



The following information was recently provided to NYSTRS' participating employers. As a Retirement System delegate, it is important you are aware of these issues.

## Delegate News

Issue No. 2009-3

May 2009

### Leaves of Absence Prior to Retirement

A number of participating employers are now offering provisions in employment contracts and collective bargaining agreements ("CBA") that essentially provide for a period of paid leave immediately prior to retirement. The purpose of this bulletin is to clarify the System's position regarding the treatment, for pension purposes, of earnings paid pursuant to such provisions.

#### Paid Leaves of Absence Reportable to the System as "Regular Salary":

In general, a paid leave of absence is reportable to the System as "Regular Salary" if the terms of such leave meet the following criteria:

- The paid leave of absence must be duly provided for in the governing employment contract or CBA;
- The paid leave of absence must not be tied to retirement or resignation;
- The employee is expected to return to his/her position after the leave; and,
- The paid leave of absence is available to all members of the bargaining unit or administrative staff, regardless of age or proximity to retirement.

Under these conditions, the employee is also entitled to service credit in the System for the period of the paid leave of absence.

#### Paid Leaves of Absence NOT Reportable as "Regular Salary" to the System:

In contrast, a paid leave of absence is **not** reportable to the System as regular salary *if such leave is tied to, or is to be followed by, the employee's retirement or resignation.*

Under certain circumstances, the monies paid to the member pursuant to such leave may be considered "termination pay," because the monies are paid pursuant to an agreement to retire. As termination pay, the monies would be reportable to the System only in the case of Tier 1 members with a date of membership prior to June 17, 1971, and would be includable only in the calculation of the five-year final average salary. Termination pay, however, is **not** includable in the final average salary calculation in the case of Tier 1 members with a date of membership after June 17, 1971, or in the case of Tier 2, 3 and 4 members.

A paid leave of absence is **not** reportable as "Regular Salary" to the System if:

- The paid leave of absence requires the employee's resignation;
- The paid leave of absence is immediately followed by the employee's retirement;
- Eligibility for the paid leave of absence is dependent upon the employee's age and proximity to retirement; or,
- The terms of the paid leave of absence require return of the monies paid pursuant to the leave if the employee does not retire at the end of the leave.

Under these conditions, the employee would not be entitled to service credit in the System for the period of the leave.

Any further questions on this topic should be referred to Melodie Simpkins at (800) 356-3128, Ext. 2813.