



## Ohio Administrative Code Rule 3309-1-02 Definition of compensation.

Effective: July 27, 2015

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(A) This rule amplifies and is in addition to the provisions of division (V) of section 3309.01 of the Revised Code.

(B) Except as otherwise provided by division (V) of section 3309.01 of the Revised Code, the following payments made by an employer are not "compensation."

(1) Payments made by the employer for accrued but unused compensatory time for overtime worked;

(2) One-time and/or lump-sum payments made by the employer to an employee where such payments are not based upon the employee's standard rate of pay or identified in paragraph (C) of this rule;

(3) Retroactive payments or pay increases made or granted by the employer in whole or in part in consideration of retirement or an agreement to retire; and

(4) Any terminal payments or other additional remuneration paid by the employer in consideration of retirement or an agreement to retire.

(C) The following payments made by an employer shall be "compensation":

(1) Payments on behalf of the contributor to an eligible retirement plan as defined in section 402(c)(8) of the Internal Revenue Code of 1986, 26 U.S.C. 402(c)(8).

(2) Back wages awarded pursuant to a final order or final settlement award that reinstates the contributor to the contributor's former position, or comparable position, without interruption or loss of time.

(3) Effective January 1, 2009, differential wage payments as defined in section 3401(h)(2) of the



Internal Revenue Code, 26 U.S.C. 3401(h)(2).

(4) Payments based on an employee's length of service.

(5) A one-time or lump sum payment by the employer that is paid in lieu of a salary or wage increase, to all persons in a class of employees, in the same dollar amount or same percentage of salary or wages, and in accordance with a written contractual agreement.

(6) A one-time or lump sum payment made by the employer for additional services rendered.

(1) Prior to remitting contributions on salary, wages or other earnings where there is a question on whether such payments or earnings are "compensation," the employer shall request in writing a determination by the retirement board.

(2) The retirement board shall give the employer written notice of its determination.

(3) If the employer fails to request a prior determination and the retirement board determines that the salary, wages or other earnings are not "compensation," then any contributions received on such salary, wages and other earnings shall be deemed unauthorized and shall be refunded.

(4) If the employer fails to request a prior determination and the retirement board determines that the salary, wages, or other earnings are "compensation," then the retirement board may certify for collection pursuant to sections 3309.47 and 3309.51 of the Revised Code the amount of contributions not remitted.