

TO: City and County Employers participating in PERS

RE: Employees who move from a PERS-covered position to a local elected official position **with the same employer**

ISSUE: Local elected officials are generally not eligible to earn vacation or sick leave and are therefore paid out their accumulated leave at the time they assume a local elected office. Multiple employers have questioned whether PERS contributions should be withheld from the payout of leave.

DECISION: PERS contributions should not be withheld from the payout of leave.

DISCUSSION: Compensation for PERS purposes is defined in section 19-3-108, MCA. Subsection 19-3-108(1)(b)(v) excludes “lump-sum payments for compensatory leave, sick leave, banked holiday time, or annual leave paid without termination of employment” from the definition of compensation for PERS purposes.

While our statutes do not define “employment”, section 19-2-303(25) defines an employee as “a person who is employed by an employer in any capacity and whose salary is being paid by the employer....” Thus, the PERS member has not terminated employment with the employer, but has merely changed from one PERS-covered position to another PERS-covered position with the same employer.

“Termination of employment” is termination of “covered employment,” meaning in this instance PERS-covered employment. The payout occurred “without termination of employment” and is thus excluded from compensation for PERS purposes.

*If the employee was employed in a position covered by a retirement system other than PERS, the payout is compensation for the purposes of that system and retirement-system contributions should be withheld. This is because the definition of “termination of employment” requires the complete severance of “covered employment,” not any and all employment with the employer.