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STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

In the Matter of the PERA Salary  
Determinations Affecting Retired and Active  
Employees of the City of Duluth,

**AFFIDAVIT OF MARY MOST VANEK**

OAH Docket No. 4-3600-2080902

Allen Johnson, et al., Petitioners.

STATE OF MINNESOTA    )  
                                  ) ss.  
COUNTY OF RAMSEY    )

MARY VANEK, being first duly sworn, deposes and states:

1. I am the Executive Director of the Public Employees Retirement Association (“PERA”), which has administrative and management authority over both PERA General Plan (“General Plan”) and the PERA Police and Fire fund (“P&F Fund”). My duties as the Executive Director are set forth under Minn. Stat. § 353.03,3a(b) (2008) and include the management of the PERA Association, and the determination and payment of annuities, refunds, disability benefits and PERA’s necessary operating expenses. Those duties include determining whether certain amounts paid by an employer constitute salary for PERA purposes. *See*, Minn. Stat. § 353.01, subd. 10(b)(2) (2008).

2. Both the general and police and fire are defined benefit plans. Under these plans retirement benefits are determined through a formula based upon years of service and a participant’s “high five average salary.” The most important part of this formula is “salary.” It is salary that determines the contributions that employers and employees must make to PERA in

order to fund future benefits, and it is salary that determines the amount of an individual's pension.

3. PERA's general plan and the P&F Plan are "governmental plans" for purposes of federal law. In general, governmental plans are not subject to Titles I and IV of the Employee Retirement Income Security Act of 1974 (ERISA), which provide mandatory requirements for private plans including termination insurance. However, governmental plans are subject to many of the provisions required for "qualified plans." In order to assure that employer/employee pension contributions and accrued benefits remain untaxed until retirement benefits are received, a governmental plan must maintain its status as a tax-qualified plan under 26 U.S.C. § 401(a). . Those requirements include a complex procedure to follow where errors are made in the administration of a plan. A failure to follow the terms of a retirement system's Plan Document, which results in overpayments, underpayments or excess contributions is considered by the IRS to be an "operational failure" and must be corrected using the standards set forth in Rev. Proc. 2008-50, 2008-35 I.R.B. 464, 2008 WL 3522439 (IRS RPR).

4. Minn. Stat. § 353.27, subd. 4 (2008), requires governmental subdivisions participating in PERA to accurately report employees' salaries, deduct the required employee contributions and submit payment to PERA. PERA has prepared and provides to governmental subdivisions an "Employer Reporting Manual" which details the reporting process and instructs employers on what types of compensation are, and are not, PERA eligible "salary." The Manual is available on PERA's website and in the past has been mailed to all governmental subdivisions. Attached hereto as Exhibit 1 is a copy of the relevant pages from the most current Employer Manual. Its provisions regarding what is, and what is not "salary" date back to the year 2002.

5. Over 2,000 governmental entities participate and contribute to PERA. PERA believes that the law places primary responsibility on its governmental entities to accurately report salaries and contributions to PERA. PERA utilizes a number of resources to educate and inform both employers and employees of PERA's requirements, including seminars and workshops throughout the state, newsletters, and an extensive internet site with instructions on how to contact PERA representatives. Several PERA employees are assigned to respond to telephone and e-mail inquiries by governmental subdivisions and employees who are encouraged to contact PERA with any questions or concerns. The reporting procedures that PERA utilizes to administer its programs, the reporting by employers, and the general manner in which PERA responds to employer inquiries are explained in the Affidavits of Cheryl Keating which have been filed in this proceeding.

6. A basic principle for Minnesota pension plans is that the final salary or final average covered salary of participants is intended to reflect a retiring participant's pre-retirement standard of living, so that the pension plan replaces the appropriate portion of that standard of living based on the person's length of service credits. Therefore, the intended goal of Minnesota's Legislative Commission on Pensions and Retirement and the public retirement plans has been to define "salary" so that it reflects the regular types of compensation that participants received that set the participants' standards of living. In the early 1990's there appeared to be an increased use of flexible benefit plans, cafeteria plans and other forms of compensation under which an employee was given options on how to spend certain amounts paid by the employer. The statewide funds saw a need to clarify their definitions of salary in order to assure that such plans were not used to erroneously raise salary for pension purposes.

7. During the 1993 legislative session, PERA prepared an administrative bill for consideration. Attached hereto as Exhibit 2 is a copy of PERA's summary that was provided to both the legislature and to the PERA Board of Trustees. As set forth on page 3 of that summary, the purpose of the proposed amendments to the PERA definition of salary was to clarify that employer-paid flexible spending accounts, cafeteria plans, healthcare expense accounts, and day care expenses were not salary. I have been an employee of the PERA Association for over thirty years. I believe that PERA has always treated amounts paid directly by an employer to an employee's deferred compensation plan as ineligible salary for PERA purposes.

8. Additional clarification of the definition of salary was intended during the 1994 legislative session, primarily by adding the term "used by the employee" and "employer paid fringe benefits" to the existing exclusion for employer paid amounts. The purpose of the amendments was to provide a broader and more defined exclusion and assure that amounts added to employees' salary that would otherwise be used as a minimum employer contribution towards employee benefits did not count as salary for PERA purposes. Also intended was to give the Executive Director additional authority in making "salary" determinations. Attached hereto as Exhibits 3, 4, and 5 are memoranda prepared by myself to the PERA Board of Trustees, dated March 28, 1994 and February 3, 1994, together with a 1994 administrative bill summary. Attached as Exhibit 5 is a Summary of the 1994 legislation provided by Edward Burek, Deputy Executive Director, Legislative Commission on Pensions and Retirement dated June 10, 1994.

9. Attached as Exhibit 7 is a memorandum dated August 12, 1994 from Lawrence Martin, Executive Director, Pension Commissions which addresses "salary" issues and led to the appointment of an advisory committee to study those issues.

10. PERA's records reflect that the first contact between representatives of the City of Duluth and PERA occurred through the exchange of telephone and e-mail correspondence in late July 2007. Attached hereto as Exhibit 8 is a copy of the e-mail correspondence between Chris Arcand at PERA and Wayne Parson, City Auditor, City of Duluth. Under PERA's procedures, the inquiry was considered to be routine and required no follow-up by PERA.

11. Attached hereto as Exhibit 9 is a letter dated September 15, 2008 from Lisa Potswald, Chief Administrative Officer, City of Duluth, to myself, informing PERA that the City of Duluth had erroneously treated certain employer-paid benefits as "salary" for PERA purposes. This is the first formal correspondence PERA received on these issues.

12. Attached hereto as Exhibit 10 is an October 8, 2008 letter to PERA from City Auditor Parson, discussing the process that would be used to provide PERA with payroll abstracts on the amounts erroneously reported as salary to PERA.

13. Attached hereto as Exhibits 11, 12 and 13 are copies of letters the City of Duluth sent to active and retired employees informing them of the errors in the payroll reporting to PERA. These letters are available on the City of Duluth's web-site.

14. Attached hereto as Exhibit 14 is a document available on the City of Duluth's web-site which PERA believes city representatives provided to the City of Duluth's City Council in August 2009.

15. PERA staff members reviewed the bargaining agreements which were posted on the City of Duluth's web-site and all payroll summaries submitted by the City of Duluth. The payroll summaries set forth on an annual basis, amounts that had been reported to PERA as either a deferred compensation payment, an insurance supplement payment, or payment for a personal leave day. Based upon the information provided, PERA readjusted and redetermined

benefits and overpayments and will make required adjustments in accordance with the final decisions in this proceeding.

16. Since late 2008, PERA has been in contact with IRS representatives concerning the correction of what IRS deems to be an "operational failure." My understanding of IRS requirements is that in correcting a plan administrative error, there is no federal statute of limitations that would apply, the issue of what constitutes "salary" under the PERA plan is a state law issue, but the results must be applied to all PERA participants who would be similarly affected.

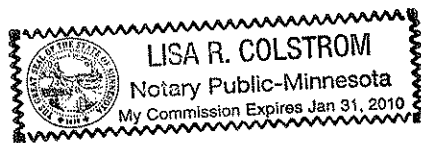
Further Affiant sayeth not.

  
MARY MOST VANEK

Subscribed and sworn to before me on

this 30 day of December, 2009

  
NOTARY PUBLIC



AG: #2559412-v1

- Public hospitals owned or operated by, or an integral part of, a governmental subdivision(s)
- Economic development authorities created or operating under sections 469.090 to 469.108
- Minneapolis Employees Retirement Association Fund for employment initially commenced after June 30, 1979
- Spring Lake Park Fire Department, incorporated
- Dakota County Agricultural Society

**Employer Responsibilities**

PERA-eligible employers are entrusted with the responsibility of enrolling all employees who qualify for membership so that each person receives an individual PERA member account. Employers are legally required to remit contributions and related information to PERA on a pay period basis and to report employment status changes that occur to assure the accuracy of employees' records so that members receive the benefits to which they are entitled by law. PERA's staff and members rely on employer representatives to meet the responsibilities and obligations set by statute and PERA policy. These responsibilities include, but are not limited to, the following:

- Determine PERA membership eligibility and promptly enroll eligible employees in the appropriate PERA plan. Employers must also prepare certifications as required by law to complete the enrollment of certain employees into the Police and Fire Plan and all employees enrolled in the Correctional Plan. When membership in PERA is optional, the employer is to inform the individual of the pension plan choices he or she has and to enroll the individual in the plan to which the individual elects (in writing) to participate.
- Withhold member contributions from employee PERA-eligible earnings at the plan-specified rate
- Submit required employee and employer contributions
- Report the wages of employees who are retired from PERA and return to a PERA-covered position using the required PERA format within the established due dates
- Report complete and accurate information associated with contributions withheld from employees' earnings each pay period. This includes, but is not limited to, date employees are paid, pay cycle coverage dates, PERA-eligible salary, etc.
- Provide member information and employment status changes to PERA in a timely manner
- Prepare an Annual Exclusion Report to certify the exclusion of employees from PERA

- Maintain records for use in the proper administration of PERA laws and requirements
- Report changes that occur in agency names, address or governmental status and update employer contact data maintained by PERA
- Respond to requests and inquiries from PERA staff, including those concerning member service and salary histories

## Employer Services

PERA offers a variety of informational materials and services to assist you in the performance of your duties associated with PERA. These services include written and electronic resources, education and training seminars, and individualized information upon request.

Please refer to the 'Contact Us' page on PERA's Web site for more information on who to contact regarding specific questions.

### PERA Employer Manual

*This Employer Manual is also available for viewing or download from PERA's Web site.*

The PERA *Employer Manual* contains comprehensive information about PERA and its policies and plans. The manual explains the rules and regulations of PERA and the laws that govern the association as simply and accurately as possible. It is intended to provide you with information on eligibility, enrollment, reporting and more. The manual is designed so that it can effectively be the first resource in answering questions related to PERA.

### The PERA 'phrase' newsletter

The quarterly newsletter, *The PERA 'phrase'* is PERA's primary source for sending critical news, changes and information to PERA employers. The newsletter, published at least four times per year, is mailed to all Payroll contacts as well as any other employer representatives who request it. *The PERA 'phrase'* is also available on our Web site.

Those employers who are registered for PERA's Employer Reporting and Information System (ERIS) can choose to receive an electronic version of the newsletter rather than a printed copy.

### PERA Web site

PERA maintains a Web site that contains information for both employers and members. The employer section contains on-line versions of the Employer Manual and the *PERA 'phrase'*, downloadable forms and instructions, on-line registration for employer seminars, current news and a method for employers to submit questions via email.

The member section includes valuable news related to members, benefit calculators, downloadable brochures and forms and on-line registration for the many member education seminars offered by PERA.

PERA's Web site also includes information concerning PERA's Board of Trustees, legislative updates, financial news, useful links to other state agencies and much more. PERA's Web site address is [www.mnpera.org](http://www.mnpera.org).

### **Employer Reporting and Information System**

*Go to our Web site to register for ERIS.*

PERA's Employer Reporting and Information System (ERIS) is an Internet-based tool for employers to conduct PERA business. Among the current capabilities are enrolling new members, conducting employee searches, sending files, submitting employee status changes and maintaining employer contact information. A future module will include contribution reporting.

### **System Access and Security**

ERIS operates through our Web site and will not require any computer programming or data downloads by employers. An employer who wishes to report new enrollees through ERIS will simply need to contact PERA to get a user name and password and then enter the system through our Web site with that data. Because ERIS includes the exchange of certain private member data such as addresses and social security numbers between PERA and employers, we put a high emphasis on system security and data protection methods, such as encryption and secured transmission.

Registration instructions are available from our Web site.

We took several steps to protect the privacy of information that will be sent over the Internet and prevent unauthorized access. Employers enter ERIS using 128-bit *Secure Socket Layer* (SSL) encryption, a protocol for securing data across computer networks. For entry, an employer uses a PERA-assigned user identification and password.

Although there is no cost to employers to use ERIS, there are certain system requirements. First, the site requires a Secured Socket Layer (SSL) compliant browser. If you are using Windows, we recommend using Mozilla Firefox, Microsoft Internet Explorer 6, or Netscape Version 7. We recommend using Mozilla Firefox or Safari if you are using Apple Macintosh. The system checks each employer's computer to ensure that the correct browser is being used. A link is available to Mozilla Firefox, Internet Explorer and Netscape if an upgrade is required. Second, the person who wishes to use ERIS must have a valid business email address that we can use to send important messages and instructions.

**System Administrator**

The first step an employer must take before registering to use the new web system is to determine who will serve as the "System Administrator" for ERIS. The System Administrator will maintain security rights within the agency and serve as the liaison between the employer agency and PERA. The individual assigned to serve as System Administrator is the only person in an organization that needs to register for ERIS through PERA's Web site.

The System Administrator is responsible for determining who within the organization has access to which components of ERIS. As new modules are released, the System Administrator must decide which employees will have access to the various functions.

To grant ERIS access to other individuals, the System Administrator uses the 'Manage Access Rights' subsection under the Admin module. This screen is used by the one or two individuals who are designated as an employer's ERIS System Administrators to facilitate their management of who within their employer agency may use ERIS and for what purpose.

**Registration Process**

Once the System Administrator is determined, that person registers for access to ERIS through PERA's Web site.

The online registration process generates two automated responses. First, an email is sent to the System Administrator confirming that this individual has been recorded as the ERIS Administrator for the named employer. Second, PERA's system generates a letter that provides more details concerning ERIS, as well as the User Name assigned to that employer representative, and the *Agreement and Authorization for Access* form. The letter and form arrives through U.S. Postal mail.

The *Agreement and Authorization for Access* form gives an overview of the responsibilities of the System Administrator. The System Administrator must sign and date the form. Additionally, another person of authority within the employer agency must sign the form indicating that he or she is approving the designated ERIS Administrator. Once the form has been read and signed, it should be mailed back to PERA. PERA staff then processes the Authorization form and, upon completion, which should take less than 6 days. An email containing a temporary password is sent to the System Administrator when PERA has completed their process.

**Passwords**

PERA issues a temporary password used to access ERIS the first time. Immediately upon entering ERIS, the system requires the user to change

the password to a unique combination of alpha and numeric characters. For security purposes, the password should be something only the user can quickly identify and must not be distributed to others. Each user of ERIS must have his or her own password to sign on to ERIS.

### Training

Our goal was to make ERIS as user-friendly as possible and easy to navigate even for rare and occasional users of the system. However, we also realize that all new tools and procedures require a learning curve. ERIS includes on-screen help text and we have designated option '2' of the Employer Response Line as the ERIS Help Line.

### Email

PERA encourages employers to arrange for email access for payroll, personnel, finance, and benefits staff who work directly with PERA staff. In the months and years ahead, we foresee an increasing amount of interaction with employers and members through email and the Internet. Employers who have access to email can submit questions about eligibility, enrolling employees, employee status changes, electronic reporting information and more to PERA's Account Information Management division.

Employers with Internet capabilities can view and download up-to-date brochures, notices, forms, etc., through our Web site and we anticipate using email in the future to send important announcements and information updates.

Email is an inexpensive, efficient, fast way to exchange information, but we recognize that as it is commonly used today it is not an *entirely* secure means of sending data unless it is encrypted (scrambled). PERA is researching what it would take to establish an email method for an employer that includes encryption or passwords, but we cannot make a commitment for its development at this time. Employers concerned about sending unprotected emails may want to reserve their use of emails to matters that do not require the inclusion of private data on members.

Please refer to the 'Contact Us' page of the Web site for more information on whom to contact regarding specific questions.

### Employer Response Line

PERA maintains two telephone lines for employers with questions or comments. Employers may dial toll-free at 1 (888) 892-PERA (7372) or use the Twin Cities metropolitan area number, (651) 296-3636. Each number takes the caller to an automated system that provides a menu by topic that will connect the caller to a specific PERA staff member or, if that

*Employers can quickly  
contact PERA by calling  
1 (888) 892-7372 or  
(651) 296-3636.*

staff member is unavailable, to his or her voice mail box. Please note that these numbers are for use by employers who need information on employer-related issues, such as enrollment or contribution reporting.

PERA members with questions about accounts or benefits should call PERA's Member Services Line. The Member Services telephone numbers are 1 (800) 652-9026 (toll-free) or (651) 296-7460 (Twin City metro area).

*The fastest way to register for a PERA seminar is by going online.*

### **Employer Seminars**

PERA provides various opportunities for payroll and personnel officers, as well as for other representatives of local government, to obtain information or instructions on how to carry out pension responsibilities.

For those whose PERA reporting responsibilities may be relatively new, or those wishing to review the fundamentals of PERA membership and reporting, we provide online presentations covering various topics. As you go through the presentation, you are welcome to call or email us with specific questions.

Individuals familiar with the basic membership and contribution procedures are encouraged to attend one of our Employer Workshops. These workshops, which are conducted in various locations around Minnesota, provide not only a review of PERA's membership and reporting requirements, but also opportunities to discuss certain topics in greater depth and time for group discussions. The workshops often use a series of PERA-developed Fact Sheets, Case Studies and informal quizzes to cover a variety of topics.

Workshops are typically half-day sessions but can vary in length based on content. PERA does not assess a charge to attend the workshops, but we require advanced registration. Seminar location schedules are announced in *The PERA "phrase"* and on the Web site. You may register for a workshop on the Web site, by mail or fax, or by calling PERA's Employer Phone Line (select option 3).

For a schedule of upcoming Employer Workshops, please visit our Web site, [www.mnpera.org](http://www.mnpera.org).

### **Special Meetings**

PERA staff is available to meet with employers on a small-group basis to provide personalized instructions on reporting issues. PERA staff can also speak at various business conferences related to public employers. Employers or associations interested in scheduling a meeting or speaking engagement with PERA staff should call PERA's Employer Response

Line in advance of the desired date. Special meetings are subject to the availability of staff, resource accommodations, and budget.

### **Group Term Life Insurance**

A governmental employer eligible to offer PERA retirement plans to its employees is also automatically approved to make available group term life insurance to its workers, if the employer wishes to do so. The life insurance program is made available to members of the National Conference of Public Employee Retirement Systems, of which PERA of Minnesota is a member. The policies are term insurance historically providing decreased death and injury coverage for fixed premium levels. The coverage may be continued into a member's retirement with deductions taken from the member's monthly pension payments, as long as the member enrolled in the program *before* retirement. Many employers make payroll deductions available for this program. For more information, contact the insurance administrator, Gallagher Benefits Services at 1 800 628-5691 by telephone or visit its Web site at [www.gallagherbyerlyinc.com](http://www.gallagherbyerlyinc.com).

### **Comprehensive Annual Financial Report**

PERA's *Comprehensive Annual Financial Report* (CAFR) contains a complete disclosure of the structure and financial status of PERA and its funds. It also includes suggested footnote disclosures so employers can comply with current accounting standards in annual reports. The CAFR is available in December of each year. To reduce administrative costs a limited number of paper copies are printed. PERA requests that those employers with Internet access print or view the CAFR from our Web site.

## **Employer Contacts**

PERA maintains an employer database of all governmental agencies eligible to participate in PERA and uses the names and addresses in it for communications. Therefore, employers are required to designate at least one staff member as the contact person for each agency. To serve as a contact for an employer, the staff member must be an officer or employee who has the authority to complete, sign and submit member enrollment forms, *Salary Deduction Reports* and other forms and communications to PERA on behalf of the agency. A contact person must also be able to respond to both written and oral requests and inquiries by PERA staff. A postal mailing address and telephone number must be provided for each contact person listed in PERA's records.

### **Types of Contacts**

PERA's database allows employers to designate several types of contacts for PERA's purposes. At a minimum, an employer must

designate one staff member to serve as the Payroll Contact for the agency.

When designating contact persons, an employer may choose to name one staff member to serve as the contact in more than one area. However, an employer cannot list two staff members to share a single contact designation. For example, Jane Doe can be defined as both the Payroll Contact and the Human Resources Contact and John Smith can be named as the Finance Manager. However, the employer cannot define both Jane and John as the Payroll Contact.

*You must designate one staff member to serve as the Payroll Contact.*

**Payroll Contact**

This staff member receives all correspondence and reports concerning PERA contribution reporting, including the agency's pre-printed *Salary Deduction Reports*, if applicable. If an employer only wishes to define one staff member as a contact, then that individual is listed as the Payroll Contact in PERA's database. If an employer defines more than one contact, the Payroll Contact should be the staff member who regularly processes or oversees the reporting of member salary and contributions.

**Human Resources/Personnel Contact**

Oftentimes the staff member who completes and oversees the enrollment of new employees into PERA is different than the Payroll Contact. The person designated as the HR/Personnel Contact receives correspondence and questions about enrollment, employee eligibility, and employment status changes.

If no HR contact is listed, PERA will direct personnel related questions to the person listed as the payroll contact.

**Administrator**

This person is typically a department head, manager, or director who oversees employees who are responsible for PERA-related duties. PERA will only initiate communication with the person designated as the Administrator when it needs input from an employer at an administrative level. PERA will not contact this person for routine reporting issues.

**Finance Manager**

This is the individual who administers or oversees the agency's financial operations, such as the Finance Manager, Business Manager, or Director of Finance. PERA will only contact this person when managerial input is needed regarding financial information related to PERA.

**Information Systems/Data Processing Contact**

This individual is responsible for the generation of electronic media used for PERA reporting. He or she must be able to answer technical questions about the agency's electronic reporting practices.

**Electronic Funds Transfer**

With the implementation of Electronic Funds Transfer (EFT), employers may designate a person to specifically work with this feature. This person should be the individual responsible for electronic transfer of funds from the employer to PERA.

**Omitted Deductions**

Employers who have a specific person to work with omitted deductions can designate that person as the omitted deduction contact.

**Legal Representative**

This person performs legal counsel for the agency.

**Exclusion Reporting Contact**

If an agency has a specific person who processes PERA's Annual Exclusion Report, that person can be designated as the Exclusion Reporting Contact.

**Mail Recipient**

Employers may also designate staff members who only wish to be recipients of PERA's newsletter and special mailings. Mail recipients may be those who do not perform operational duties associated with PERA or who share job responsibilities with a staff member designated as a contact, such as the Payroll or Human Resources Contact.

**Maintaining Contact Data**

At various intervals, PERA sends an *Employer Profile Document* to employers showing the current contact information in the PERA database. Employers should use the document to verify correct contact information, such as names, mailing or email addresses and telephone numbers, and to convey changes in any of these areas.

## Employer Identification Number

PERA assigns all eligible employers a six-digit identification number. This number is recorded in our database and placed on all correspondence and other communications. Employers are to include their assigned employer number on all remittances to PERA.

*Ask PERA to consolidate your employer records under a single 6-digit PERA ID No.*

Prior to July 2000, PERA assigned more than one identification number to employers. Situations which may have resulted in the assignment of additional employer numbers were when employers had more than one pay period cycle such as biweekly and monthly; employers had distinct divisions or departments within it; or employers participated in the Correctional, Police and Fire Consolidation, or Defined Contribution Plans in addition to the Coordinated Plan. Due to PERA's expanded computer capabilities, we no longer need separate employer numbers to handle these structural characteristics. In fact, we have found that PERA reporting is simpler when an entity has only one PERA employer identification number. If your agency reports contributions under multiple PERA identification numbers, you should contact the PERA staff to determine if we can combine these accounts into a single employer record.

## Consolidation or Dissolution of Employers

Occasionally, employers have a change in status due to consolidation or merger with another agency. Other employers, such as hospitals sold or leased to private organizations, may no longer be eligible to participate in PERA. Any employer considering or affected by changes such as these should notify PERA at least 60 days prior to the effective date of the change to determine the impact of the anticipated change. In the case of a consolidation or merger, the new or remaining employer agency is responsible for timely submission of this notice. The agency should provide PERA with copies of official documents related to the consolidation or purchase such as resolutions enacted by the governing body, legislative bill language and agreements or contracts.

In addition, the following information must be given to PERA *before* the effective date of consolidation, sale, lease, or merger:

- Names and PERA employer numbers of the agencies being consolidated<sup>1</sup>
- Legal name and address of the newly created entity

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<sup>1</sup> If one or more PERA-covered employers are consolidating or merging into an existing employer that will continue to operate under the same name or school district number, the PERA employer number will remain the same. If a new public agency is being formed because of the consolidation, PERA will issue a different employer number to the new public agency. A common example of this type of consolidation is when two school districts merge into a new district that is given a new Independent School District number.

- Name, address and telephone number of the contact person(s) responsible for PERA reporting for the new agency
- Names and Social security numbers of PERA members transferring to the newly formed agency

PERA staff will review these materials and determine, on a case-by-case basis, whether the legally restructured or new entity may be considered a governmental agency for PERA purposes

elect to continue participation are obliged to pay both the employee and employer contributions, unless the labor organization chooses to pay the employer portion.

### **Membership at Employer Discretion**

Membership is optional by action of the employer for employees of the following governmental subdivisions under the conditions specified:

- **County historical society employees** - The county board must pass a resolution to authorize participation of historical society employees. Once passed, all employees who subsequently reach the monthly earnings requirement must participate.
- **Minnesota association of townships' employees** - The board of the townships association, at its option, may certify to PERA that its employees are to be included for purposes of retirement coverage. Once certified to PERA, the status of the township association as a participating employer is permanent.

### **Determining PERA-Eligible Salary**

Determining what does and what does not qualify as PERA-eligible salary is important in that salary determines: 1) whether or not an employee can receive coverage in a PERA Defined Benefit Plan; 2) the amount that is to be contributed by DBP and DCP members and employers; and 3) a DBP member's high five-year average salary, which is one of the components used to calculate pension benefits.

PERA Defined Benefit Plan membership should start when an employee has earned more than \$425 in any given month (assuming exclusion for other reasons is not applicable). PERA deductions are required from the pay period in which an employee's monthly earnings exceed the eligibility threshold. Deductions must continue on all future salary, even if the monthly earnings fall below \$425. An employee remains a PERA member until termination of governmental service.

Only salary subject to PERA withholding is to be used to determine membership eligibility and to determine if a payment qualifies as reportable compensation from which retirement deductions can be taken. Some forms of compensation are not subject to PERA withholding and cannot be used to qualify a person for membership or used to compute pension plan deductions.

All employees who do not fit into one of the valid membership exclusions must be immediately enrolled in PERA unless membership is optional under the law. From that date forward, salary is irrelevant in regards to PERA eligibility for Defined Benefit Plan membership.

### **Salary Earned versus Salary Paid**

When determining monthly earnings for a potential PERA member, employers should include earnings from the first day of the calendar month to the last. This may differ from the dates earnings are paid. When the beginning and ending dates of a pay period lie within the first and last day of the month, it is relatively easy to determine if the individual earned more than \$425. However, if pay periods fall into two or more months, it may be necessary to break down earnings by days worked to determine eligibility. This breakdown of earnings does not need to be reported to PERA. Instead, you may want to retain this information in the employee's personnel file to document your eligibility decisions.

### **Eligible and Ineligible Earnings**

Determining what does and does not qualify as salary for PERA purposes is very important for both PERA and its members. PERA has a fiduciary duty to comply with the law and to ensure that only those amounts that meet the definition of salary are used to calculate a member's retirement or disability benefit. It is equally important that members understand what will be considered as salary so that at the time of their retirements, there will be no surprises or misunderstandings about what will and will not be included in their final high-five salaries.

The definition of salary in Minnesota Statutes 353.01, subdivision 10, was established to provide for employee deductions and employer contributions on predictable wages for services rendered by an employee in a governmental position. Generally, PERA-eligible earnings are considered gross wages paid periodically by employers to employees for labor performed or services rendered as a regular part of the duties for which the individual was hired. An employee's wage is customarily a level amount that is periodically increased throughout an individual's employment because of promotions, raises based on performance, or cost-of-living increases. The salary definitions in law establish a structure that ensures that PERA can reasonably project a member's high-five salary and can fund the member's retirement benefits through the investment of contributions that had been collected throughout the years of public employment.

In determining what is and is not salary for retirement purposes, employers and PERA staff must go beyond the name that is given to the payment and consider what the payment is for and the source of the payment. If an employer is uncertain about how to treat compensation for PERA purposes, we ask that you contact PERA for a determination before remitting contributions. In certain instances, PERA will ask that this request be in writing and include documentation relating to the compensation such as personnel policies or labor agreements.

PERA-deductible earnings are not identical to Social Security-deductible earnings for state or federal taxable compensation. For Social Security and salary information contact the Internal Revenue Service at 1 (800) 829-1040.

### Salary Subject to PERA Withholding

Below is a list of some of the types of salary payments that are subject to PERA withholding. The list is not meant to be all-inclusive. If you have questions about any payment type, whether listed below or not, please contact PERA.

- Gross earnings, wages, and overtime pay for services performed in an eligible position during the coverage period being reported. Gross earnings must include compensation treated as deferred income for federal or state income taxation or both.
- Cash payments from accrued or banked compensatory pay when attached to an earnings period and paid routinely to employees in the course of employment. Employers that pay accrued banked compensatory pay on an annual or periodic basis must report the amounts separately from any regular earnings being paid and must indicate a specific earnings period for the pay. Example: An employer makes a lump-sum payment to all clerical employees for accumulated unused overtime hours at the end of the calendar year 2001. The payments are PERA-eligible because they are for hours worked by the employee from January 1, 2001 through December 31, 2001.
- Used vacation, sick, and personal leave pay for periods of excused absence from work. This includes sick leave that is used by the recipient of donated vacation hours under a sick leave donation program. Please also see section, Paying Accrued Vacation and Sick Leave to Terminating Members, that appears later in this chapter for further details.
- Holiday pay when paid as routine earnings for a period of excused absence and lump-sum payments for accrued holidays that are available to a group of employees and made periodically throughout the course of employment. Employers that pay accrued unused holiday pay on an annual or periodic basis must report the amount separately from any regular earnings being paid and must indicate a specific earnings period for the holiday pay. When a contract or agreement governs cash-out payments, employers should provide a copy of the written agreement to PERA for its records.
- Merit increases
- Retroactive pay or "back pay." These are wages paid to employees or former employees for any period before the current payroll period. Often, retroactive pay is the result of a salary increase negotiated

through a management/union contract settlement with a retroactive effective date.

- Payments for lost wages. These commonly occur in two instances: 1) when an employee who had been discharged is awarded an amount for lost wages (excluding any interest awarded) through a court order or arbitrator's award to remedy a wrongful discharge, or 2) when a person receives an amount that is deemed to represent back wages as a result of an agreement between the employer and the employee. A copy of the Court Order, arbitration document, or agreement must be submitted to PERA for review.
- Longevity or stability bonus pay when it meets four conditions: 1) it is attached to a specific earnings period, 2) it represents a periodic payment, whether paid annually or more frequently, 3) it is available to a group of employees throughout the course of employment, and 4) it is based on length of service. Employers paying longevity pay on an annual basis must report the amount separately from any regular earnings and must indicate a specific earnings period for the longevity pay (such as 01/01/02 – 12/31/02).
- Additional pay for working on a scheduled holiday. Example: A police officer works on July 4<sup>th</sup> and has the choice of taking another day off with pay or receiving an extra day's pay. When the employee takes the extra day of pay, the payment is viewed similarly to overtime pay and is PERA-eligible salary.
- Salary or sick leave paid in addition to Worker's Compensation payments. (See later section on Workers Compensation payments for further explanation.)
- Employee-paid amounts to flexible spending accounts, cafeteria plans, health care expense accounts, day care expenses, or an amount that voluntarily reduces the employee's salary. Often these amounts are not treated as income for federal income taxation under Internal Revenue Code.
- Performance bonus pay is PERA-eligible salary when it meets three conditions: 1) it represents a periodic payment available to a group of employees throughout the course of employment, 2) is given in consideration of high achievement or exceptional service, and 3) is associated with a specific performance period. PERA recommends that employers document the bonus programs in their personnel policies or in their written employment agreements to be able to provide a copy of such documentation to PERA staff upon request. Employers that issue performance bonus pay to employees must report the amounts separately from any regular salary and indicate a specific earnings period for the performance bonus pay. Example: Several school employees are given a lump-sum achievement award of \$1000 for their accomplishments in a computer system development project that went on for the entire school year. This payment is PERA-eligible because it is for exceptional services rendered by the

employees to the employer from September 1, 2001 through May 31, 2002.

- Salary paid to district court reporters
- Fees paid to employees (excluding court reporters) in addition to salary
- Short-term disability payments from self-insured governmental subdivisions are generally considered salary; however, employers should provide a copy of the program's provisions to PERA for a determination. As a general rule, PERA considers payments from employers to employees under short-term disability programs as salary when the:
  - ✓ short-term disability program is an extension of a current or previous sick leave benefit provided directly by the employer,
  - ✓ the employer is replacing the full salary of the employee,
  - ✓ the employee continues to accrue sick/vacation/personal leave while on short-term disability, and
  - ✓ the employer continues to pay the cost of medical coverage provided as part of its benefit package.
- Tips when collected by the employer and paid to employees as wages
- Jury duty leave paid by employers -- Paid absences of employees excused from work for jury duty
- Court appearance pay awarded by the employer to its police officer employees.

### **Salary not Subject to PERA Withholding**

By law, some forms of compensation are not subject to PERA deductions and must not be reported as salary. PERA withholding cannot be made on the following forms of compensation. Again, this list is not all-inclusive. If you have any questions, please contact PERA.

- Fees paid to district court reporters
- Unused sick or vacation pay, especially when issued as a lump sum.
- Lump-sum longevity or stability payments that are not periodic such as a one-time payment issued upon completion of 20 years of service
- Lump-sum payments made under wellness programs or incentive programs that provide compensation for the preservation of accumulated sick leave.
- Vacation and sick leave donations for the individuals making the donation
- Lump-sum settlements not attached to a specific earnings period
- Severance pay
- Court-ordered damages
- Retirement incentive pay or retirement bonuses

- Expense payments and reimbursements for job-related expenses such as parking, mileage, meals, travel, moving, and education; per diem payments that represent expenses, uniform expense payments and allowances or fixed amounts given to employees to pay expenses regardless of whether the individual uses the full amount for expenses or receives cash for any unused allowance.
- Workers' Compensation payments made by a third-party payer. Also see section, Workers' Compensation payments, that appears later in this section.
- Employer-paid fringe benefits, flexible spending accounts, cafeteria plans, health care expense accounts, day care expenses, or any payments instead of any employer-paid insurance coverage, including the difference between single and family rates that may be paid to a member with single coverage
- Employer-paid amounts paid directly to an employee to be used toward the cost of insurance coverage regardless of whether the individual uses the full amount for insurance coverage or receives cash for any unused allowance.
- The amount equal to that which the employing governmental subdivision would otherwise pay toward single or family insurance coverage for a covered employee when, through a contract or agreement with some but not all employees, the employer:
  - discontinues, or for new hires does not provide payment toward the cost of the employee's selected insurance coverage;
  - makes the employee solely responsible for all contributions toward the cost of the employee's selected insurance coverage under a group plan offered by the employer, including any amount the employer makes toward other employees' selected insurance coverage under a group plan offered by the employer; and
  - provides increased salary rates for employees who do not have any employer-paid group insurance coverage.
- Except as provided in section 353.86 or 353.87, compensation of any kind paid to volunteer ambulance service personnel or volunteer firefighters for ambulance or fire fighting services
- Referral pay given to employees by his or her employer that help to recruit new workers to the agency, and signing bonuses awarded to new employees.
- Long-term or short-term disability insurance payments paid by a third-party insurance provider. As a general rule, long-term disability payments from self-insured governmental subdivisions to employees are considered a fringe benefit, rather than salary for PERA purposes. However, employers should provide a copy of the long-term disability program's provisions to PERA for a determination.
- Jury duty compensation paid to a PERA member by the court, or expense payments to a PERA member paid in addition to regular

salary while on jury duty leave. Some county employers add the pay for jury services to their employees' wages and issue one payment. When this is done, the pay for jury services is not PERA-eligible salary. Other employers reduce an employee's regular salary by the amount the person receives directly from the court for jury duty. When employers reduce the member's pay by the amount of the jury duty expense, this reduces the compensation from which PERA contributions are made. The net effect of this practice is that the employer does not pay for the full work absence of the employer for jury duty.

- Mileage reimbursement payments
- Payments that represent charges assessed to an individual for personal use of a company vehicle
- Amounts paid to a former police officer for a court date appearance that falls after the individual's termination date and thus after the employer/employee relationship has ended.

### **DBP Compensation Limits**

Certain federal and state laws restrict the amount of compensation upon which PERA Defined Benefit Plan contributions can be made and used for calculating member benefits. The compensation limit applies to employees who became PERA members on or after July 1, 1995. Under federal regulations, the limitation is \$200,000 in 2002. This limit will be indexed for inflation annually in \$5,000 increments. Under state law, compensation paid to certain employees of local governmental agencies cannot exceed 95% of the governor's salary unless approved by the Commissioner of the Department of Employee Relations. The state compensation limit does not apply to school district employees, medical doctors, or doctors of osteopathy.

PERA does not ask employers to monitor the wages of their DBP members against the federal or state limits or to stop withholding deductions when a member reaches the limits. In the first quarter of each calendar year, PERA staff reviews earnings data collected from employers in the previous year to determine if any member's annual salary exceeded the federal or state limits. PERA will inform you if you have members who have exceeded the salary limit and issue refunds to the employee and employer of the contributions for amounts beyond the limitations. The refund method PERA uses assures that service credit is properly given for the calendar year in which employees' earnings exceeded the limits.

### **Workers' Compensation Payments**

Under Minnesota law Workers' Compensation payments are not considered salary for PERA purposes when issued from a third-party payer. When an employee is placed on an extended Workers'

# Eligible Earnings

Generally, PERA-eligible earnings are considered gross salary and are paid to employees for labor performed or services rendered. PERA contributions are to be made from total (gross) salary before deducting deferred compensation as defined by Section 457 of the IRS Code, supplemental retirement plans, or other voluntary reductions in salary.

Gross salary includes regular wages, overtime earnings, compensatory time, pay for used vacation and used sick leave, holidays, retroactive wage settlements, and merit increases. Gross salary may also include bonuses. A bonus by PERA's definition is money provided in addition to what is normally received, given in consideration of superior achievement. Any other form of bonus paid by an employer to a member would require a special determination by PERA.

## Salary subject to PERA Withholding is:

- Earnings, wages, and overtime
- Used vacation and used sick leave pay
- Holiday pay
- Merit increases and/or bonuses
- Retroactive or back pay
- Compensatory pay
- Longevity, stability or bonus pay which represent a periodic payment available to a group of employees which is based on length of service and/or in consideration of high achievement or for exceptional service
- Per diems paid in addition to expenses
- Salary paid in addition to workers' compensation payments
- Employee - paid flexible spending accounts, cafeteria plans, health care expense accounts, day care expenses, or an amount that reduces the employee's salary
- Employee suggestion awards
- Salary paid to district court reporters
- Federal and state grants, unless grant by-laws specifically prohibit the use of grant money (funds) for pension contributions
- Fees paid to employees (excluding court reporters) in addition to salary.

**Note:** When reporting salary earned outside the regular payroll period, (such as, retroactive pay or an annual bonus payment,) submit a separate deduction report for this non-routine salary and show the period over which the pay is earned, such as January 1, 199X through December 31, 199X. Refer to page 11 of Section 8, of your Reporting Manual for Payroll and Personnel Officers for an example on how to report this salary.

## Salary Not Subject to PERA Withholding

By law, some forms of compensation are not subject to PERA deductions and must not be reported. PERA withholding cannot be made on:

- fees paid to district court reporters
- unused sick leave
- unused vacation or annual payments
- lump-sum settlements not attached to a specific earnings period
- severance pay
- employer-paid flexible spending accounts
- retirement incentive pay, or retirement bonuses
- lump-sum settlements not attached to a specific earnings period
- expense payments, per diem payments that represent expenses, uniform expense payments, and flat monthly expense payments
- workers' compensation payments
- employer-paid fringe benefits, flexible spending accounts, cafeteria plan, health care expense accounts, day care expenses, or any payments in lieu of any employer-paid group insurance coverage, including the difference between single and family rates that may be paid to a member with single coverage
- employer-paid amounts used by an employee toward the cost of insurance coverage
- the amount equal to that which the employing government subdivision would otherwise pay toward single or family insurance coverage for a covered employee when, through a contract or agreement with some but not all employees, the employer:
  - a) discontinues, or for new hires does not provide payment toward the cost of the employee's selected insurance coverage
  - b) makes the employee solely responsible for all contributions toward the cost of the employee's selected insurance coverages under a group plan offered by the employer, including any amount the employer makes toward other employees' selected insurance coverages under a group plan offered by the employer; and
  - c) provides increase salary rates for employees who do have any employer-paid group insurance coverages
- except as provided in section 353.86 or 353.87, compensation of any kind paid to volunteer ambulance service personnel or volunteer firefighters
- payments in advance for expenses or reimbursements for expenses
- long-term or short-term disability insurance payments
- jury duty pay
- and charges assessed for personal use of a company vehicle.