

RESOLUTION #2013-04 GRANTING SERVICE CREDIT AFTER EMPLOYMENT DISPUTES

(Clarifies Resolution #2004-11)

September 13, 2013

WHEREAS, Utah Code Annotated § 49-11-401(3)(c) provides that the Utah Retirement and Insurance Benefit Act allows the Utah State Retirement Board (“Board”) to fix the minimum time per day, per month, and per year upon the basis of which one year of service and proportionate parts of a year shall be credited toward qualification for retirement; and

WHEREAS, employers participating with Utah Retirement Systems will occasionally take incorrect employment action in terminating or otherwise limiting employment; and

WHEREAS, the Board desires to clarify Resolution 04-11 in regards to granting service credit or other adjustments or contributions made to the Utah State Retirement Office under a judgment or settlement agreement in an employment dispute; and

WHEREAS, Utah Code Annotated § 49-11-401(4) allows the Utah State Retirement Office (“Office”) to estimate the amount of service credit, compensation, or age of any member participant, or alternate payee, if information is not contained in the records; and

WHEREAS, the Board desires to clarify and update the requirements needed in a judgment or settlement agreement from an employment dispute in order for the Board to grant service credit for time not actually worked, or to make other adjustments for contributions made to the Office.

NOW, THEREFORE, BE IT RESOLVED, that in order to both protect the actuarial soundness of the retirement systems and to allow for benefits to be granted when an employee is involved in an employment dispute, the Board makes the following rules. A member may qualify for service credit following a judgment or settlement agreement in an employment dispute only when all of the following requirements are met:

1. The judgment or settlement agreement must contemplate that the employee would have actually worked during a specific period of time in the past and include those dates;
2. The judgment or settlement agreement must require payment of retirement contributions in full, as determined by the Office, for that specific period of time, which must be in the past;

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3. The Office shall calculate the retirement contributions to be paid on:
 - a. Salary that is the greater of:
 - i. the most recent hourly rate; or
 - ii. the highest hourly rate earned in the last full calendar year the employee actually worked; and
 - b. The number of hours worked that is the greater of:
 - i. the most recent number of hours the employee was scheduled to work each pay period (i.e. 80 hours per pay period); or
 - ii. the highest number of hours worked by the employee in the last full calendar year the employee actually worked;
4. The employer, employee, or the employer and employee combined have paid all the required retirement contributions as determined by the Office;
5. The employer is adjudicated or admits to some error or fault in the employment action, and any settlement is not merely a release of claims; and
6. The service credit requested otherwise meets all the other legal requirements for service credit. (i.e. an individual cannot receive more than one year of service credit during any one-year period.)

NOW, THEREFORE, BE IT FURTHER RESOLVED, that any adjustments or contributions made to a Defined Contribution Plan due to a settlement agreement must be in accordance with both state and federal law, including any regulations promulgated thereby, and the rules set forth in the Plan's governing document.

This resolution shall take effect on September 13, 2013