

AAM 310. SETTLEMENT PAY AND ARBITRATION AWARDS

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AAM 310.010 Introduction

Settlement pay and make whole back pay are awarded in settlements negotiated between an employee's collective bargaining representative and the State, in arbitration awards or in tort cases. The language of an award for settlement pay is unique for each letter of agreement reached between an employee, the employer, and the employee's union. Settlement pay and related benefits must be processed according to specific provisions of the settlement agreement or arbitrator's award. The agreements or awards indicate the type of compensation awarded and what benefits apply.

As authorized by [AS 44.21.020](#), this policy provides standards and guidelines for calculating back pay and benefits to comply with negotiated settlements or make whole arbitration awards for cases regarding layoff, dismissal, demotion, suspension, or leave-without-pay (LWOP).

Settlement pay and make whole back pay policies of the State comply with Internal Revenue Service (IRS) regulations regarding reportable income, deferred compensation, retirement contributions, supplemental benefits, and Medicare tax deductions. These policies are in compliance with state statutes regarding unemployment insurance overpayment provisions, the Public Employees Relations Act (PERA), other Alaska Administrative Manual policies regarding payroll, and collective bargaining agreements. Any deviation from this policy must be authorized by the arbitrator's award or in the form of a negotiated settlement authorized by the Commissioner of Administration.

AAM 310.020 Back Pay Period Defined

Unless specified otherwise in the arbitration award or other negotiated settlement, the back pay period for make whole awards begins on the date of layoff, dismissal, demotion, suspension, or leave-without-pay (LWOP) and ends when one of the following occurs:

1. The employee is put back to work,
2. An offer of reinstatement is made, or
3. Another resolution brings closure to the action.

AAM 310.030 Calculation of Back Pay - Base Pay

Back pay for the make whole period is calculated by computing what the employee would normally have earned less earnings from other sources.

Wages are adjusted for merit increases that would have been awarded during the make whole period if so granted, agreed to, or ordered. Longevity increases are granted in accordance with [AS 39.27.022](#). Performance incentives are granted in accordance with the collective bargaining agreements. Cost of living increases are added to back wages retroactive to the date of the increase.

AAM 310.040 Calculation of Back Pay - Premium Pay

No compensation is paid for overtime unless specified in the arbitrator's award. If specified in the award, overtime will be calculated based on the employee's average semimonthly overtime hours worked during the 12-month period immediately preceding the make whole period. Overtime eligible employees are compensated at the rate of one and one-half times the regular rate of pay in addition to the applicable base wage for holidays that would have been worked during the period.

Compensation for shift differential is paid in accordance with the employee's regular schedule. No compensation for standby is paid unless specified in the arbitrator's award and the employee's department has a written policy of maintaining a standby roster. If both conditions are met, standby pay will be calculated based on the employee's average semimonthly standby hours worked during the 12-month period immediately preceding the make whole period.

If a replacement employee was assigned hazardous duty or sea duty during the grievant's make-whole period, the grievant will be entitled to hazard or sea duty pay calculated using the actual number of hazardous hours or actual number of hours served at sea by the replacement employee. Otherwise, no back pay for hazardous duty or sea duty will be calculated.

AAM 310.050 Offsets to Back Pay - Gross Amounts

The employee has a duty to mitigate back pay damages by making reasonable efforts to find interim employment. It is the obligation of the employee to provide documentation of earnings. Employees represented by a union shall provide documentation through their collective bargaining unit representative. All other employees will provide documentation of earnings directly to the employer. The gross amount of make whole wages shall be mitigated by the following interim earnings:

1. Full time employment earnings.
2. Part time employment earnings.
3. Overtime earnings during the interim period.
4. Self employment earnings.
5. Willfully incurred income losses.
6. In kind income at fair market value.
7. Inability to work due to illness of self or a family member (including disability or workers' compensation income).
8. Inability to work due to incarceration or being unavailable to the work force due to other absences.
9. Gross pay for forecasted holidays where provided by collective bargaining contracts.

AAM 310.060 Offsets to Back Pay - Net Amounts

The net amount of make whole wages (make whole wages less offsets and deductions) shall be mitigated by unemployment benefits received by the employee during the make whole period. Unemployment benefits are provided for in [AS 23.20.390](#), [392](#), [505](#), and [530](#). For information on overpayments refer to [AAM 330 Overpayments](#).

AAM 310.070 Strike Wages

No adjustments will be made for strike pay. However, no back pay will be made to the employee for any period while the employee could have participated in a sanctioned strike against the employer.

AAM 310.080 Holiday Compensation

The employee will be compensated at the appropriate rate for holiday hours if the employee would have worked the day before and the day after a scheduled holiday during the make whole period

AAM 310.090 Personal or Annual and Sick Leave Adjustments (07-04)

Personal or annual leave that would have accrued during the make whole period will be added to the employee's leave account. Accruals are not reduced by mandatory leave usage, as the employee was not given the opportunity to use leave.

Sick leave balances will be restored to pre-separation levels. In addition, sick leave that would have accrued during the make whole period will be added to the employee's leave account.

Employees who have had an offset applied under [AAM 310.050](#) Offsets to Back Pay - Gross Amounts, # 7, may submit documentation and request all or part of the period of illness be charged against available personal, or annual and sick leave balances. Documentation must include hospital bills or a physician's statement attesting to the illness, period of hospitalization, and period of recuperation.

AAM 310.100 Repayment of Personal or Annual Leave Cashed Out

Employees will be given a one-time opportunity to buy back personal or annual leave cashed out at the time of layoff, dismissal, demotion, suspension, or leave-without-pay. Personal or annual leave may be

restored to pre-separation balances by a lump sum payment at the time of reinstatement to state service.

AAM 310.110 Union Business Leave

Business leave deductions will be handled in accordance with the bargaining unit agreement for an employee being reinstated to a position in the same bargaining unit (BU) from which the employee was laid off, dismissed, demoted, or suspended. If during the make whole period the bargaining unit had a business leave assessment of all members, a deduction will be made from the employee's leave balance as appropriate.

An employee reinstated to a different bargaining unit with a mandatory union business leave contribution must have the deduction taken from the personal or annual leave balance.

AAM 310.120 Union Dues

The employer will calculate and make payroll deductions for payment of retroactive dues. If at the time of layoff, dismissal, suspension, or leave-without-pay (LWOP), the employee had a valid dues checkoff on file with the employer and the checkoff is still valid for the employee's reinstatement, it will be reactivated by the employing agency.

If the employee did not have a valid checkoff on file with the employer, or if reinstatement is to a different bargaining unit, the employee is responsible for obtaining the appropriate dues checkoff form from the union and submitting the completed form to the union.

The employee is responsible for recovery of any union dues paid by the employee to the union during the period of layoff, dismissal, demotion, suspension, or LWOP.

AAM 310.130 Legal Trust

For those bargaining units with a Legal Trust plan, the State will calculate and pay retroactive premiums to the plan administrator to cover the period of separation. Retroactive premiums for Legal Trust must be calculated by the employee's agency and included on the make whole payment as an employer charge.

AAM 310.140 Supplemental Benefits System

Contributions to the Alaska Supplemental Benefits System (SBS) are limited to the maximum allowed in the year the settlement is paid. Back pay is considered gross income in the year paid and cannot be applied to prior years in which it was earned. As a result of this limit, a former employee may lose some tax advantages and SBS contributions for which the employee would have been eligible had employment continued. In this situation, these lost benefits may be identified and awarded through additional amounts added to the settlement.

SBS accounts refunded to the employee at the time of layoff or dismissal through direct payment, transfer to an individual retirement account (IRA), or the purchase of an annuity cannot be returned to the SBS annuity plan at the time of reinstatement to state service. As long as a payment has not taken place, previous SBS benefit payment options can be canceled.

AAM 310.150 SBS Voluntary and Other Benefits

SBS voluntary contributions will be deducted and paid retroactive to the beginning of the benefit year (July 1) in which the grievant is paid. Retroactive benefits will be the same benefits in effect prior to the layoff, dismissal, suspension, or period of leave-without-pay (LWOP). If an open enrollment period or status change occurred during the aggrieved period, the employee is entitled to change SBS voluntary benefits upon reinstatement.

Deductions for dependent care contributions will only be made for the current benefit year in which the grievance is paid. Deductions are not taken if the employee did not incur child care costs during the aggrieved period. An employee who cares for the employee's own children during the aggrieved period may make a claim against child care deductions if the employee fulfills the expense qualification requirements of the plan.

Optional Life or Group Life Insurance premiums will be deducted and paid retroactive to the date of layoff, dismissal, suspension, or period of LWOP.

AAM 310.160 Deferred Compensation Plan

Employee contributions to the Deferred Compensation Plan (DCP) are limited to the maximum allowed in the year the settlement is paid. Back pay awarded to an employee is gross income in the year paid and cannot be applied to prior years in which it was earned. If the settlement allows

for a deferred compensation deduction from back pay, the deduction is limited to the maximum amount allowed by the plan for a year unless catch up provisions apply.

Amounts received by a participant in the DCP through direct payment or transfer to another 457 plan cannot be returned. If the employee has taken the DCP account balance in any form of payment, the employee cannot return the money to the DCP. The employee must re-enroll in the DCP program to restart deductions or have a deduction taken from back pay.

A DCP participant can cancel a previous deferral if reinstatement to the plan takes place before the deferral date is in effect.

AAM 310.170 Public Employees Retirement System (01-06)
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Public Employees Retirement System (PERS) employee and employer contributions are required for employees who would have been eligible for PERS during the make whole period. The employee's and employer's calculations are based on compensation earned. For purposes of this section, "compensation earned" is defined as wages for personal services that would have been paid to the employee had there been no break-in-service. Offsets (reductions to make whole compensation for earnings from other sources) will not reduce the basis on which PERS contributions are calculated.

For income tax purposes, compensation resulting from arbitration awards or any other negotiated settlement will be treated as income in the year paid. An employer cannot make retroactive contributions for the employee. In any make whole situation, PERS should be sent a complete copy of the actual settlement documents and any calculation worksheets. Calculations must be detailed on a pay period by pay period basis for proper recording of employee and employer contributions and to ensure correct documentation of the employee's salary by PERS. Worksheets for part-time employees who are being made whole must include only hours that would have been worked.

Employee contributions to PERS for "compensation paid" are pretax. Employee contributions on any gross offset amounts are optional. The employee should be given the option of establishing a post tax indebtedness account or having contributions taken as pretax when the payment is made. PERS will be notified of any offset amount so an indebtedness account can be established. PERS will notify the employee of repayment options and advise the employee of the effects the indebtedness has on retirement.

Employer contributions to PERS for make whole compensation will be calculated by payroll period at the rate that was in effect for that pay

period. Employer contributions are due on the whole settlement amount regardless of any offsets.

AAM 310.180 Reinstatement of PERS Refund

If an employee separates, receives a PERS account refund, and must subsequently be made whole for a period of service, the employee may reinstate the prior refund. This can be done once the make whole adjustments described previously for employee contributions and service credit are completed by PERS. An indebtedness will be established for the employee to allow them the option of reinstating prior refunded service. PERS will notify the employee of repayment options and advise the employee of the effects the indebtedness has on retirement.

If the employee is not returning to work and wants to receive an additional refund of make whole PERS contributions, a separate application will be required.

PERS will make the repayment arrangements with the employee at the time of reinstatement. If the employee received benefits and elects to remain retired after the make whole settlement, retirement benefits will be recalculated to include the additional service and any necessary adjustments will be made to ensure the employee receives the correct amount of benefits.

AAM 310.190 Health Insurance (07-04)

Health insurance will be reinstated from the date it lapsed. Insurance premiums will be paid by the employer. The employee will submit all claims directly to the health insurance carrier.

The employee portions of retroactive health insurance premiums will be deducted from gross make whole pay or other negotiated settlement wages.

AAM 310.200 Medicare Deductions

Compensation resulting from arbitration awards or other negotiated settlements will be treated as income in the year paid. Medicare taxes are calculated on income at the rate in effect for the year compensation is paid. There is no limit on compensation or income subject to Medicare tax.