CPERS Guidance: Review of Settlement Agreements & Arbitration Awards

1. Our Role

CPERS reviews all settlement agreements and arbitration awards, providing employee compensation to determine whether payments are PERS-subject and to ensure compliance with PERS statutes. Agencies must submit all signed settlements and arbitration awards to CPERS for review.

2. PERS Subjectivity

Under ORS 238.008, retroactive wage payments made under a settlement agreement or arbitration award are considered salary and are subject to PERS. Payments must be allocated in the PERS system to the period the work was performed or would have been performed, and corresponding retirement service credit must be granted as required by statute.

Agreement language does not override statute. If an agreement labels a payment inconsistently with statute, statutory definitions will determine whether the payment is treated as PERS-subject salary.

3. Settlement Language Considerations

Settlement agreement language plays an important role in how payments are treated for PERS purposes. Because statute, not agreement wording, ultimately governs PERS eligibility, agencies should use clear terminology that accurately reflects the intent of the payment.

Here are some examples of subject payments:

- Back pay, retroactive pay, or any wage-related payment linked to employment rights or reinstatement.
- Payments resolving wage claims, reinstatement, or classification-related disputes.

Here are some examples of non-subject payments:

- Payments for pain and suffering or other non-economic damages.

- Payments to an employee's legal representation.

Agencies are encouraged to contact CPERS with any questions about PERS subjectivity or settlement agreement language. If an agency is unsure whether a payment may be considered PERS subject, or needs support in drafting clear settlement language, they should reach out to CPERS before the agreement is finalized and signed. Early consultation helps ensure agreements comply with statutes and prevents delays or unintended PERS reporting outcomes.

4. Submission Process & Required Documentation

Agencies must submit signed settlement agreements and other related documentation to CPERS via email. CPERS will review payment language, determine PERS-subject status, and work with the agency to ensure proper reporting and contribution remittance. See the checklist section below for a complete list of the information needed.

When submitting a settlement agreement to CPERS, agencies must provide:

- A complete, signed settlement agreement including all exhibits.
- Payroll documentation showing how payments are coded and processed in OSPA.
- A clear description of payment purpose and the timeframe for which the payment is made.
- A breakdown of how any PERS-subject payments are allocated by pay period. If no breakdown is provided, CPERS will allocate the payment evenly across applicable periods.

5. Other Considerations:

Closed PERS Accounts and Contribution Limitations

If an employee has withdrawn or retired their PERS account before the settlement is finalized, PERS may not accept contributions even if the payment is otherwise PERS-subject depending on the circumstances. In rare cases, agencies may need to compensate the individual directly for the 6% employee contribution amount when this occurs. CPERS will instruct agencies on the appropriate steps to take when these situations arise.

Leave Payout Considerations

Leave payouts have different PERS treatment depending on the employee's membership type:

- Sick leave payouts are non-PERS-subject.
- Vacation, holiday, and compensatory time lump-sum payouts are PERS-subject for Tier One and Tier Two members, but not for OPSRP members.

Agencies should consult CPERS before coding leave-related payments to ensure proper reporting and remittance.