

Franklin Regional Retirement System's

Adherence to

PERAC regulations pertaining to "Regular Compensation" (aka "pensionable wages")

840 CMR 15.03 (3) During any period of active service subsequent to July 1, 2009 the term "Regular Compensation", as defined by M.G.L. c.32, § 1, shall be determined subject to the following:

- (a) to be considered regular compensation, any compensation to an employee must be compensation received exclusively as wages by an employee for services performed in the course of employment for his employer.
- (b) "wages" shall mean the base salary or other base compensation of an employee paid to that employee for employment by an employer including pre-determined, non-discretionary, guaranteed paymentsⁱ paid by the employer to similarly situated employees, provided, that "wages" shall include payments made by the employer to the employee because of the character of the workⁱⁱ, because of the employee's length of service, because of the time at which the work takes placeⁱⁱⁱ as a condition of employment in a particular position, because of educational incentives^{iv}, and payments for holding the training^v, certification, licensing or other educational incentives approved by the employer for the performance of services related to the position the employee holds and payments made by the employer to the employee calculated as a percentage of base pay^{vi};
- (c) not applicable
- (d) not applicable
- (e) Lump-sum retroactive payments which would have been wages if paid in the periods in which the services remunerated thereby were actually rendered will be allocated to said periods rather than being entirely attributed to the time of receipt for the purpose of determining a member's regular compensation;
- (f) "wages" shall not include, without limitation, overtime^{vii}, commissions, bonuses^{viii} other than cost-of-living bonuses, amounts derived from salary enhancements or salary augmentation plans which will recur for a limited or definite term, indirect, in-kind or other payments for such items as housing, lodging, travel, clothing allowances, annuities, welfare benefits, lump sum buyouts for workers' compensation, job-related expense payments, automobile usage, insurance premiums, dependent care assistance, 1-time lump sum payments in lieu of or for unused vacation or sick leave or the payment for termination, severance, dismissal or any amounts paid as premiums^{ix} for working holidays, except in the case of police officers, firefighters and employees of a municipal department who are employed as fire alarm signal operators or signal maintenance repairmen money paid for holidays shall be regarded as

regular compensation, amounts paid as early retirement incentives or any other payment made as a result of the employer having knowledge of the member's retirement, tuition, payments in kind and all payments other than payment received by an individual from his employing unit for services rendered to such employing unit, regardless of federal taxability; ~~provided further, that notwithstanding the foregoing, in the case of a teacher employed in a public day school who is a member of the teachers' retirement system, salary payable under the terms of an annual contract for additional services in such school and compensation for services rendered by a teacher in connection with a school lunch program or for services in connection with a program of instruction of physical education and athletic contests as authorized by section 47 of chapter 71 shall be regarded as "regular compensation" rather than as bonus or overtime and shall be included in the salary on which deductions are to be paid to the annuity savings fund of the teachers' retirement system.~~

ⁱ "pre-determined, non-discretionary, guaranteed payments" - This means if you have it in your personnel policy (or contract, etc.), and it includes anyone that fits the criteria, and it's not arbitrary that it will be paid – then it is pensionable wages. Examples: longevity, all police get 12 days holiday pay,

Salary is "compensation actually received" as opposed to "average annual rate of regular compensation"

ⁱⁱ "character of the work" – This would be extra pay for being assigned duties that are above-and-beyond the regular duties of the position the member holds. Examples: school aide working with a student that needs help in the bathroom

ⁱⁱⁱ "time at which the works take place" – This mostly refers to shift differential.

^{iv} "educational incentives" – Educational incentives are recurring (annual or each pay period) payments added to an employee's regular wages (aka base salary) in recognition of attaining a certain level of education or training. One-time stipends are more of a bonus and likely will not be considered regular comp. If someone is paid to attend classes, etc., during their regular work week - then the hours are part of regular comp (unless they are overtime). This type of pay is not considered "educational incentives". The "base salary" for calculating Quinn is a deep discussion and subject to the contracts in each town when applicable. As far as we know, shift differential, step increases, longevity, normal holiday pay (11-12 paid holidays), changes in rank, vacation, personal, sick, bereavement, jury duty paid time are all included as "base salary". FRRS will accept what individual towns choose to include from this list or not subject to change via defining instruction from higher authority, should it occur. Premium for working the holiday, overtime, detail pay, bonuses are not included.

^v "training" – Time spent in training is not regular compensation if it is over and above the regular weekly hours, full time or part time (call firefighter training is one exception (unless paid and/or identified as overtime)), (professional development for school Paras is an exception because it is part of their contracts and is on days when students are dismissed). Receiving a stipend or slightly higher hourly rate for all regular hours throughout the year, for completing the training and for having that knowledge, is regular compensation. (Please note: It is recognized that FRRS allows for wages beyond regular schedule hours to be pensionable when they are not overtime or training time, and that it seems inconsistent to exclude training wages for part-timers (regular schedule less than 40), however, the law specifically excludes wages for training time, and so FRRS must do so as well.

^{vi} "as a percentage of base pay" – This is in reference to personnel policies or contracts describing periodic increases to base pay.

^{vii} "overtime" – The FLSA simply states that overtime is time worked beyond 40 hours in one week. (There are separate rules for police and firefighters.) However, the reality of how overtime is defined is much more complicated and varied throughout our employer units. Most people instantly understand the statement, "overtime is time-and-a-half", and most of the people that process payroll adhere to the distinction of "hours worked" versus not worked (holiday, vacation, sick), so when there is a week with a holiday (8 hours) and later that week extra hours worked (5), the pay will be for 45 hours at

the regular rate (no time-and-a-half). Some people would say the 5 hours is overtime, others would say it is not. Another example is a town that includes vacation, sick and holidays as time worked during the winter when calculating overtime, so 4 days of vacation and one 12-hour day plowing calculates to 40 hours regular rate and 4 hours at the overtime rate (as opposed to 44 hours straight time). **Bottom line is: we believe that the treasurers and payroll clerks know what they are doing regarding the definition of “overtime”, and we have it from PERAC that we should follow the lead of the treasurers as to what they say is overtime. So we will take what the treasurer says is pensionable, and we will exclude what the treasurer has determined as “overtime”, regardless of rate, or over/under 40 hours. If they label it “overtime” do not include it in regular comp, and refund any related deductions.** Please also know that PERAC has told us that multiple positions in one or many units can all be pensionable if they are not decided to be “overtime” by the treasurer. Note that FLSA doesn’t agree as far as multiple positions with one employer – over 40 is over 40, but that is between the treasurer and whoever wants to enforce FLSA, and again, we will follow the decision of the treasurer as to what they say is overtime in their unit.

- School Paras extra hours, tutoring, substitute – FRRS will accept if the unit’s policy is that it is non-pensionable because it is over and above regular schedule and/or because the unit determines that it is “overtime”, otherwise FRRS will accept it as pensionable.

vii Premium for working holiday – see separate info sheet regarding Police and Firefighters holiday pay

viii Bonuses – Bonuses are typically given as rewards for exemplary work, extra effort when needed, and/or appreciation for shared expertise. If there was no expansion of hours worked beyond the normal work schedule, then it is clearly a “bonus” and thus non pensionable. However, if extra hours were worked, then it is pensionable much the same as if an extra person was hired to do the extra work. (Often it is simpler and less costly for the employer to not have to find and process a new hire.) It is still a bonus regardless of one-time payment or multiple payments. Another test would be to consider if it would be excluded from section 18 anti-spiking (additional hours or position change).

ix Premium for working holiday – see separate info sheet regarding Police and Firefighters holiday pay

Particular circumstances:

There are a couple of positions out there that are scheduled for regular hours greater than 40 hours per week, and in their contract or salary calculation letter it states that the first 40 hours are at one rate, and the pay for hours over 40 is determined using the overtime rate of 1.5. An example would be a position that requires 42 hours per week, and the first 40 are at \$10 per hours (\$20,800), and the 2 at \$15 (\$1,560) for a total annual wage of \$22,360 paid every week at \$430 per week. One might argue that this situation would be all pensionable because, barring the need to appease FLSA with the demonstration that hours over 40 in the calculation were at 1.5, it is predetermined and guaranteed that whoever holds this position will be paid that amount of money and therefore very much fits the definition of base salary. However, we have to adhere to the exclusion of “overtime” from pensionable wages, and so if the contract or salary calculation letter mentions overtime in the calculation, or if the payroll records indicate a distinction, we need to ask you to exclude that portion from pensionable wages and take no retirement deductions from that portion.

When vacation, sick, holiday, etc. cause the overtime hours to be paid at the regular hourly rate (not times 1.5), then the extra hours are over and above the base salary (hours of 40) and the extra hours, even at the regular rate, are not pensionable and are not to have retirement deducted.

Some people hold multiple positions with one employer, and PERAC has agreed that all positions can be pensionable. There will be situations where the treasurer will have to contemplate whether to pay overtime or not. For example, if one position is 25 hours per week, and the second is 30 hours per week, the treasurer might pay overtime rates on the 15 hours over 40. If so, then we only want retirement deductions on the 40 hours. However, we usually see just straight time on the two positions, and thus would accept deductions on the full 55 hours.

Multiple positions might occasionally have extra hours over and above the regular base hours. If the treasurer wants to decide that those extra hours are overtime – then we will go with that – regardless of overtime rate or not. Just say the word “overtime”.

We have an example of one person working two positions where one is a definite 20 hours per week, and the second is 20 to 25 hours per week. If the treasurer simply pays the regular rate on all the hours, and doesn’t consider any of it overtime

(regular or 1.5), we will go with it. If the treasurer classifies any of it as overtime, we ask that it be excluded from pensionable wages and retirement deductions.

There may be times when a part time position is paid overtime for hours beyond their regular schedule. If the treasurer calls it overtime – we will go with that.

We occasionally see where someone takes unpaid time off in a week where they also work in excess of 8 hours (or on a weekend). An example would be someone getting 79 hours regular pay and 5 hours overtime. They typically work 80 hours each week. In this case we were fine with just the 79 hours as pensionable.

These are subject to more research.

Mahar pays 1.5 rate to custodians that have to report to work on a snow day. See MHR CBA notes.

Mahar pays double time to custodians that have to report on a Sunday or holiday.

Regular Comp to include:

Regardless of “regular schedule”, e.g., position defined as 20 hours but work a few extra hours now-and-then (pensionable and take deductions).

Summer School – in addition to regular position (even though MTRS won't)

After School – in addition to regular position (even though MTRS won't)

- School Paras extra hours, tutoring, substitute – FRRS will accept if the unit's policy is that it is non-pensionable because it is over and above regular schedule and/or because the unit determines that it is “overtime”, otherwise FRRS will accept it as pensionable.

We will consider stipends from grants to teacher's aides, regardless if regular payout or lump-sum, to be compensation and subject to deductions.

- (not sure about this after the Feb 2018 Vernava decision – needs to be answered – waiting for decision from appeal)
- 111F Workman's Comp benefit for Fire and Police is considered Regular Comp
- Police “holiday pay”, and “premium” for working the holiday – see separate policy sheet

On-Call pay versus Call back pay:

- On-call pay (aka beeper pay) is pensionable and is when someone is paid a stipend just to be available to respond if called. How the town calculates and/or decides the amount is not important, even if they use an hourly rate to set an amount. Note that on-call pay is not purchasable as make up purchase of hours worked prior to membership.
- Call back pay is the pay they receive for getting called out to do some work. The treasurer will determine when and if it is pensionable or overtime.

FMLA, PFML, FFCRA and EPSLA

- FMLA can include paid and unpaid time, and when it is paid time then it is regular compensation that accrues service credit.
- PFML is not regular compensation and thus does not accrue service credit.
- FFCRA and EPSLA are thus far specific to the covid-19 pandemic period. Paid leave is regular compensation and accrues service credit. (See PERAC memos 20-2020 and 27-2020.)

Hazard pay – when paid annually as part of the regular job is pensionable

Election workers - Take retirement if they are an active member in the retirement system and hold other membership eligible positions. Call FRRS to find out if active.

Regular Comp will not include:

Fees: Inspection, building, fire department, town clerk, tax collectors, etc. fees are not “regular compensation.

Constable “fees” are regular comp because that's how the towns pay constables (even though they are occasional and infrequent).

Pay outs of unused benefits (vacation, sick, personal, etc.)

Detail Pay – This is not pensionable because it is on an as-needed basis, most often to provide traffic control for an outside entity who then reimburses the town for the person’s services. It makes sense that it would not be pensionable because it is not part of the town’s regular budget and thus not part of what the town would have to include in the retirement assessment. Stay mindful of the concept of “regular compensation”.

Fill the 261 gap extra pay – When the employer has paid the full salary by the middle of June, and there is a gap of potential no-pay until July 1, the employer might pay extra salary to fill the gap. We do not include this in pensionable earnings when it’s clear it’s over and above the annual contract salary.

Erroneous overpayment of wages or salary – When the employer has erroneously paid the employee for hours they didn’t work, or paid the semiannual stipend 3 times (instead of 2), if the employer reverses it and the deductions are corrected by such, then all is well, otherwise FRRS will exclude the wages from pensionable compensation, and effect a refund of deductions.

Hazard pay – as a bonus or extra pay for temporary circumstances is not pensionable (Covid)

Imputed Income – this is fake “wages” added to payroll for benefit items like health insurance in excess of \$50k so that taxes can be withheld (Google the term and read the IRS regulations).

Quinn OT – no retirement deductions should be taken

Although, DER does withhold it, but even so, we do not consider it regular comp and we exclude it from their 3-high

Workers Comp benefits, as well as sick and/or vacation pay to supplement Workers Comp benefits are not regular comp. (see PERAC memo 12/2018)

PNR Building Use pay – is non-pensionable. This is wages paid from the “rent” account, where fees are deposited from outside entities that use the buildings or grounds, and from which custodians are paid for opening, closing, and tidying the premises. It is non-pensionable because it is optional (custodians have right of first refusal).

Umpires and referees – The athletic associations handle the scheduling of referees and umpires, and apparently it is done by sign-up for individual events. The host school is responsible for paying the officials, and we believe it is usually paid from the related activities fund by the school payroll department, although the source in this case is not the determining factor as to pensionable. These are optional and not regular - therefore they are not pensionable even if the person is already a member with FRRS.

Gatekeepers, concessionaires, <others?> – We believe athletic directors are in charge of finding people to work these positions, and so it could be just about anyone willing. We believe it is usually paid from the related activities fund by the school payroll department, although the source in this case is not the determining factor as to pensionable. These are optional and not regular - therefore they are not pensionable even if the person is already a member with FRRS.