs from a holiday leave bank (for hours related to recognized holidays)?

Report compensation only with an “A” code in the month of the associated holiday. Examples to follow.

**Sample Holiday Leave Bank and Scenarios** This sample holiday leave bank is for 10-hour shift workers who work Monday – Thursday. At the beginning of the year, the workers are credited with 10 hours per holiday for the following 11 holidays for a total of 110 hours in the holiday leave bank. The employer offers the option of cashing out unused holiday leave bank hours in December of each year.

State Legal Holiday Names	State Statutory Designation of Holiday (RCW 1.16.050)	Observed Holiday Dates
New Year's Day	First day of January	December 31, 2021 (Friday)
Martin Luther King Jr.'s Birthday	Third Monday in January	January 17, 2022 (Monday)
Presidents' Day	Third Monday in February	February 21, 2022 (Monday)
Memorial Day	Last Monday of May	May 30, 2022 (Monday)
Juneteenth	June 19	June 20, 2022 (Monday)
Independence Day	July 4	July 4, 2022 (Monday)
Labor Day	First Monday in September	September 5, 2022 (Monday)
Veterans' Day	November 11	November 11, 2022 (Friday)
Thanksgiving Day	Fourth Thursday in November	November 24, 2022 (Thursday)
Day Immediately Following Thanksgiving	Day Immediately Following Thanksgiving	November 25, 2022 (Friday)
Christmas Day	December 25	December 26, 2022 (Monday)

**Scenario 1:**

The employee either took each holiday off or otherwise used all her holiday leave bank hours throughout the year and has no holiday leave balance to cash out. The employee's hourly rate of pay is \$35, and she works Monday – Thursday, 10-hour shifts. She worked no other overtime during the year. The hours and compensation would look very normal as shown below:

Earn Period	Hours	Compensation	Comment
01/2022	190	6650	
02/2022	160	5600	If every month, the worker took the holiday off or otherwise used all of her holiday leave bank leave during the year.
03/2022	160	5600	
04/2022	180	6300	
05/2022	180	6300	
06/2022	160	5600	
07/2022	190	6650	
08/2022	170	5950	
09/2022	170	5950	
10/2022	190	6650	
11/2022	160	5600	
12/2022	180	6300	

## Scenario 2:

Same 10-hour shifts, same workdays (Monday-Thursday), and same pay as in Scenario 1. This employee used 70 hours of his holiday leave bank hours as leave to take time off and it was reported in the same way as vacation or sick leave used would be reported – the hours and compensation were reported “as earned” in the month it was used.

It is now December. The employer will pay the employee for the holiday leave bank balance of 40 hours in a lump sum payment on his December 31 paycheck.

**How should the employer report this information to DRS?** DRS does not require employers to track exactly which holidays an employee chooses to work, and which holidays an employee chooses to take off. If an employer does not track the leave used for a holiday (if any), the employer must use the FIFO (first in, first out) method to report compensation for a holiday leave bank cash out. Using FIFO would assume that the first 70 hours had been used for the first 7 holidays. This is how the employer would report the remaining 40 hours’ worth of compensation to DRS from that December payroll.

Earn Period	Hours	Compensation	Comment
01/2022	190	6650	Holiday leave, vacation leave, and sick leave were used during the year through 10/2022. The hours and compensation look normal to DRS.
02/2022	160	5600	
03/2022	160	5600	
04/2022	180	6300	
05/2022	180	6300	
06/2022	160	5600	
07/2022	190	6650	



Earn Period	Hours	Compensation	Comment
08/2022	170	5950	
09/2022	170	5950	
10/2022	190	6650	
11/2022	160	6650	<p><b>Regular compensation \$5600 + \$1050 of holiday leave cash out</b> which will be associated with 11/2022 for the 3 holidays (30 hours of pay) in this month. Note that no additional hours are reported. The \$1050 is considered a deferred payment of overtime; the hours are considered to have been worked as a normal day on the holiday and reported already.</p> <p>It is as if the person worked the holidays and received double-time for doing so. The employee did not actually work extra hours, but in essence was paid overtime for working on a holiday.</p>
12/2022	180	6650	<p><b>Regular compensation of \$6300 + \$350 of holiday leave cash out</b> which will be associated with the 1 holiday (10 hours of pay) in this month. Note that no additional hours are reported. The \$350 is considered a deferred payment of overtime; the hours are considered to have been worked as a normal day on the holidays and reported already.</p>

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# Holiday Payments

Initial Presentation  
July 28, 2023

# Issue

- **The current administrative interpretation of when holiday pay is considered earnable compensation has created a situation where members may be treated differently based on their employer's payroll system, not on the days they work**

# Legislative History

- **SB 5625 (2023) – DRS Ombuds Bill**
  - This was one of the items included in this bill
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# Holiday Leave Banks

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- Later, the employee may cash out hours from the holiday leave bank

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Retirement or Termination Bonuses	No - WAC <b>415-104-3406</b>	No - WAC <b>415-104-395</b>
Shift Differential	Yes - WAC <b>415-104-3204</b>	Yes - WAC <b>415-104-379</b>
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# Holiday Pay

- **Recognized holiday vs. personal/floating holiday**
- **Cash outs for recognized holidays are considered overtime and overtime is basic salary for LEOFF 2**
- **Cash outs of personal/floating holidays are considered a leave cash out and not basic salary for LEOFF 2**

# DRS Employer Notice, 22-012

- **The leave in the holiday leave bank must be tied to a specific holiday date**
  - Personal or floating holidays are not tied to a specific date and are not considered recognized holidays for the purposes of holiday leave bank cash outs
- **If employees are allowed to cash out hours from a holiday leave bank; do not include non-recognized holidays in the holiday leave bank.**
  - Don't combine these different types of leave into the same bank because each type of leave must be treated differently if cashed out
  - If an employer does not track the leave used for a holiday the employer must use the first in, first out method to report compensation for a holiday leave bank cash out
- **Employer notice because DRS views this as procedural not policy**



# DRS Policy – First in, First Out

- Payroll systems do identify different types of holiday leave = treat only holiday leave tied to a specific holiday date as earnable compensation
- Payroll systems do not identify different types of holiday leave = First in, First Out
  - This means that if a member has 88 hours of holiday pay tied to specific holidays and 8 hours of holiday day pay not tied to a specific holiday, DRS advises employer to allocate the first 88 hours of holiday pay as earnable compensation and the last 8 hours used as not earnable compensation

# Next Steps

1. No action at this time
2. Motion for comprehensive briefing



**Thank You**

**Jacob White**

**Senior Research and Policy Manager**

**(564) 999-0738**

**[jacob.white@leoff.wa.gov](mailto:jacob.white@leoff.wa.gov)**



# Holiday Payments

Initial Consideration  
July 28, 2023

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- **The current administrative interpretation of when holiday pay is considered earnable compensation has created a situation where members may be treated differently based on their employer's payroll system, not on the days they work**

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Illegal Payments	No - WAC <b>415-104-3403</b>	No - WAC <b>415-104-387</b>
Leave Cash Outs/Severance	No - WAC <b>415-104-3304</b>	No - WAC <b>415-104-401</b>
Longevity	Yes - WAC <b>415-104-311</b>	Yes - WAC <b>415-104-375</b>
Overtime	No - WAC <b>415-104-3305</b>	Yes - WAC <b>415-104-370</b>
Paid Leave	Yes - WAC <b>415-104-3203</b>	Yes - WAC <b>415-104-373</b>
Payments in Lieu of Excluded Items	No - WAC <b>415-104-350</b>	No - WAC <b>415-104-405</b>
Performance Bonuses	No - WAC <b>415-104-3302</b>	Yes - WAC <b>415-104-377</b>
Retroactive Salary Increase	Yes - WAC <b>415-104-3202</b>	Yes - WAC <b>415-104-365</b>
Reimbursements	No - WAC <b>415-104-3404</b>	No - WAC <b>415-104-390</b>
Retirement or Termination Bonuses	No - WAC <b>415-104-3406</b>	No - WAC <b>415-104-395</b>
Shift Differential	Yes - WAC <b>415-104-3204</b>	Yes - WAC <b>415-104-379</b>
Special Salary or Wages	No - WAC <b>415-104-330</b>	Yes - WAC <b>415-104-375</b>
Standby Pay	No - WAC <b>415-104-3405</b>	No - WAC <b>415-104-393</b>
Tuition/Fee Reimbursement	No - WAC <b>415-104-3404</b>	No - WAC <b>415-104-390</b>
Workers' Compensation	Not Applicable	No - WAC <b>415-104-380</b>

# Holiday Pay

- **Recognized holiday vs. personal/floating holiday**
- **Cash outs for recognized holidays are considered overtime and overtime is basic salary for LEOFF 2**
- **Cash outs of personal/floating holidays are considered a leave cash out and not basic salary for LEOFF 2**

# DRS Employer Notice, 22-012

- **The leave in the holiday leave bank must be tied to a specific holiday date**
  - Personal or floating holidays are not tied to a specific date and are not considered recognized holidays for the purposes of holiday leave bank cash outs
- **If employees are allowed to cash out hours from a holiday leave bank; do not include non-recognized holidays in the holiday leave bank.**
  - Don't combine these different types of leave into the same bank because each type of leave must be treated differently if cashed out
  - If an employer does not track the leave used for a holiday the employer must use the first in, first out method to report compensation for a holiday leave bank cash out
- **Employer notice because DRS views this as procedural not policy**

# DRS Policy – First in, First Out

- Payroll systems do identify different types of holiday leave = treat only holiday leave tied to a specific holiday date as earnable compensation
- Payroll systems do not identify different types of holiday leave = First in, First Out
  - This means that if a member has 88 hours of holiday pay tied to specific holidays and 8 hours of holiday day pay not tied to a specific holiday, DRS advises employer to allocate the first 88 hours of holiday pay as earnable compensation and the last 8 hours used as not earnable compensation

# Next Steps

1. No action at this time
2. Motion for comprehensive briefing



**Thank You**

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