Missed Retirement Deductions for Specialty Pay
Frequently Asked Questions

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1. Overview

The Massachusetts State Retirement Board (MSRB) determined after an extensive review that the University did not historically withhold the required retirement deductions from employees’ earnings for several types of specialty pay that are considered “regular compensation” for retirement purposes.

2. Why did the University not withhold these deductions?

Under state law and retirement plan rules, a public employee’s pension calculation is based only on the annual rate of pay that he/she receives on a regular and re-occurring basis. This type of pay is referred to as “regular compensation.” Base pay is the most common and significant type of regular compensation. Other types of pay that are not regular and re-occurring, such as overtime, are not included in an employee’s pension calculation.

The University is required to take a pension deduction from an employee’s earnings that qualify as “regular compensation” and transmit that money to the MSRB. The University does not take a retirement deduction from other types of pay such as overtime, because the MSRB does not consider these types of pay to be “regular compensation” and does not include these types of pay in an employee’s pension calculation.

The University previously did not consider the missed types of specialty pay to meet the definition of “regular compensation”. For that reason, the University did not take the required retirement deductions and did not transmit that money to the MSRB. Instead, employees received that money in their paycheck.

The MSRB has informed the University that the missed types of specialty pay do meet the definition of “regular compensation”. For that reason, the University should have taken retirement deductions from any employee earnings for these types of pay. These types of pay should be included in the employee’s pension calculation – provided that the earnings occurred during the pension calculation period.

3. What types of pay were affected?

- Evening, night and weekend differential (excluding pay earned on overtime)
- Holiday pay for police officers
- On call pay that is not included in base salary
- Narcan Pay (Dartmouth Police)
- Stand-by-Pay (see section below)
- Retroactive Pay on some of these types of pay

4. Why was Stand-by-Pay not addressed at the same time as the other missed deductions?

The MSRB did not reach a final determination as to whether or not Stand-by-Pay met the legal definition of “regular compensation” until May 15, 2019 after it had an opportunity to review additional payroll information including several collective bargaining agreement provisions. In comparison, the retirement eligibility status of all the other types of pay were determined on January 31, 2019.

5. Has the University corrected the problem going forward?

Yes. The University activated the required retirement deductions from all of these types of earnings, except Stand-by-Pay, in January of 2019. The University activated the required retirement deduction from Stand-by-Pay on May 26, 2019. This deduction was reflected in the pay advice employees received on June 14, 2019.
6. **Will employees need to pay for the missed deductions?**

The MSRB has determined that employees who owe $500 or more will need to submit outstanding retirement contributions to the State Employee Retirement System to reconcile their missed deductions. The amount each employee owes is based on the value of deductions that were missed beginning with Calendar Year 2014 or the employee’s hire date (whichever is later) and ending on the last pay period before the deduction was activated.

7. **Did the MSRB waive the collection of money below $500?**

Yes. The MSRB determined that the collection of amounts less than $500 would not have a meaningful impact on the employee’s pension calculation and the financial benefit to the pension fund would largely be offset by the administrative cost of collecting amounts less than $500. In some cases, employees may have earned the specialty pay well in the past for a period that would not be included in ultimately determining a retirement benefit. This waived amount will not be included in the employee’s pension calculation.

Employees who owe more than $500 do have to pay the entire amount for the 5-year period. If these missed deductions are included in an employee’s calculation period, then the payback amount may result in an increase in an employee’s retirement benefit.

8. **When did the University provide affected employees with estimates of the amount they owe to the State Retirement Board?**

The University mailed estimates of the value of the missed deductions to affected employees on or before June 6, 2019. Employees who would like an additional copy of this letter can contact the HR Department at the University System Office (see contact information below.)

9. **How will employees be notified of the final amount they owe and how they can make the re-payment?**

The MSRB will generate a statement that will list how much an employee owes and mail the statement to the employee’s home address on file with the University.

Once an employee receives this statement, he/she will have the option of making a lump sum payment to the MSRB or making the payment through a payroll deduction. The statement the employee will receive from the MSRB will provide directions regarding how to make this payment.

10. **When will impacted employees get a statement from the MSRB?**

As of the date of this FAQ (9/6/19), the MSRB has mailed statements to approximately 80% of the employees who will need to make a payment. The University expects they will mail most of the remaining statements bills within the next few weeks. In a limited number of circumstances in which the amount of an employee’s missed deduction is far greater that most other impacted employees, the MSRB may delay sending the statement while they conduct a further review of payroll records.

11. **Will employees who owe less than $500 get a letter from the MSRB?**

No. If the value of an employee’s missed deductions is less than $500 then the amount has been waived by the MSRB. The MSRB will not send letters to these employees.
12. How much time does an employee have to respond to the letter from the MSRB?

Employees need to respond to the letter from the MSRB within 35 days of the date of the letter. If an employee fails to respond, the MSRB will begin to charge interest on the amount owed. In addition, the MSRB will not process an employee’s pension application until he/she has resolved the outstanding payment. For this reason, the University strongly encourages employees to comply with the timeline that will be outlined in the letter they receive from the MSRB.

The University will not reimburse employees for interest costs that are attributed to a failure to respond to the MSRB in the required amount of time.

13. Can an employee appeal the MSRB’s decision to collect the missed deductions?

Yes. Massachusetts General Law Chapter 32, Section 20 (5) (c) (3) permits the MSRB to waive repayment of retirement deductions in certain circumstances. The MSRB included information about this process in the letter that it sent (or in some cases will send) to employees who need to repay missed deductions. This appeals process is entirely under the jurisdiction of the MSRB and the University is not a participant in this individual appeals process.

14. If an employee files an appeal, how does that impact the 35 day timeline?

If an employee decided to file an appeal, then he/she must do so within the 35 day timeline. The MSRB will then hold the repayment process in abeyance pending the outcome of the appeal. At the conclusion of the appeal review process, the MSRB will inform the employee of the outcome of his/her appeal. If the appeal is denied, then the employee will need to make a lump sum payment for the amount owed, or enroll in a repayment plan, within 35 days of the date of the MSRB letter that informed the employee that the appeal was denied.

15. How much time will employees have to complete the back payment?

An employee who needs to make a payment to the MSRB will have the option of making a lump sum payment or making the payment through a pre-tax payroll deduction. If submitting contributions through payroll deductions, an employee will have options of spreading out the repayment of any amount owed up to a five-year period under retirement plan rules.

For example, if an employee owes $1,500, they could make a bi-weekly payment of $11.53 over a five-year period. Employees may not initiate the process of making a payment or enrolling in a payroll deduction until they receive a statement from the MSRB.

16. Will employees have to pay interest or an administrative fee?

The MSRB will charge interest to employees who utilize a payroll deduction to make required contributions. The University will make an equal dollar payment to employees to compensate them of the cost associated with this interest.

For example, if an employee owes $1,000 and he/she decides to utilize a payroll deduction to make this required payment, the MSRB will charge that employee approximately $70 as an administrative fee. The cost of that fee will be integrated into the amount that will be collected through the payroll deductions. The University will then make a separate payment directly to the employee for $70 as a reimbursement for this cost.

The statement that employees receive from the MSRB will list the specific amounts of interest that will be charged based on the duration of the payment plan.
17. What retirement contribution percentage was used to calculate the amount owed?

For the purpose of providing an estimated calculation, the University assumed that all employees are required to make an 11% retirement contribution. However, approximately 15% of the employees who will need to make a back payment were members of the retirement system prior to July 1, 1996. These employees may make a smaller regular retirement contribution. In this situation, the estimated amount owed may be less than what is listed on the individual employee letter from the University. When the MSRB completes their official calculation of how much an employee owes, they will base this calculation on the employee’s individual rate in the retirement system.

18. Will this impact an employee’s pension?

An employee’s retirement benefit is determined by a multi-factor formula that is based in part on the employee’s five highest years of earnings – or three highest years of earning for employees hired before April 2, 2012. If these affected types of specialty pay are included in an employee’s calculation period, then these required payments and/or future deductions may result in an increase in an employee’s retirement benefit. Only the MSRB can make an official determination of how much an individual employee will receive in their pension benefit.

19. Can employees use their deferred compensation account to pay for the missed deductions?

Yes. Employees who are enrolled in the deferred compensation program that is sponsored by the University (commonly referred to as a 403(b)) will be able to use their account to pay some or all of the amount owed. University records show that approximately 25% of the affected employees are enrolled in this benefit. Please see the MSRB site regarding Payment Options for Approved Creditable Service Purchases for more information regarding the use money from your University 403(b) plan and/or your 457(b) SMART Plan.

20. What if an employee decides to retire prior to completing the repayment process?

The MSRB will require an employee to pay any outstanding balance owed to the State Employee Retirement System prior to processing that employee’s application for retirement.

21. How can an employee get a detailed copy of his/her affected earnings?

Affected employees may want to review a detailed report of their earnings over the period of time that the University used to estimate how much an employee may need to contribute to the MSRB. This detailed report breaks down earnings by pay period and pay type. If an employee wants a detail report, they should call 774-455-7150 or email MSRB@umassp.edu.

22. How will this situation impact retirees and former employees?

The MSRB has not yet made any decision regarding how they will address this matter for retirees who retired before February of 2019. Impacted retirees who retired after this date should have already received a letter from the University and may have already received a statement from the MSRB. The same situation applies to former employees who left the employment of the University before February of 2019.

23. Does this situation impact employees who are enrolled in the Optional Retirement Plan (ORP)?

There are only 28 employees University-wide who are enrolled in the ORP who also earned the affected types of pay. The University will be sending letters directly to these employees. The overwhelming majority of employees enrolled in the ORP did not earn any of the affected types of pay and are therefore not affected by this situation.

24. What does it mean if an employee did not receive a letter from the University?
If an active UMass employee did not receive a letter from the University regarding this matter, it is likely that they never earned any of the affected types of pay (listed above) and are therefore not affected by this situation. In total, less than 20% of the UMass workforce is affected so the large majority of employees will not receive letter. If an employee believes he/she did earn one or more of the affected types of pay listed above, and believes he/she should have received a letter, then the employee should call 774-455-7150 or email MSRB@umassp.edu.

25. How will this issue impact an employee’s current or prior year taxes?

The University is not able or qualified to provide tax advice to employees and we encourage employees to speak with their own accountant regarding any questions they may have regarding a taxation issue. That said the University’s Office of Treasury & Operations has determined there is no need to issue revised tax statements. The University’s position is based on the provision of tax law referred to as the Claim of Rights Doctrine, which requires a taxpayer to recognize earnings in the year in which they receive the income even though there may be a chance that they will have to repay the amount in a future year. Based on this provision of law, the University maintains that employee’s W-2 Box 1 wages were correct for the years that the deductions were not taken and a W-2C (Corrected Wage and Tax Statement Form) will not be needed.

26. How can employees get additional information or speak with someone about this issue?

- Additional information about this matter can be found on the University of Massachusetts’ website at www.umassp.edu/hr.
- Phone calls can be directed to the Human Resources Department at the University System Office at 774-455-7150.
- Emails may be sent to MSRB@umassp.edu.
- The Massachusetts State Retirement Board can be reached at 617-367-7770.