

## RETROACTIVE PAYMENTS, SETTLEMENTS, AND AWARDS

### INTRODUCTION

Retroactive salary is salary for previous periods of employment for which payment was delayed or the rate of pay subsequently changed. Retroactive salary payments are considered earned in the month(s) for which salary should have been paid if no delay or subsequent rate change occurred. They are subject to the employer and member contribution rates in effect for that month and may or may not be considered Colorado PERA-includable salary. Retroactive salary payments will generally fall into one of the three following categories:

#### ARBITRATION AWARDS

A payment issued to an individual employee or group of employees as the result of an arbitration or the resolution of a dispute outside of the court system.

#### LITIGATION AND GRIEVANCE SETTLEMENTS

A payment for the resolution of a dispute or lawsuit between the employer and employee reached without a formal trial.

#### RETROACTIVE SALARY PAYMENTS

A payment issued to an individual employee or group of employees as the result of a court order, a mill levy, or a delayed salary increase.

In order for a payment in one of these categories to be considered PERA-includable salary, the following criteria must be included:

- » The payment must be compensation for past services rendered.
- » The settlement, order, or award must outline the period of time for which it applies.
- » The payment amount cannot be greater than the rate of pay the member would have received had he or she been employed with the employer and/or paid at the time services were provided.

Generally, the following types of payments are **not** PERA-includable salary:

- » Payment for penalties, attorney's fees, or interest.
- » Severance or separation pay.
- » Any payment that is not associated with an applicable earnings period.
- » Payments that result in wages exceeding those normally earned by the member.
- » Payments covering a time when the employee/employer relationship had been terminated.



In the event that the retroactive salary payments are less than the rate of pay the member would have received had he or she been employed with the employer and/or paid at the time services were performed, PERA will provide partial service credit in the same proportion to the salary that was actually paid versus the salary that would have been paid.

*(Continued on next page)*

## EXAMPLES



### Litigation and Grievance Settlements

**Scenario 1:** A computer programmer at a State agency was fired from his position in June 2015. The programmer appealed his termination and, in 2017, the State Personnel Board found he had been wrongfully terminated. In accordance with the settlement agreement, he was immediately reinstated to his former position. The settlement agreement also stipulated that he receive back wages for the time he would have worked had he not been terminated, and also be reimbursed for the court costs and attorney's fees he incurred as a result of the appeals process.

**Explanation:** The back wages the programmer was awarded are considered PERA-includable salary because they are wages he would have earned as services rendered had he not been terminated. The reimbursements he received for court costs and attorney's fees are not considered PERA-includable salary because they are not for services rendered.

***Both PERA-includable salary and not PERA-includable salary***

**Scenario 2:** A settlement agreement between a school district and a former employee contains the following language:

- » In consideration for Claimant's release of claims, Defendant will pay Claimant a total of twenty-thousand dollars (\$20,000.00) ("the Settlement Proceeds"). Defendant and Claimant agree that the Settlement Proceeds constitute a good and sufficient consideration for Claimant's release of all claims.
- » The Settlement Proceeds shall consist of the following:
  - (1) In consideration of Claimant's release of claims for alleged economic damages, Defendant shall pay to Claimant the sum of ten-thousand dollars (\$10,000.00), less legally required deductions and withholdings, pursuant to an IRS form W-2;
  - (2) In consideration of Claimant's release of claims for alleged non-economic damages, Defendant shall pay to Claimant the sum of five-thousand dollars (\$5,000.00), pursuant to an IRS Form 1099; and
  - (3) As Claimant's attorney's fees and costs, Defendant shall pay to law firm, the sum of five thousand dollars (\$5,000.00), pursuant to an IRS Form 1099.

**Explanation:** None of the provided information represents salary for services rendered and there was no court-ordered restitution of past wages. The proceeds are in exchange for an agreement to pursue no further legal action.

***Not PERA-includable salary***



Any court order, arbitration award, or litigation and grievance settlement that involves payment to a current or former employee must be forwarded to PERA for review and determination if any amounts payable are PERA-includable salary.

## EXAMPLES (CONTINUED)



Retroactive  
Salary  
Payments

**Scenario 1:** A janitor at a local school district was due to receive a raise in July 2012. In January 2017, it was discovered the employer failed to pay the raise. After being notified of their mistake, the district paid the raise retroactively to the janitor for July 2012–March 2017.

**Explanation:** The back wages are for previous periods of employment for which the rate of pay subsequently changed so they are considered PERA-includable salary.

***PERA-includable salary***

**Scenario 2:** Voters in a school district approved a mill levy increase in the November election. As a result of the additional funds now available to the district, the district elects to give all teachers a 2 percent salary increase retroactive to the beginning of the contract year. The retroactive portion of the increase is paid as a lump-sum in January when the ongoing base-building salary increase also takes effect.

**Explanation:** This is a regular base-building salary increase so it is considered PERA-includable salary.

***PERA-includable salary***

## REPORTING RETROACTIVE SALARY PAYMENTS TO PERA

The employer must upload adjustments through the contribution reporting system in order to distribute the retroactive portion of the increase to the month(s) in which it should have been paid had the increase taken effect at that time.

In order to correctly apply contributions on retroactive payments to member accounts, PERA will need the employer to identify:

- » Each individual who received the payment.
- » The amount(s) of the payment(s).
- » The month(s) in which the payment(s) would have been earned.



### **Interest Due on Retroactive Salary Payment**

In accordance with PERA Rule 4.20, the employer is responsible for the interest due on any retroactive salary payments. Interest can only be calculated after all payments have been correctly reported to PERA.

## SUBMITTING A RETROACTIVE SALARY PAYMENT FOR REVIEW

If you determine that you have a retroactive salary payment that may meet the definition of PERA-includable salary, you must submit the relevant documentation to PERA for review. Requests for review should be submitted as soon as possible once it is known that a retroactive salary payment will be made. Contact your Employer Representative to help you initiate this process as explained below:

You have a retroactive salary payment you believe is PERA-includable salary.

Submit all relevant documentation pertaining to the retroactive salary payment to your Employer Representative. PERA will review the plan and determine whether or not the payments described meet the definition of PERA-includable salary.

After a full review, PERA will send the determination of the payment to the employer. *Note: Although PERA strives to provide a determination in a timely manner, this review may take several weeks.*

## INCORRECTLY REPORTING SALARY AS INCLUDABLE

If you report a payment as PERA-includable salary and it is later determined the payment did not meet the definition of PERA-includable salary, you will be required to make corrections to member records. This may include crediting the non-includable salary and contribution amounts out of member accounts and returning the withheld contributions to employees and former employees—including PERA retirees. You may also be required by the IRS to correct tax records such as W-2s for the year(s) in question.

## FOR MORE INFORMATION

- » Call PERA's Employer Relations team at 1-800-759-7372 ext. 3724.
- » Email the Employer Relations team at [ercontributions@copera.org](mailto:ercontributions@copera.org).
- » Visit the "Employer" page on PERA's website at [www.copera.org](http://www.copera.org).
- » Visit PERA's main office at 1301 Pennsylvania Street in Denver.