

MEMORANDUM

TO: All Retirement Boards

FROM: John W. Parsons, Esq., Executive Director

RE: Regular Compensation and Creditable Service Status of Certain Leaves

DATE: September 3, 2020

This memorandum is intended to supplement and expand upon that portion of Memorandum No. 20 of 2020 regarding the status of certain leaves taken as a result of the coronavirus situation. In Memo No. 20 of 2020, we wrote:

As you are likely aware, Congress recently passed the Families First Coronavirus Response Act (“FFCRA”). This law contains provisions for 10 days of paid sick leave for full-time employees unable to work due to the coronavirus. PERAC has determined that this paid leave should be treated the same as an employee’s other paid sick leave, and regular compensation should be charged for these days. The circumstances of how a member qualifies for this leave are laid out in the legislation; whether an employee qualifies for the leave is a determination to be made by the employer. We note that the FFCRA contains other types of leave related to the coronavirus that are detailed; guidance is expected to be issued by the federal government in the days ahead. We recommend that you work with your municipalities on the implementation of these provisions and further issues that may arise relative to regular compensation. PERAC will continue to review the further guidance that is issued.

The FFCRA is effective from April 1, 2020 to December 31, 2020, and provides for various types of leave for employees. This memorandum only addresses that leave being paid pursuant to FFCRA’s Emergency Paid Sick Leave Act (“EPSLA”). This leave is available for six distinct purposes as follows:

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a health care provider to self-quarantine related to COVID-19.
3. The employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis.



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4. The employee is caring for an individual either (1) subject to a government quarantine/isolation order or (2) in self-quarantine based on the recommendation of a health care provider.
5. The employee is caring for their child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons.
6. The employee is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.

An employee qualifying for this job-protected leave for any of the six reasons listed above is entitled to paid leave of up to 2 weeks or 80 hours for full time employees. Part-time employees are also entitled to this leave, and the number of hours a part-time employee will be given is based upon their customary schedule. The EPSLA leave is in addition to any paid sick or other leave to which an employee may otherwise be entitled. However, the rate of pay to which the employee is entitled under this leave differs depending upon the reason for the leave.

Those taking leave based on Reasons 1 to 3 as outlined above are to be paid 100% of their rate of pay. Those taking the leave for Reasons 4 to 6 are to be paid 2/3rds of their required rate of pay.

PERAC had previously opined in Memorandum No. 20 of 2020 that the two weeks of paid sick time provided for under reasons 1 to 3 are to be considered regular compensation and that the member is entitled to creditable service for this time. Now we have concluded that the leave paid at 2/3rds of rate of pay should also constitute full creditable service and retirement deductions must be taken on this pay. It is clear that, although the rate of pay is different, the leave is intended to encompass 2 full weeks or 80 hours for full time employees.

Because the member is receiving regular compensation and full-time creditable service for the two weeks, if this period does fall within someone's highest 3-year period (or highest 5-year period), then the Board should use the pay actually received (the pay at the 2/3 rate) for those two weeks.

Of note, and in regard to the EPSLA leave paid at the 2/3 rate, an employer and employee may mutually agree that the employee will use pre-existing leave entitlements to supplement his or her EPSLA leave up to his or her normal earnings. This is not a retirement board issue, this is for the employer and employee to decide, but retirement boards will no doubt receive contributions on these amounts paid. If the employee is paid his or her normal earnings, it will then have no effect on the highest years average used in the calculation of a retirement allowance.

Teleworking

Employees who are able to telework during the COVID-19 crisis are generally ineligible for the EPSLA leave. Extenuating circumstances, however, may exist that would make a teleworking employee eligible to take FFCRA leave. An obvious extenuating circumstance, which would come into play under Reason 3, is that an employee suffering from COVID-19 symptoms may simply be too ill to telework.

We trust the foregoing will be of some assistance to you. If you have any questions about this, please contact General Counsel Judith Corrigan at Extension 904.