

## Interpretive Memorandum No. 2019-1

**DATE:** **REVISED September 18 2023** (originally issued July 30, 2019 and revised August 2, 2022)

**TOPIC:** **SERVICE CREDIT AND COMPENSATION ISSUES RELATING TO MEMBERS RECEIVING WORKERS' COMPENSATION INDEMNITY BENEFITS**

### **PURPOSE:**

The purpose of this memorandum is to discuss the various service credit and Earnable Compensation<sup>1</sup> issues relating to Members who are receiving workers' compensation indemnity benefits (WCIB).

### **SUMMARY:**

- A.** WCIB are not Base Compensation or otherwise included in the definition of Earnable Compensation; and, therefore, are not subject to reporting or contributions.
- B.** A Member may provide proof of an award of WCIB in order to receive up to one year of creditable service at no cost.
- C.** Workers' compensation supplemental pay, sick and vacation pay and compensation for part-time work, each as paid while a Member is receiving WCIB, is reportable as Earnable Compensation.

### **ANALYSIS:**

**A. General Overview.** WCIB are weekly payments paid pursuant to RSA 281-A by an Employer's insurance carrier (or third party administrator if self-funded) which are intended to replace some portion of the lost wages of Members who have a work-related injury or illness. Typically, this is approximately 60% of a Member's regular wages. WCIB are paid in lieu of wages for actual work performed and cannot be considered part of Base Compensation. In addition, WCIB are not listed in the definition of Earnable Compensation in RSA 100-A:1, XVII. Therefore, WCIB are not reportable as Earnable Compensation.

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<sup>1</sup> Capitalized terms shall have the meanings as provided in the Interpretive Memoranda Glossary of Terms.

Thus, for reasons explained more fully in Paragraph B. below, a Member receiving WCIB typically may not receive sufficient Earnable Compensation and/or work full-time for a sufficient number of days in a month to otherwise qualify for service credit for that month under NHRS Administrative Rules Ret 307.02(g) & (h). However, RSA 100-A:4, III(b) provides that a Member is entitled to up to one year of service credit while in receipt of WCIB, notwithstanding the fact that a Member would otherwise have insufficient Earnable Compensation or work-days in a month to earn service credit.

However, if an Employer pays Supplemental Pay (or a Member uses vacation or sick time to supplement his/her WCIB), such amounts are Earnable Compensation that must be reported to NHRS. In addition, if a Member returns to work on a part-time basis and also receives WCIB, the part-time wages are Earnable Compensation and are calculated on a proportional basis as described below.

## **B. Service Credit Issues**

RSA 100-A:4, III(a) provides that the NHRS Board of Trustees “*shall fix and determine . . . how much service in any year is the equivalent to one year of service, but in no case shall it allow credit for a period of absence without pay of more than a month’s duration, . . .*”

Ret 307.02(g) provides in relevant part that

*[t]o receive service credit for subsequent months [other than the first, second, or last month of employment], the member shall, for the month for which service credit is sought, have attributable earnable compensation that is at least equal to 50% of the member’s average monthly earnable compensation over the member’s previous 6 months of credited service.*

Ret 307.02(h) provides that

*[n]otwithstanding the requirements of . . . (g) above, a member shall receive service credit for any month of service in which the member receives earnable compensation for at least 50% of the regularly required work days for that position.*

A Member who is absent from full-time work for more than two weeks in a month and is receiving WCIB would typically not have Earnable Compensation at least equal to 50% of his/her average monthly Earnable Compensation or receive Earnable Compensation for at least 50% of the regularly required work days, and the Member would not be eligible for service credit for that month.

However, RSA 100-A:4, III(b) provides that

*“[n]otwithstanding the provisions of subparagraph (a) or any other law to the contrary, any member who receives a weekly award under the provisions of RSA 281-A from the commissioner of labor, for injury arising out of and in the course of employment, shall be entitled to creditable service for said period not in excess of one year. To receive creditable service, a member shall file a department of labor memo of payment of disability compensation form, with the*

*board of trustees, verifying the first and last payment of disability compensation for each new unrelated injury.”*

Therefore, a Member who provides the requisite proof of an award of WCIB can receive up to one year of creditable service despite not having worked or received Earnable Compensation sufficient to meet the 50% thresholds under Ret 307.02(g) & (h).

### **C. Earnable Compensation Issues**

**1. WCIB.** Earnable Compensation is defined under RSA 100-A:1, XVIII as consisting of the Member’s “full base rate of compensation paid” plus certain other types of compensation expressly listed in the statute. WCIB are paid by an insurance company (or the third party administrator if self-funded), and are not wages for work actually performed. Therefore, WCIB are not part of Base Compensation. In addition, WCIB are not otherwise listed in the definition of Earnable Compensation, unlike vacation pay, sick pay and Supplemental Pay. Therefore, WCIB are not Earnable Compensation, are not reportable to NHRS, and are not subject to the payment of Employer or Member contributions.

NHRS staff have encountered situations where an Employer pays a Member his or her full normal wages on a contingent basis while the Member is out with a work-related injury, typically while the Member is waiting for WCIB to be awarded. When Members receive their WCIB, they typically reimburse the Employer, either by endorsing the check over to the Employer or by deduction from paychecks. In cases where reimbursement is made, the employer must make corrections with NHRS for the pay period in which the contingent payments were originally made and reported to NHRS, not for the pay period in which reimbursement is made. In cases where the contingent payments are not reimbursed, such payments are Workers’ Compensation Supplemental Pay and the Employer must file correction files thorough the NHRS employer reporting system to move the wages from Base Compensation to Compensation Over Base for Tier B and Tier C Members.

**2. Workers Compensation Supplemental Pay.** RSA 100-A:1, XVII(b)(1) provides that “*supplemental pay paid by the employer while the member is receiving worker’s compensation*” (Supplemental Pay) is Compensation Over Base. Supplemental Pay consists solely of wages paid to a Member that are (a) in addition to any WCIB that the Member is entitled to receive up to the amount for the Member’s normal compensation and (b) not attributable to sick or vacation time or to actual part-time work. Supplemental Pay may be a matter of personnel policy or collective bargaining. Supplemental Pay includes any contingent payments described above that are not reimbursed by the Member. Supplemental Pay is reportable as Base Compensation for Tier A and Tier A/C Members and as Compensation Over Base for Tier B and Tier C. In addition, the maximum amount of supplemental pay reportable is the difference between the Members’ regular base wages and the amount of WCIB the Member receives.

**3. Sick and Vacation Time.** If a Member is allowed to use vacation or sick time to supplement his or her WCIB, such wages should be reported as Base Compensation, just like sick and vacation time is reported for Members not on WCIB. Sick and

Vacation time is not Supplemental Pay. In addition, the maximum amount of sick and vacation pay reportable is the difference between the Members' regular base wages and the amount of WCIB the Member receives.

**D. Returning to Work Part-Time.** In some situations, a Member may return to work on a part-time basis and still receive WCIB for the days, or partial days, when he or she does not work. In these cases, the amount of Earnable Compensation that is reportable to NHRS is calculated on a proportional basis. For example, if a Member's regular wage is \$1,000 per week and he or she returns to work for 2 days (or 40%) of the normal workweek, the wages paid for the 2 days (\$400) is Earnable Compensation reportable to NHRS as part of base salary. The \$360 in WCIB (i.e., 60% of \$600 for the other 3 days) is not Earnable Compensation.



September 18, 2023

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**Approved by Mark F. Cavanaugh, Esq.  
Associate Counsel and Compliance Officer**

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**Approval Date**