Preserving Employee Pension and Optional Retirement Plan Benefits During Temporary Furloughs/Salary Reductions in FY 2021

If furlough or salary reduction plans are structured to meet the restrictions set forth below, there is no necessity for an executive order to ensure that employees' pension benefits or employer ORP contributions will be calculated in the same manner as they would have been had the furloughs or salary reductions not occurred. (For clarity's sake, a furlough is defined in this guidance as a scheduled workday or partial workday during which an employee does not work and is not paid. This is distinguished from a temporary salary reduction plan, which may include additional paid administrative leave days for employees.)

Optional Retirement Plan

For employees in the ORP, there is justification in the plan document for the universities to make contributions based on the employee's normal (unreduced) compensation, so long as the employee is in a pay status (either working or using some type of accrued leave) during some portion of the pay period. If the employee is in a pay status for some portion of the pay period, they are eligible to participate in the ORP and the employer must make the ORP contribution for the pay period based on the employee's unreduced, earnable compensation. If the employee is off payroll for a full pay period or longer due to furlough or being on Leave Without Pay for some other reason, the ORP plan document does not permit the employer to contribute to the ORP for that period of unpaid leave. Salary reductions pursuant to a temporary salary reduction plan will not affect these contributions so long as the employee meets the requirement for paid status during a pay period. As always, contributions to the ORP are subject to limitations under the Internal Revenue Code Section.

Pension System (Teachers or Employees Pension System & Teachers or Employees Retirement System)

For employees in the pension system (either Teachers or Employees Pension System, as well as the Teachers or Employees Retirement System), there are two basic components used to compute a retiree's benefit: average final compensation and creditable service based upon hours worked.

If an institution implements a furlough plan or salary reduction plan, the State Retirement Agency has provided direction to State agencies and state universities informing them that they should report the employee's full earnable compensation without regard to reductions for furloughs/salary reductions, and also take deductions/make contributions for member contributions based on the employee's normal salary (earnable compensation) unreduced by any loss of pay due to furloughs or salary reductions. If this directive is followed, any furlough time or implemented temporary salary reduction during the pay period will not impact the calculation of average final compensation. Institutions should report the actual hours worked by the employee.

In order for pension service credit to be unaffected by furloughs, the employee must work at least one day during the pay period. In addition, a full-time, 12-month employee (working 2080 regular hours per year) may take up to 21 furlough days in a fiscal year without negative impact on the employee's service credit accrual. For a full-time, 10-month employee whose standard work hours are 80 in a pay period, the maximum annual number of furlough days before creditable service would be affected is 19. For part-time employees, the number of furlough days permitted before adverse impact would be lower. In addition, if the employee takes Leave Without Pay for reasons other than furlough (with exclusions for leaves that do not reduce SRA's calculation of creditable service, if any), the maximum number of furlough days that could be taken without a reduction in creditable service would be reduced.

Also, the employee's paycheck must be sufficient in each pay period to cover the required pension contributions, based on full compensation without reductions due to furloughs or salary reductions, bearing in mind that employees also have other regular deductions for FICA, taxes, health benefits, etc.

For salary reductions without furloughs, if the employer reports the unreduced regular compensation (earnable compensation) and employee contributions are made based on the unreduced salary, there should be no impact on service credit or pension benefits.

Structuring Temporary Furlough or Salary Reduction Plans

Based on this information, the following parameters should be observed when implementing furloughs or temporary salary reductions:

- A full-time, 12-month employee (who regularly works 2080 hours/year) should not be assigned more than 21 furlough days in a fiscal year.
- A full-time, 10-month employee whose standard work hours are 80 in a pay period should not be assigned more than 19 furlough days in a fiscal year.
- The permissible number of furlough days for a part-time employee, regardless of whether they are a 12-month employee or 10-month employee, is fewer than the pro rata share of the days permissible for a full-time employee. Legal counsel should be consulted.
- Employees should not be permitted to take furlough days during any pay period in which they are taking Leave Without Pay.
- The employee's paycheck after reductions for furlough days or temporary salary reductions are taken must be sufficient in each pay period to cover the required pension contributions, bearing in mind that employees also have other regular deductions for FICA, taxes, health benefits, etc.

This document provides guidance only with respect to parameters affecting pension/retirement; other considerations, such as requirements under the Fair Labor Standards Act, have been addressed elsewhere.