

145-1-26

**Definition of earnable salary.**

(A) This rule amplifies and is in addition to the provisions of division (R) of section 145.01 of the Revised Code.

(B) As used in division (R)(1)(e) of section 145.01 and section 145.296 of the Revised Code, "sponsored by the employer" means the employer funded a program in whole or in part.

~~(B)~~(C) For the purposes of the calculations required pursuant to sections 145.47, 145.48, and ~~145.491~~ 145.49 of the Revised Code, a public employee's salary, wages, or earnings shall include amounts:

- (1) Treated as deferred income for federal income taxation under Internal Revenue Code section 401(k), 403(b) or 457;
- (2) Designated by the employer as picked-up contributions under Internal Revenue Code section 414(h)(2) by either a salary reduction method or the gross salary under a fringe benefit method; or
- (3) Not treated as income for federal income taxation under Internal Revenue Code section 125 except as provided in paragraph (E)(5) of this rule.

~~(C)~~(D) For purposes of section 145.01 of the Revised Code and this rule, ~~"during the year" means~~

(1) "Conversion program" means the employer's annual program for conversion of sick leave, personal leave, and vacation leave, as described in division (R)(1)(b) of section 145.01 of the Revised Code, and for which the retirement system has received a copy of the employer's resolution, meeting minutes, or other formal documentation detailing the terms and adoption of the conversion program;

(2) "During the year" means in the year or within the next calendar year of not later than one month following the year in which a payment is earned under an employer's annual a conversion program for its employees. Such earnable salary shall be reported on a supplemental report of retirement contributions for the year in which such payment was accrued.

~~(D)~~(E) The following payments made by the public employer are "earnable salary":

- (1) Payments for overtime worked and payments for accrued but unused compensatory time for overtime worked if such payments are made during the year in which the compensatory time is accrued.

- (2) Payments made annually or more frequently as a supplement for longevity of service.
- (3) Stipends paid to a student that are subject to federal income taxation.
- (4) Payments made for assuming call or stand-by responsibility.
- (5) Payments made in lieu of salary, wages, or other earnings for sick leave used under a donated sick leave program.

~~(E)~~(F) The following payments made by the public employer are not "earnable salary":

- (1) Payments made by the employer for accrued overtime worked or for compensatory time for overtime worked that are made at any time other than in the year in which the overtime or compensatory time is accrued;
- (2) Payments made by the employer as a residency bonus to employees;
- (3) Payments made pursuant to an agreement and representing either one-time lump-sum payments or bonus payments made periodically but not related to or not made upon the basis of the individual employee's basic rate of pay;
- (4) Retroactive payments made by the employer within thirty-six months of the employee's effective date of retirement and with an understanding that the employee would retire;
- (5) Monetary amounts which are in excess of the employee's gross salary paid in lieu of a fringe benefit or a cash value placed on that fringe benefit;
- (6) The amount in excess of gross salary paid under a fringe benefit method as picked-up contributions under Internal Revenue Code section 414(h)(2);
- (7) Stipends paid to a student that are not subject to federal income taxation;
- (8) Payments made as honoraria which means a nominal payment made for services for which there is no binding legal obligation to pay; ~~and~~
- (9) Payments made as fees or commissions which are fixed charges or calculated as a percentage of an amount not directly related to work or services performed; ~~;~~

(10) Payments paid by the employer to an individual who is not a public employee; and

(11) Payments for accrued, but unused sick leave, personal leave, or vacation leave that are made at the time of termination of employment.

~~(F)~~(G)

(1) If a member or retirant is reinstated without interruption or loss of time to the member or retirant's former or comparable position of employment and awarded back wages pursuant to a final court order, arbitration or personnel board of review order, grievance award, or other settlement or order, the earnable salary upon which employee and employer contributions are due is the earnable salary which would have been due the employee for the entire period of reinstatement.

(a) Employee and employer contributions shall be reported and paid in the same amount as would have been contributed if the member or retirant had been reported to the retirement system during the period of reinstatement. If the amount of earnable salary cannot be reasonably determined, then the amount shall be the average earnable salary during the twelve month period immediately preceding the date of termination.

(b) If a member had previously taken a refund of the member's accumulated contributions pursuant to section 145.40 of the Revised Code or article VIII of the combined plan document at the time of termination, such member may purchase such refunded service pursuant to section 145.31 of the Revised Code or rule 145-3-22 of the Administrative Code.

(c) If a member on or after the date of termination, applied for and received a benefit pursuant to section 145.32, 145.33, 145.34, 145.35, 145.36, 145.361, 145.37, ~~145.43~~, or 145.46 of the Revised Code, article IX or X of the combined plan document, or article IX of the member-directed plan document, and any period of reinstatement is concurrent with a period for which the member received a benefit, section 145.362, 145.38, 145.382, or 145.383 of the Revised Code, whichever is applicable, shall apply.

(2) If a member or retirant is awarded additional earnable salary pursuant to a final court order, arbitration or personnel board of review order, grievance award, or other settlement or order for any period of employment for which contributions were made, the earnable salary upon which employee and

employer contributions are due is the additional earnable salary which would have been due for the period of the award. Employee and employer contributions shall be reported and paid in the same amount as would have been contributed if the member or retirant had been reported to the retirement system during the period of employment.

~~(G)~~(H)

- (1) Prior to remitting deductions on compensation on which there is a question of whether such compensation is earnable salary, the employer shall request ~~in writing~~ a determination by the retirement board.
- (2) If the employer fails to request a prior determination and the board determines the salary, wage or earning to be earnable salary, then the employer shall be liable for employee and employer contributions pursuant to section 145.483 of the Revised Code if no deductions have been remitted.
- (3) If the employer fails to request a prior determination and the board determines the salary, wage or earning is not earnable salary, then any contributions received prior to the determination shall be unauthorized and shall be refunded.
- (4) A determination by the board will be applicable to similar pending requests while the board amends this rule or one hundred twenty days, whichever occurs first.

Effective:

R.C. 119.032 review dates: 09/29/2005

---

Certification

---

Date

Promulgated Under: 111.15  
Statutory Authority: 145.01, 145.09  
Rule Amplifies: 145.01, 145.47, 145.48, 145.49  
Prior Effective Dates: 1/1/03, 11/2/00, 9/27/97, 6/1/96, 8/31/92, 8/31/91,  
3/17/89, 10/31/88, 5/27/88, 8/28/86, 6/18/86 (Emer.)