New York State Teachers' Retirement System

**Delegate News**

Issue No. 2025-14
October 2025

*The following information was recently provided to NYSTRS' participating employers. As a Retirement System delegate, it is important you are aware of these issues. Please share this Delegate News with NYSTRS members in your district.*

# Reportability of Employment Contract Provisions and Agreements

NYSTRS reviews the collective bargaining agreements and individual employment agreements between NYSTRS members and participating employers, and advises on which pay categories should be used to report various contract provisions.

Periodically, it comes to our attention that some contract provisions are reported to NYSTRS using inaccurate pay categories. The purpose of this Administrative Bulletin is to reiterate the System's position regarding the treatment of earnings paid pursuant to provisions that could have the impact, intentional or not, of inflating members' Final Average Salary (FAS) calculations.

## Payroll Deferral, Lag Payments

One method employers have used to reduce expenditures in the near term is withholding a portion of a member's salary earned during one school year and deferring payment of those earnings to a subsequent school year, or until the member retires or otherwise ceases employment with the district.

In this scenario, payments are pensionable for the school year in which they were earned, as opposed to the year in which they are or will be paid. However, employer contributions on the earnings will be billed in the school year the payment is posted.

For employer reporting purposes, salary earned in one school year but paid in a subsequent school year should be reported to the System *in the year of payment* in the pay category G: MTD Retro Earliest Prior Yr Pay.

## Salary Freezes, Salary Givebacks and Increased Health Insurance Costs

In arrangements such as the following, the payments are not considered as employment compensation, and are neither pensionable nor billable to the employer:

- Freezing all or a portion of an employee's contractual salary increases while allowing increases for other members who are retiring. Salary increases only for members who are retiring would be reported to the System in the pay category M: MTD Non-NYSTRS Pay.
- Providing salary increases of which all or a portion of the increases are reduced through voluntary or mandatory donations returned or donated back to the employer. Only the portion of the member's salary that is *not* returned to the district should be reported to the System in



10 Corporate Woods Drive
Albany, New York 12211

800-348-7298
**nystrs.org**

the pay category B: MTD Base Salary Pay. The portion of the member's salary that is returned to the employer should be reported in the pay category M: MTD Non-NYSTRS Pay.

- Increasing the employee-paid costs of health insurance or creating surcharges whereby the employee's health insurance payments to the district exceed the cost of coverage, with the excess retained by the district.

## Selective Bargaining, Memorandums of Agreement

The System also considers as non-pensionable any payments resulting from provisions that are not in accordance with or are outside of the collective bargaining agreement (CBA), allowing some members to receive preferential treatment (e.g., selective bargaining) or otherwise manipulating compensation received by some members. Memorandums of Agreement (MOAs) are reviewed by the System, and salary or service provided by such agreements may not be considered pensionable compensation by the System, and therefore may not be used in benefit calculations or be billable to the district.

All MOAs and Employment Agreements should be promptly forwarded to the System for review after they are signed so that NYSTRS may advise on the proper pay category to use for reporting.

## General Rules

In general, employment agreements entered into by NYSTRS-participating employers cannot be negotiated or modified in ways that could artificially inflate an employee's final average salary (FAS), as such payments are inconsistent with the System's statutory responsibility to ensure the actuarial soundness of the pension fund. The System may determine payments are not pensionable in any or all the following cases:

- When negotiated or made on the eve of retirement or FAS years.
- When not reasonably representative of career earnings.
- When resignation, retirement or other forms of separation from employment are required as a condition, and/or within a certain window of time.
- When the terms and conditions restrict availability to only a select group of retirement-eligible employees.
- When paid in other circumstances that result in an unavoidable inflation of a member's FAS.
- When the employee is denied full use of the salary paid to them, such as when the employee is expected to return a portion of the payment to the employer.
- When payments are made (as a lump sum, as a salary increase, or in any other manner) for unused leave or in exchange for a reduction in leave time. These payments have long been considered by NYSTRS to be Termination Pay, which is only pensionable in a 5-year FAS for members who joined NYSTRS prior to June 17, 1971.
- When payments are made in lieu of employer-provided health insurance coverage. These payments have long been considered by NYSTRS to be either Non-Regular Compensation (when coverage is waived throughout a member's career) or Non-STRS pay (when coverage is only waived in the years approaching retirement). Non-Regular Compensation is only pensionable in a 5-year FAS for members who joined NYSTRS prior to July 27, 1976.

Administrative Bulletin 2025-11: Court Decisions Upholding the Retirement System's Three-Year Final Average Salary Determinations, available on the Employers/Administrative Bulletins page at nystrs.org, cites several rulings supporting the System's position that compensation available only to teachers on the eve of retirement is not reportable compensation.

As a reminder, Section 5015.3 of the System's Rules and Regulations reads in part:

> *The responsibility of the employer to make reports and provide information as required by the System is nondelegable and may not be made subject to any agreement with a member, member's representative or third party. Any agreement by an employer with any member, member's representative or third party to make a report or provide information to the System in a particular manner or to withhold information which is required to be reported to the System is contrary to public policy and shall be null and void and of no effect.*

Thank you for your cooperation.



10 Corporate Woods Drive
Albany, New York 12211

800-348-7298
**nystrs.org**