



ADMINISTRATIVE RULES OF MONTANA

2.43.2209 PROCEDURES - COMPENSATION MUST BE TREATED CONSISTENTLY

- (1) If an employer increases a member's compensation to account for health, dental, vision, life or disability costs, the amount of the increase can be included in compensation for retirement system purposes only if the employer includes that amount, to the extent required by applicable federal and state law, in its calculation of the member's compensation for all purposes, including, but not limited to:
 - (a) federal income taxes;
 - (b) state income taxes;
 - (c) Federal Insurance Contribution Act (FICA) ;
 - (d) state unemployment insurance;
 - (e) overtime under the Fair Labor Standards Act (FLSA) ;
 - (f) overtime under Montana's Wage Protection Act;
 - (g) shift differentials;
 - (h) workers' compensation; and
 - (i) benefits based on compensation, such as life or disability benefits based on a multiple or percentage of annual pay.
- (2) If the employer does not comply with (1) , the board will not consider the amount as an elective contribution under a cafeteria plan that would be includible in gross income but for IRC section 125, and will not include the increase as compensation for purposes of PERS, JRS, HPORS, SRS, GWPORS, MPORS, and FURS.
- (3) If the board has any reason to doubt that the employer is complying with (1) , the board has the right to obtain documentation up to and including an audit of any participating employer to ensure compliance with (1) . If compliance with (1) cannot be verified by the board, the participating employer's 125 plan contribution will not be considered compensation for retirement system purposes.

Authorizing statute(s): 19-2-403, MCA

Implementing statute(s): 19-2-1001, 19-2-1005, 19-2-1010, 19-3-108, 19-5-101, 19-6-101, 19-7-101, 19-8-101, 19-9-104, 19-13-104, MCA



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History: NEW, 2005 MAR p. 2241, Eff. 11/11/05; TRANS, from ARM 2.43.909, 2008 MAR p. 2467, Eff. 12/1/08.