



ADMINISTRATIVE RULES OF MONTANA



2.44.530 DETERMINATION OF INCENTIVES AND BONUSES AS PART OF A SERIES OF ANNUAL PAYMENTS AND INCLUDED IN EARNED COMPENSATION

- (1) An incentive or bonus payment paid to a member is part of a series of annual payments, and therefore included in earned compensation, only if:
 - (a) the incentive or bonus has been paid to the member for at least five consecutive years;
 - (b) the employer publishes, in some official manner (in board minutes, in a collective bargaining agreement, in employment contracts, etc.):
 - (i) its intent to make the incentive or bonus payments;
 - (ii) who will receive the incentive or bonus payments;
 - (iii) the criteria for determining the award and amount of the incentive and bonus payments with respect to all employees and certification classes to receive the payments;
 - (iv) the anticipated duration of the incentive or bonus payments;
 - (v) the specific annual amount of the incentive or bonus payment or the specific percentage of annual salary by which the incentive or bonus payment will be calculated;
 - (vi) how the incentive or bonus payments will be made (annually, monthly, etc.); and
 - (vii) the date by which the payment will be made.
 - (c) the incentive or bonus payment amount in each year is the same or is subject to fluctuation only if the payment is determined as a percentage of annual salary, in which case, the percentage increase in annual salary is the same in each year for all employees of the certification class (teacher, administrator, or superintendent);
 - (d) continuation of the incentive or bonus payment is relatively certain and not subject to budgetary discretion, revenue stream factors, or award or payment criteria that puts the payment at any greater risk of nonpayment than the base salary; and
 - (e) eligibility criteria and payment calculation methodologies do not weight the award of or amount of incentive or bonus payments in a manner that disproportionately increases compensation to employees based on years of service or age, including that:
 - (i) if an incentive or bonus is paid to one employee of a certification class, the incentive or bonus must be paid to every member of that certification class; and

- (ii) the amount of the incentive or bonus paid to each employee of a certification class must be the same, except that the incentive or bonus payment amount paid to each member of the certification class may be calculated as a percentage of each employee's annual salary, in which case, the percentage of annual salary to be calculated must be the same for all employees of the certification class.
- (2) If incentive or bonus payments that are otherwise part of a series of annual payments have not been paid to a member for at least five consecutive years at the time the member retires, any amounts reported in the three-year period that constitutes a member's average final compensation will be included in average final compensation as termination pay Option 2 as provided under 19-20-716, MCA.
- (3) An employer who wants incentive and bonus payments that are part of a series of annual payments included as part of the earned compensation of its employee(s) should submit the published information described in (1)(b) to the Teachers' Retirement System for review prior to submitting contributions for those compensation amounts.
- (4) As used in this rule, "annual salary" means the salary to be paid to a member of the Teachers' Retirement System in a particular year as set forth in the employer's salary schedule or in a written employment agreement, without consideration for pay for additional duties, bonuses, incentives, fringe benefits, or other additions to remuneration.
- (5) Bonus and incentive payments that are part of a series of annual payments are subject to the 110% cap set forth in 19-20-715, MCA, and administrative rules clarifying 19-20-715, MCA.

Authorizing statute(s): 19-20-201, MCA

Implementing statute(s): 19-20-101, 19-20-102, MCA

History: NEW, 2009 MAR p. 1778, Eff. 10/16/09.