

Office Memorandum

Date: February 14, 2019
To: Agency Payroll, HR, Accounting Coordinators
From: Mary Muellner, Director, Statewide Payroll Services
Subject: **Deferred Compensation Upon Separation**

The following information has been provided regarding payments processed following an employee's separation from service, which will be directed to:

- Minnesota State Deferred Compensation Plan (MNDCP) 457(b)
- Minnesota State Tax Sheltered Annuity (TSA) 403(b) Program

Compensation Eligible for Deferral After Separation

Section 415(c) Treasury regulations clarify that compensation can include post-severance compensation if it is paid within the later of 2 ½ months after separation from service or the end of the calendar year in which severance occurs. 26 C.F.R. 1.415(c)-2(e) (3). The governing Treasury regulation is published at [www.law.cornell.edu/cfr/text/26/1.415\(c\)-2](http://www.law.cornell.edu/cfr/text/26/1.415(c)-2).

The following payments may have deferrals after separation:

Payments may have deferrals after separation as long as the payment would have been paid to the employee prior to separating employment, if the employee had continued to be employed.

- Regular compensation for services during the employee's regular working hours:
 - salary
- Compensation for services outside the employee's regular working hours:
 - overtime
 - shift differential
 - commissions
 - bonuses
 - other similar payments for work outside regular working hours
- Back pay for lost wages, such as grievance payments
- Unused bona fide sick and vacation or other leave pay, if the employee would have been able to use the leave if employment had continued

The following types of payments are not eligible for deferral:

- Early retirement incentives
- Early retirement notification incentives
- Grievance payments that are not back pay for lost wages or salary

The following is provided by Statewide Payroll Services:

Eligible employees may direct payments processed within the timeline previously mentioned, and included in the table below, if allowed by the bargaining agreement or compensation plan. This includes payments processed in Mass Time Entry, Current and Prior Period Adjustments and some grievance settlements.

- For most bargaining agreements and compensation plans, employee “Leave pay” (vacation payoff and severance) is directed to HCSP (Health Care Savings Plan).
- This Treasury clarification continues to allow deferred compensation deductions to occur for wage related grievance payments. Normal processing of grievance payments **does not** include deferred compensation deductions. Special handling by Statewide Payroll Services staff must occur when deferred compensation deductions are requested.

The table below includes examples of when the payment must be processed. Be sure to take into account the pay date **not** the pay period end date.

Employee’s employment severed/terminated effective	Payment(s) must be processed no later than Pay Period End Date	Pay Date	Rule
7/14/2019	12/10/2019	12/20/2019	End of calendar year in which termination occurs
11/21/2019	1/21/2020	1/31/2020	Paid within 2 ½ months of employee’s termination

Note that early retirement incentive payments are not eligible to be directed to Deferred Compensation Plans.

Questions?

- If you have questions regarding post-severance compensation contributed to the 457(b), please contact:
 - **MSRS Employer/Payroll Support Team** at 651-284-7729.
- If you have questions regarding post-compensation contributed to TSA 403(b), please contact:
 - **TIAA** - Minnesota State’s Retirement Call Center at 1-800-682-8969, Monday - Friday, 8:00 a.m. to 5:00 p.m. and to speak to a Minnesota State Retirement Call Center Representative.
 - Minnesota State Benefits Helpdesk at employee.benefits@minnstate.edu.
- If you have questions regarding payment processing, please contact: Agency HR, Payroll, and Accounting staff should contact Jennifer Goossen 651-201-8072 or jennifer.goossen@state.mn.us.

PLEASE SHARE THIS INFORMATION WITH APPROPRIATE AGENCY STAFF