



To: Chief School Administrators
College and University Presidents
District Contacts
Employer Secure Area Contacts

Administrative Bulletin

Issue No. 2020-3

March 2020

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 reiterate 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 all of 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.
- 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

Under the following conditions, a paid leave of absence is **not** reportable as “Regular Salary” to the System and the employee is not entitled to service credit in the System for the period of the leave:

- 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/or proximity to retirement.
- 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.

NOTE: Any paid leave of absence offered outside of the governing employment contract or CBA must be reported as Non-NYSTRS Pay. Documentation of the leave should be provided to NYSTRS as soon as possible.

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 or resign. 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 their five-year final average salary. Termination pay, however, is **not** includable in the final average salary calculation for Tier 1 members with a date of membership **on or after** June 17, 1971, or for members of Tiers 2 through 6.

If you have questions on this topic, call NYSTRS at (800) 348-7298, Ext. 6220.

Administrative Bulletins dating from 2005 to the present are available on our website at NYSTRS.org. Select Employers and visit the Administrative Bulletins page.