

Background Information on Leaves of Absence

Minnesota's public defined benefit plans are a personnel policy tool of the employer which serve to attract sufficient numbers of new employees, to promote retention of capable existing employees, and to out-transition long-term employees at the end of their fully productive working life, by providing those long-term employees with retirement plan income which is sufficient, in conjunction with personal savings and Social Security, to allow the individual to retire without a significant drop in the standard of living.

Leave of absence provisions are found in most Minnesota defined benefit public pension plans. They permit the individual to receive either full or partial service credit for a period of break in service to the employer. The provisions are somewhat unusual in that they are providing service credit in the retirement plan for a period of time during which the individual was not providing service to the employer. The provisions presumably are justified as retention tools. Another factor may be that the leave, if used to receive additional training or education, further enhances the productivity and value of the employee to the employer.

Nearly all plans have a provision covering breaks in service from the employing unit to provide military service. These provisions are compliant with requirements of the Uniformed Services Employment and Reemployment Rights Act (USERRA) in federal code. Many plans also have another military leave provision, permitting individuals to obtain service credit in the plan for service prior to becoming an employee covered by the plan, or for those who can no longer receive credit under the USERRA-compliant provision due to a failure to exercise their rights in a timely manner.

In addition to the military-related provisions, some plans have few other leave of absence provisions, placing heavy reliance on generalized leave provisions to handle a wide variety of situations. For example, the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) has a generalized leave of absence provision (Sec. 352.01, Subd. 11, Cl. (8)) permitting service credit for any period of leave authorized by the employing unit not exceeding one year, for which the employee makes required payment to the fund. In contrast, teacher plans tend to have several leave of absence provisions with each tailored to a specific leave type. Besides the military-related provisions, the Teachers Retirement Association (TRA) has a sabbatical leave provision (Sec. 354.092), parental leave (Sec. 354.093), extended leave of absence (Sec. 354.094), medical leave (Sec. 354.095), and family leave (Sec. 354.096). The first class city teacher plans have similar leave types, and there are some additional leave types which apply only to St. Paul Teacher Retirement Fund Association (SPTRFA) basic members, or to basic members from the former Minneapolis Teachers Retirement Fund Association (MTRFA), now administered by TRA. Basic member leave provisions in the applicable first class city teacher retirement plans are found in association bylaws rather than in statute.

Generally, the employee is required to cover the employee and employer contributions as specified in law to the pension fund if the individual is to receive service credit for a leave period. Typically, the employer may pay part of the cost on behalf of the employee, but is not mandated to do so. Some types of leave provisions mandate that the employer pay employer contributions. This occurs with USERRA-compliant military break-in-service provisions and teacher plan sabbatical leaves.

With typical leave provisions, the general intention is to approximate, as closely as feasible, the treatment that would have occurred if the employee had not been on leave. If the individual had worked during the period, employee and employer contributions would have been deducted from pay. Some allowance is typically provided in law in recognition that the employee may have reduced compensation during the leave, or possibly no compensation at all. Because of this, it is not uncommon to allow all or a portion of required or optional contributions made by the employee to be made by some date a year or more following the end of the leave. Generally, interest must be paid on contributions made after the leave ends.

A longstanding problem was lack of consistency within plans or across similar plans regarding leave payment requirements. Contribution requirements often differed, and there were often differences in salary bases used to compute any required contribution amounts, the time limits for making contributions, and interest payment requirements when payments are not received until well after the leave occurs. This lack of consistency created unequal treatment of similar individuals, raising equity issues for the individuals and subsidy effects among employees and contributing employers.

Although problems remain, consistency within plans and within plans of a given system has improved in recent years. In 2007, leave of absence payment procedures were developed to apply to most leaves applicable to a given plan or system of plans, at least for MSRS, the Public Employees Retirement

Association (PERA), and TRA. These provisions have been modified a few times since 2007. The MSRS procedure was coded as Section 352.017, the PERA procedure is Section 353.0161, and the TRA provision is Section 354.72. These provisions create more consistency within plan systems. But across different systems, some differences remain:

- Under the current law MSRS procedure, the payment is an amount equal the employee plus employer contribution rates specified in law as of the end of the leave, applied to the salary applicable when the person returns from the leave. If paid within one year of returning from the unpaid leave, interest must be included. The employer is permitted but not required to cover the employer contribution on behalf of the employee. If payment is made after one year, a full actuarial value payment must be made and the employer is not permitted to cover any of the full actuarial value payment.
- The PERA procedure differs by using salary before the leave and does not permit including any overtime pay that may have occurred. While there is reasonable consistency within MSRS plans and within PERA plans, a similar MSRS member may not be treated comparably to a similar PERA plan member because of the different salary bases.
- TRA's provision differs from both the MSRS and PERA provisions by using, for salary and for the applicable contribution rates, the full salary and contribution rates at the commencement of the leave.

The first class city teacher plans still lack any uniform leave of absence payment procedure. Their procedures are generally inconsistent with those of TRA, and also those of MSRS and PERA. With the first class city teacher plans, the leave of absence provisions are not uniform regarding the applicable salary to compute contributions. For example, the sabbatical leave provision (Sec. 354A.092) and medical leave provision (Sec. 354A.096) use salary prior to the leave, while the parental and maternity leave provision (Sec. 354A.095) uses salary upon returning. First class city teacher plan leave provisions shortchange the pension plan by not requiring interest. Typically payment can be made by the end of the fiscal year following the fiscal year in which the leave ends. Depending on when the leave terminates, that might be as much as two years after the end of the leave. The payment is subsidized because no interest is charged and consequently the fund is shortchanged. Unlike TRA, PERA, or MSRS, there is no provision permitting full actuarial value payment if contributions are considerably delayed.