



School Law FYI

Determining WRS Reportable Earnings with Employee Separations and Settlements

BRIAN P. GOODMAN | 04.20.22

Sometimes, a school district provides something of value to an employee in exchange for an employee's separation from employment and the employee signing a waiver of potential claims against the district. This is often referred to as a separation agreement (but may have different titles). There are a variety of legal issues involved in drafting an effective and enforceable separation agreement. One area of potential confusion is how monetary payments made to employees via a separation agreement should be treated for purposes of the Wisconsin Retirement System (WRS).

A separation payment, whether in a one-time lump sum or as a series of payments, made at the time of separation of employment does *not* constitute WRS reportable earnings, and neither the employer nor the employee are permitted to make WRS contributions based on such payment. Additionally, unless the district has a policy of annually paying employees for their unused vacation or sick leave, paying an employee a certain amount for unused vacation or sick leave upon separation would *not* constitute WRS reportable earnings, and no WRS contributions should be made based on such a payment. To limit potential future disputes, a separation agreement that includes such payment should expressly state that such payment does not constitute WRS reportable earnings and that no WRS contributions will be made based on such payment.

Note, a separation payment is generally taxable income to the employee, subject to regular payroll withholding, even though it does not constitute WRS reportable earnings. This might require running a special payroll for the payment to ensure the payment is treated properly for tax and WRS purposes.

If an employee is terminated by the district and then is subsequently reinstated following a grievance or legal action (or following the settlement of such a claim), or if the employee settles a wage claim against the district, WRS treats these situations differently than payments upon an employee's separation. Any settlement in these situations constitutes a *compromise settlement*. The WRS requires districts to submit the compromise settlement to the Department of Employee Trust Funds (ETF) for its review within 90 days of the effective date of the compromise settlement. The compromise settlement must include a breakdown of any hours and earnings and the time period the hours would have covered, and the earnings paid. Following ETF's review, ETF will invoice the district if a compromise settlement results in the district owing additional WRS contributions. Similarly, ETF will make any appropriate corrections to the employee's account. Section 1300 of the WRS Administration Manual provides details regarding how ETF will determine which portions of any compromise settlement constitute WRS earnings. ETF will not pre-review or pre-approve draft compromise settlements.

School districts should work carefully with legal counsel regarding any compromise settlement to ensure that the WRS earnings and ETF reporting requirements of the compromise settlement are properly incorporated into any settlement document. Please reach out to the author of this article or any member of the Boardman Clark School Law Practice Group if you require assistance with this issue.

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