



Employer *Bulletin*

Employer Communication Center (608) 264-7900 Toll free: 1-888-681-3952 <http://etf.wi.gov>

EDUCATIONAL BULLETIN:

When are Payments for Vacation and Compensatory Time Considered Earnings for WRS Purposes?

A recurring question raised during employer training sessions and through the Employer Communication Center has been whether payments for vacation, sick leave and compensatory time are earnings for Wisconsin Retirement System (WRS) purposes. The short answer is that any time vacation, sick leave or compensatory time is used, the respective payment is WRS earnings and reportable to the year when paid. However, when payment is received in lieu of the time being used, the payment may or may not be WRS earnings, depending upon the circumstances.

Below are frequently asked questions pertaining to the determination of compensatory time payments as WRS earnings. In addition, the chart attached to this *Bulletin* identifies some of the more common situations pertaining to payment for vacation, sick leave and compensatory time and provides guidance on determining whether the payment is WRS reportable. The information contained within this *Bulletin* is meant to provide clarification of the topic as discussed in the *WRS Administration Manual* (ET-1127).

The attached chart does not cover every scenario pertaining to the use and payment of vacation and compensatory time. Exceptions to those in the chart must be reviewed on a case-by-case basis by contacting the Employer Communication Center toll free at (888) 681-3952 or locally at (608) 264-7900.

Frequently Asked Questions Regarding Compensatory Time Related Payments

1. Does compensatory time have to be used or paid out within the same annual earnings period in which it was earned to be considered WRS earnings?

No. Compensatory time does not need to be used or paid out within the same annual earnings period in which it was earned to be considered WRS earnings. Payments for used compensatory time will always be reportable and will be reportable to the annual earnings period in which the payment was made. In cases where the employee takes cash in lieu of the compensatory time, the payment will be reportable to the annual earnings period in which it was earned, which may result in interest assessment per Wis. Stat. § 40.06 (5).

2. Is specific compensatory time payout language needed in the collective bargaining agreement for it to be considered WRS earnings?

No. Specific language does not need to be added to Collective Bargaining Agreements for it to be considered WRS reportable earnings. However, it may be prudent to include language requiring that employees use any accrued compensatory time or it will be paid out routinely (such as at year's end). Instituting such a policy will eliminate the potential for employers being subject to late interest assessments on the payment. Payment for unused compensatory time accrued in a previous annual earnings period must be reported to the year the compensatory time was earned, resulting in a late reported interest assessment per Wis. Stat. § 40.06 (5).

3. Do compensatory time payments have to be “made routinely” to be considered WRS earnings and, if so, what does routinely mean?

That depends on the circumstances. Payment for unused compensatory time must be reported to the year earned, so if there is a policy of making routine payment for unused, accrued compensatory time the payment will always occur in the annual earnings period in which it was earned, since ETF interprets “routinely” to mean any regular interval (e.g., quarterly, semi-annually), but at least annually.

An exception occurs when a lump sum payment for accumulated compensatory time is made due to termination. Payments made due to termination are only WRS reportable if the employer has a broadly applicable policy mandating routine payment for unused time. If there is no such policy, and the compensatory time is unused and paid out solely due to termination, the payment is not WRS reportable.

4. What is meant by the phrase “...except for the employee’s election that part or all of the amount be used for other purposes...” in the definition of earnings in Wis. Stat. § 40.02 (22) (a)?

ETF interprets that to mean that employees may elect to have some of their earnings diverted to other uses, such as loan or mortgage payments, long-term care insurance, etc., rather than being made directly available to them via payroll check; it is not interpreted as applying to compensatory time.

5. If compensatory time accumulated in previous years is not used during the annual earnings period in which it was earned, must it be reported to the annual earnings period in which it was earned or is it just not WRS reportable?

Refer to the answer to question #3. All used compensatory time is WRS reportable to the year paid. Unused compensatory time that is converted to cash is WRS reportable to the year it was earned, since essentially the agreement to accept time in lieu of additional pay has been reversed. The only time payment for compensatory time is not WRS reportable is when it is paid out solely due to termination and the employer does not have a policy of routinely paying out unused leave, per Wis. Stat. § 40.02 (22) (b) 6.

6. When unused compensatory time is converted to cash and reported to the year it was actually earned, do the employers file a corrected or amended earnings statement for the employee for that year and, if so, how far are they allowed to go back in time?

Yes. When an employee’s prior year WRS earnings need adjustment, the employer must submit the proper report. ETF will then invoice the employer for the required contributions plus interest at the effective rate. An earnings correction is subject to a 7-year statute of limitations that commences on the date the employee’s benefit is calculated.

7. When unused compensatory time accrued in a previous year is converted to pay and the employer reports the payment to that previous year, what pay rate does the employer use?

Report the earnings at the rate the compensatory time was paid out, but no less than one and one-half the rate of pay at the time the service was actually performed.

8. When compensatory time is paid at termination does it extend the termination date?

Used compensatory time would extend the termination date if it were used following the last day of work per agreement with the employer. If the compensatory time was unused and converted to cash at termination, the term date is not extended and the payment is WRS earnings only if the employer has a policy of routinely paying out accumulated, unused leave.

Conditions under which Payments for Vacation*/Compensatory Time are/are not WRS Reportable Earnings

#	Leave Type	Outcome	Conditions	Payment Reportable?		Hours Reportable?		Report to the Year:	
				Yes	No	Yes	No	Used	Not Used
1	Vacation	Used	Vacation earned and used in the same annual earnings period.	Yes		Yes		Used	
2	Vacation	Used	Vacation earned in one annual earnings period but used in a subsequent annual earnings period.	Yes		Yes		Used	
3	Vacation	Used	Vacation used at termination following the last actual day of work. Term date is extended accordingly.	Yes		Yes		Used	
4	Vacation	Paid-out	Unused vacation is converted to cash at the employee's option . [Wis. Stat. § 40.02 (22) (b) 11.]	No		No		N/A	
5	Vacation	Paid-out	Unused vacation is routinely converted to cash per employer policy . Routinely is defined as at least annually.	Yes		No		Paid	
6	Vacation	Paid-out	Unused vacation is converted to cash at termination. Termination date is not extended. Employer does not have a policy of routinely converting unused vacation to cash. Routinely is defined as at least annually. [Wis. Stat. § 40.02 (22) (b) 6.]	No		No		N/A	
7	Vacation	Paid-out	Unused vacation is converted to cash at termination. Termination date is not extended. Employer has a policy of routinely converting unused vacation to cash. Routinely is defined as at least annually.	Yes		No		Paid	
8	Comp Time	Used	Compensatory time earned and used in the same annual earnings period.	Yes		Yes		Used	
9	Comp Time	Used	Compensatory time earned in one annual earnings period but used in a subsequent annual earnings period.	Yes		Yes		Used	
10	Comp Time	Used	Compensatory time used at termination following the last actual day of work. Term date is extended accordingly.	Yes		Yes		Used	
11	Comp Time	Paid-out	Unused compensatory time accumulated in the current annual earnings period and converted to cash in the current annual earnings period (payment not due to termination). [Wis. Stat. § 40.02 (22) (a)]	Yes		Yes		Paid	
12	Comp Time	Paid-out	Unused compensatory time accumulated in a prior annual earnings period(s) is converted to cash (payment not due to termination). [Wis. Stat. § 40.02 (22) (a)]	Yes		Yes		Earned	
13	Comp Time	Paid-out	Unused compensatory time converted to cash at termination (either in a lump sum or installments). Unused compensatory time is routinely converted to cash per employer policy . Routinely is defined as at least annually.	Yes		Yes		Paid	
14	Comp Time	Paid-out	Unused compensatory time converted to cash at termination (either in a lump sum or installments). Employer does not have a policy of routinely converting unused compensatory time to cash. Routinely is defined as at least annually. [Wis. Stat. § 40.02 (22) (b) 6.]	No		No		N/A	

Conditions under which Payments for Vacation*/Compensatory Time are/are not WRS Reportable Earnings

#	Leave Type	Outcome	Conditions	Payment Reportable?	Hours Reportable?	Report to the Year:
15	Comp Time	Paid-out	Unused compensatory time is accumulated over several annual earnings periods. Employer policy permits employees to use the time, convert it to cash, or bank it up to a maximum number of hours. Any unused compensatory time exceeding the maximum is routinely converted to cash per employer policy . Routinely is defined as at least annually.	Yes	Yes	<u>Earned:</u> cashed hrs. under the max. <u>Paid:</u> cashed hrs. exceeding the max.
16	Comp Time	Paid-out	Unused compensatory time accumulated over several annual earnings periods is converted to cash (payment not due to termination). Employer does not have a policy of routinely converting unused compensatory time to cash.	Yes	Yes	Earned
17	Comp Time	Paid-out	Unused compensatory time accumulated over several annual earnings periods is converted to cash <u>at termination</u> (either in a lump sum or installments). Employer policy permits employees to use the time, convert it to cash, or bank it up to a maximum number of hours. Any unused compensatory time exceeding the maximum is routinely converted to cash per employer policy . Routinely is defined as at least annually.	Yes	Yes	<u>Earned:</u> cashed hrs. under the max. <u>Paid:</u> cashed hrs. exceeding the max.
18	Comp Time	Paid-out	Employee with a 30-hour workweek converts 10 hours of compensatory time to cash in order to receive 40 hours of pay for that week. (Note: The 10 hours converted to cash does not constitute pay for used compensatory time because the employee is not taking time off from their normal work schedule; they still worked their normal 30 hours. It is cash for unused compensatory time and must be reported to the annual earnings period during which the compensatory time was earned.) [Wis. Stat. § 40.02 (22) (a)]	Yes	Yes	Earned

* Reporting for sick leave use and pay-outs is the same as for vacation use and pay-outs, except in cases where the employee is filing for a WRS disability benefit.