



New York State Teachers' Retirement System

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DELEGATE NEWS

SUBJECT: The System's Rejection of Attempts to Convert Employer-Paid Health Insurance Premiums into Reportable Compensation

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For your information, we are providing a copy of the most recent Administrative Bulletin sent in April to all Chief School Administrators.

Administrative Bulletin No. 2002-02 issued in April 2002 discussed the circumstances under which payments in lieu of health insurance coverage might be includable in a five-year final average salary calculation. Please note that the bulletin contained the following advisement:

The System, however, will **not** treat payments as reportable compensation and as compensation which may be included in either a three or five-year final average salary calculation in situations where health or other coverage which had previously been totally or partially paid by the employer during the teacher's career is waived by the teacher in the final few years before retirement in exchange for a lump sum or increase in the payroll salary. Such arrangements, made on the eve of retirement, have the potential to artificially inflate the three and/or five-year final average salaries. Accordingly, in such cases, the payments will be **excluded** from the teacher's three and five-year final average salaries.

The following are examples of improper attempts to convert employer payments for health insurance coverage into reportable compensation. In each case, the amounts involved have been excluded from the retiring members' final average salary calculations.

Under a collective bargaining agreement, the employer agreed to pay the cost of health insurance for bargaining unit members. However, in the case of members in their last five years of employment, it was agreed those members would have the employer pay them the cost of health insurance, which they would then contribute to a cafeteria plan for the purpose of obtaining the health insurance coverage previously provided and paid for by the employer. The employer, in effect, retained all the financial responsibility for providing health insurance coverage and the arrangement was only available for unit members approaching retirement. Indeed, eligible members had to submit their resignations as a condition to participating in this arrangement. Clearly, this was designed to inflate these members' final average salaries.

In another instance, a System member and the member's employer negotiated a provision in the member's employment contract under which the member would receive a so-called "buyout" payment equal to the district's cost of providing health insurance. The member, however, then recontributed the amount to a cafeteria plan to obtain the health insurance coverage previously provided and paid for by the employer. This provision was negotiated four years prior to the member's retirement from the System. The only purpose for the provision was to have the payments included in the member's final average salary calculation. The employer at all times retained the financial responsibility for underwriting the cost of the member's health insurance.

In a third instance, a System member and the member's employer tried a variation of the above. The member and employer purported to agree that the member would assume responsibility for paying for the member's health insurance coverage. However, at the same time this agreement was made, the member received an unusually large salary increase covering the cost of the health insurance the member was supposedly going to be paying for out of pocket. The agreement was made on the eve of the member's retirement. The only reasonable explanation for the unusual size of the increase is that the agreement was an attempt to inflate the member's final average salary.

The Retirement System is obligated by law to assure that only bona fide compensation is included in final average salary calculations and to vigilantly guard against attempts to artificially inflate members' final average salaries.