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Standby Pay as Basic Salary

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

This report will provide information about the rules regarding standby pay and reportable compensation.

BACKGROUND AND POLICY ISSUES

A majority of law enforcement officers and fire fighters do not receive standby pay. Instead, they are generally subject to call-up if an emergency requires more resources than available from on-duty staff.

However, 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 generally is not reportable compensation for LEOFF Plan 2.

The Board considered this issue during the 2016 Interim. An Initial Consideration report was provided to the Board at their September 21, 2016 meeting. The Board did not take action on the issue at that time.

Standby pay is reportable compensation for pension purposes in two state retirement systems: the Public Employees Retirement System (PERS) and the Public Safety Employees Retirement system (PSERS).

In 1994, legislation was enacted¹ that allowed the inclusion of standby pay in compensation earnable for the Public Employees' Retirement System (PERS) when: (1) the member is required to be present at, or in the immediate vicinity of, a specified location; and (2) the employer requires the member to be prepared to report immediately for work if the need arises. In 1995, the requirement that the member must be present at or in the immediate vicinity of a specified location was dropped.²

¹ C 177 L94 (ESHB 2644)

² C 244 L 95 (SSB 5118)

Standby pay was included as compensation earnable for the Public Safety Employees Retirement System when it was created in 2003³.

Reportable Compensation

"Reportable compensation" is used in determining a state retirement system member's pension. The Department of Retirement Systems (DRS) uses this term universally for all plans, regardless of terminology in RCW. It is generally defined as salaries and wages payable for services rendered to the employer. DRS determines reportable compensation based upon the nature of the payment made to an employee, not the name given to it.

In order for a LEOFF member's salary or wages to be subject to retirement system contributions and included in the calculation of his or her retirement benefit, they must meet the definition of "basic salary" in LEOFF retirement law⁴.

Definition of Basic Salary for LEOFF Plan 2

In LEOFF Plan 2 "reportable compensation" is termed "basic salary". In order for compensation to be reportable to DRS for LEOFF, it must be basic salary. Basic salary for LEOFF Plan 2 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 are not for personal services rendered by a member also qualify if there are specific provisions in the laws identifying them as basic salary. Payments not specifically identified in the rules qualify as basic salary only if the payments are for services rendered.⁵

Standby pay is one such payment that does not qualify as basic salary for LEOFF as is not considered pay for services rendered and is not included by law as basic salary.

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.

DRS excludes standby pay from LEOFF basic salary because it does not consider standby pay compensation for services rendered⁶. While ready to work if called, an employee on standby is engaged in personal activities, not performing work for their employer.

Standby Pay Earned by LEOFF Members

An informal survey identified the following examples of standby pay. Arrangements vary depending upon the local collective bargaining agreement.

Fire Fighters Earning 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, including:
 - Fire investigators, Fire Marshals, or Public Information Officers
 - Battalion Chiefs and/or Deputy Chiefs

³ PSERS was removed as a membership subset from PERS in 2003 when it was created.

⁴ see RCW 41.26.030 and WAC 415-104-298

⁵ WAC 415-104-299 Basic Salary Table

⁶ see RCW 41.26.030(4)(b) and WAC 415-104-393

- 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.
- A lieutenant may be designated to respond to an incident in place of a Chief's and earn standby as the Chief would.
- At least one jurisdiction pays standby pay to crews in fire camps while working on state mobilizations.

Law Enforcement Officers Earning Standby Pay

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

Compensation for Standby Pay

The rate of standby pay varies, but is usually in a form of reduced rate of compensation:

- Fire fighters examples:
 - 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 examples:
 - 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.

Standby Pay Reported in Specific Circumstance

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.

SUPPORTING INFORMATION

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

WAC 415-104-299 - LEOFF Basic salary table.

The following table will help you determine whether certain types of payments are basic salary under LEOFF Plan 1 or 2. Be sure to read the referenced rule to ensure that you have correctly identified the payment in question. The department determines basic salary based upon the nature of the payment, not the name applied to it. See WAC [415-104-311](#) (Plan 1) and WAC [415-104-360](#) (Plan 2).

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

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 his or her shift if called, although the member may not be called. Such payments, often referred to as "standby pay," are not basic salary for LEOFF Plan II.

WAC 415-104-360 - How is basic salary for LEOFF Plan II determined?

(1) **What payments are included in LEOFF Plan II basic salary?** Other than the specific exclusions listed in WAC [415-104-397](#) and [415-104-401](#), a payment that is a salary or wage earned during a calendar month for personal services rendered by a member to an employer qualifies as LEOFF Plan II basic salary.

(a) Certain payments that are not for personal services rendered also qualify if there is a specific statutory provision identifying those payments as LEOFF Plan II basic salary. See WAC [415-104-373](#).

(b) Specific types of payments that qualify as LEOFF Plan II basic salary include, but are not limited to, the payments described in WAC [415-104-363](#)(1) and [415-104-365](#) through [415-104-379](#).

(c) Other payments not specifically listed qualify as basic salary for LEOFF Plan II only if those payments are a salary or wage for services rendered.

(2) **Basic salary is earned when the service is rendered, rather than when payment is made.**

(3) **Salary characterizations are based upon the nature of the payment.** Whether a payment is basic salary depends upon whether the payment is earned as a salary or wage for services rendered. The name given to the payment is not controlling. The department determines whether a payment is basic salary by considering:

(a) What the payment is for; and

(b) Whether the reason for the payment brings it within the statutory definition of basic salary.

WAC 415-108-443 - PERS reportable compensation table.

The following table indicates whether certain types of payments are reportable compensation under PERS Plan 1, 2, or 3 and provides a cross-reference to the specific WAC.

Type of Payment	PERS 1 Reportable Compensation?	PERS 2 or 3 Reportable Compensation?
Annual Leave Cash Outs	Yes - WAC 415-108-456	No - WAC 415-108-456
Assault Pay (State Emp.)	Yes - WAC 415-108-468	Yes - WAC 415-108-468
Base Rate	Yes - WAC 415-108-451	Yes - WAC 415-108-451
Car Allowances	No - WAC 415-108-4851	No - WAC 415-108-4851
Cafeteria Plans	Yes - WAC 415-108-455	Yes - WAC 415-108-455
Deferred Wages	Yes - WAC 415-108-459	Yes - WAC 415-108-459
Disability Payments	No - WAC 415-108-477	No - WAC 415-108-477
Disability: Salary lost while on disability leave	Yes - WAC 415-108-468	Yes - WAC 415-108-468
Employer Provided Vehicle	No - WAC 415-108-4802	No - WAC 415-108-480
Employer taxes/contributions	No - WAC 415-108-459	No - WAC 415-108-459
Fringe Benefits, including insurance	No - WAC 415-108-475	No - WAC 415-108-475
Illegal Payments	No - WAC 415-108-482	No - WAC 415-108-482
Legislative Leave	Yes - WAC 415-108-464	Yes - WAC 415-108-464
Longevity/Education Attainment Pay	Yes - WAC 415-108-451	Yes - WAC 415-108-451
Nonmoney Maintenance	Yes - WAC 415-108-4703	No - WAC 415-108-470
Optional Payments	No - WAC 415-108-483	No - WAC 415-108-483
Payments in Lieu of Excluded Items	No - WAC 415-108-463	No - WAC 415-108-463
Performance Bonuses	Yes - WAC 415-108-453	Yes - WAC 415-108-453
Retroactive Salary Increase	Yes - WAC 415-108-457	Yes - WAC 415-108-457
Reimbursements	No - WAC 415-108-484	No - WAC 415-108-484
Reinstatement Payments	Yes - WAC 415-108-467	Yes - WAC 415-108-467
Retirement or Termination Bonuses	No - WAC 415-108-487	No - WAC 415-108-487
Severance Pay - Earned Over Time	Yes - WAC 415-108-458	No - WAC 415-108-458
Severance Pay - Not Earned Over Time	No - WAC 415-108-488	No - WAC 415-108-488
Shared Leave - State Emp.	Yes - WAC 415-108-468	Yes - WAC 415-108-468
Shared Leave - Local Government Employees	No - WAC 415-108-468	No - WAC 415-108-468
Sick Leave Cash Outs - State Employees	No - WAC 415-108-456	No - WAC 415-108-456
Sick Leave Cash Out - Local Government Employees	Yes - WAC 415-108-456	No - WAC 415-108-456
Standby Pay	Yes - WAC 415-108-469	Yes - WAC 415-108-469
Time Off with Pay	Yes - WAC 415-108-456	Yes - WAC 415-108-456
Union Leave ⁴	Yes - WAC 415-108-466	Yes - WAC 415-108-466
Workers' Compensation	No - WAC 415-108-479	No - WAC 415-108-479

WAC 415-108-469 - PERS 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\(9\)](#).

[Statutory Authority: RCW [41.50.050](#). WSR 98-09-059, § 415-108-469, filed 4/17/98, effective 5/18/98.]



Standby Pay as Basic Salary

Initial Consideration - April 25, 2018

Issue

- Standby pay is not part of basic salary used in computing LEOFF Plan 2 contributions and pensions

Background

- **1994 – Standby pay included for PERS**
 - Vicinity requirement
 - Prepared to report if needed
- **1995 – Vicinity requirement dropped**
- **2003 – Standby pay included for PSERS (created in 2003)**
- **2016 – LEOFF 2 Board Public Hearing**

“Basic Salary” – Reportable Compensation

- Used in determining a state retirement system member’s pension
- Generally defined as salaries and wages payable for services rendered based
- Based upon nature of payment made to an employee, not name given to it
- Certain payments not for personal services rendered may qualify if specifically identified in law

Standby Pay is NOT Basic Salary

- Not reportable basic salary in LEOFF
- Not considered pay for services rendered
- Not identified as basic salary in law
- Not used in calculating:
 - Service Credit
 - Contributions
 - Pensions (FAS)

Standby Pay Conditions

- **Typical Standby Pay Conditions**
 - Present at a specified location/timeframe or is immediately available to be contacted
 - Prepared to report immediately for work if the need arises, although the need might not arise
 - Must not be impaired
 - Standby status not concurrent with work time
 - Less than full pay

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**



Thank You

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