

Title 27: Personnel

Part 210: PERS, Regulations for Retirement Plans Administered by the Board of Trustees

Chapter 65: Earned Compensation for the Public Employees' Retirement System of Mississippi

100 Purpose

This regulation further defines the term “earned compensation” for purposes of reporting compensation to the Public Employees’ Retirement System of Mississippi (PERS).

101 Statutory definition

Except as otherwise provided by law, the term “earned compensation” means the total amount earned during a fiscal year by an employee not to exceed the employee compensation limit set pursuant to § 401(a)(17) of the Internal Revenue Code for the calendar year in which the fiscal year begins and proportionately for less than one year of service. The intent of this definition is to limit earned compensation to the regular periodic compensation paid to an employee, except as otherwise specifically provided by law.

102 Employment with more than one covered employer

Earned compensation shall include wages from a second position if the second position is independently covered under PERS or if the second position is less than half time but would otherwise be covered independently if the employee worked the requisite number of hours as required in PERS Board Regulation 36, *Eligibility for Membership in the Public Employees’ Retirement System of Mississippi (PERS)*. Conversely, where a position is expressly excluded by law or where the position is expressly excluded by joinder agreement, wages from the second position should not be reported to PERS. In no case is compensation paid to an individual as an independent contractor reportable to PERS as earned compensation.

103 Exclusions from the term “earned compensation”

The term “earned compensation” does not include the following:

1. amounts paid by an employer for health or life insurance premiums or the value of such benefits;
2. litigation fees;
3. bond fees;
4. other similar nonrecurring payments;
5. amounts in excess of the lump sum payment for unused leave upon termination from employment as authorized under state law;
6. payments not authorized by law, including but not limited to:
 - a. the value of personal use of automobile or automobile allowance;
 - b. the value of personal use of employer provided cell phones or reimbursement for business use of a personal cell phone;

- c. the value of personal use of employer-provided Internet or reimbursement for business use of personal/home Internet;
 - d. monetary awards, honorariums, or bonuses;
 - e. amounts paid in excess of statutory limitations set on salaries; and
 - f. retroactive pay increases, other than bona fide administrative errors;
7. any form of severance or termination pay, other than lump sum payments for leave upon termination from employment as authorized under state law;
 8. any additional compensation received in anticipation of retirement, such as early retirement incentives, reduction in force programs, or retroactive payments;
 9. commuting and reimbursed travel expenses, whether taxable or not;
 10. cash remuneration, if any, selected by an employee in lieu of medical or other insurance benefits within the salary averaging period before retirement; and
 11. other employer paid fringe benefits, including, but not limited to:
 - a. educational assistance;
 - b. dependent care assistance;
 - c. transportation benefits;
 - d. nonpaid major medical (sick) and personal (vacation) leave; and
 - e. employer contributions for Social Security and retirement.
 12. any form of payment to a state employee outside of budgetary funds appropriated by the legislature.

104 Reporting of maintenance

1. Maintenance provided to employees before July 1, 2013

- a. The definition of “earned compensation” includes the value of either cash or non-cash maintenance furnished by the employer before July 1, 2013, in accordance with the maximum reportable allowances set in PERS Board Regulation 33, *Value of Maintenance*.
- b. From and after July 1, 2013, the value of maintenance furnished to an employee shall be reported as earned compensation as that term is defined in Miss. Code Ann. § 25-11-103(k) (1972, as amended) only if the employee was receiving maintenance and having maintenance reported to PERS as of June 30, 2013.
- c. Where maintenance was not properly reported when furnished by the employer, the employee and employer shall have underreported the earnings of the affected employee and service credit for the underreported period(s) shall not be available until proper contributions and interest, if applicable, on the value of maintenance are made to PERS.

2. Maintenance provided to employees on or after July 1, 2013

Except as otherwise provided in § 105.1.b of this regulation, maintenance provided to employees on or after July 1, 2013, is excluded from earned compensation as that term is defined in § 25-11-103(k) and as further clarified in this regulation.

105 Reportable income for constables

In the case of constables, the net earnings from their office after deduction of expenses shall apply, except that in no case shall earned compensation be less than the total direct payments made by the state or governmental subdivisions to the official.

- 106 Reportable income for chancery and circuit clerks**
In the case of chancery or circuit clerks, the net earnings from their office after deduction of expenses shall apply as expressed in Miss. Code Ann. § 25-11-123(f)(4) (1972, as amended).
- 107 Reportable income for members of the State Legislature**
In the case of members of the State Legislature, all remuneration or amounts paid, except mileage allowance, shall apply.
- 108 Reportable income for local elected officials**
In the case of local elected officials, all compensation must be set in good faith and may not be arbitrary and unreasonable when considered with the resources of the employer and the duties of the office.
- 109 Performance-based incentive payments**
- 1. Performance-based incentive payments paid to employees before July 1, 2013**
Performance-based incentive payments that were paid to employees before July 1, 2013, under a plan or policy adopted by the employer that continued from year to year and that were (i) contracted for by the employer and the employee before the date when services were performed by the employee, (ii) determined in accordance with objective standards of measurement, and (iii) earned by personal services performed by the employee were included in earned compensation as that term was defined in § 25-11-103(k) before July 1, 2013.
 - 2. Performance-based incentive payments paid to employees on or after July 1, 2013**
Performance-based incentive payments paid to employees on or after July 1, 2013, are excluded from earned compensation as that term is defined in § 25-11-103(k) and as further clarified in this regulation.
- 110 Compensatory leave payments**
Compensatory leave paid in a lump sum is included in earned compensation; however, any such payment must be allocated by the employer to the period in which the compensatory leave was actually earned.

(History of PERS Board Regulation 65: Adopted effective August 1, 2011; amended effective April 1, 2012; amended effective August 1, 2013; amended effective August 1, 2017)