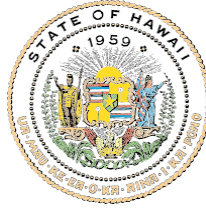


JOSH GREEN, M.D.
GOVERNOR




THOMAS WILLIAMS
EXECUTIVE DIRECTOR

KANOE MARGOL
DEPUTY EXECUTIVE DIRECTOR

STATE OF HAWAII
EMPLOYEES' RETIREMENT SYSTEM

December 28, 2023

TO: State and County Directors
Human Resources, Personnel and Payroll Officers

FROM: Thomas Williams, Executive Director
Employees' Retirement System 

SUBJECT: Employee/Employer Settlement Agreements
Act 46, Session Laws of Hawaii 2023

I am writing to provide notice of Act 46, Session Laws of Hawaii 2023, signed by Gov. Josh Green, M.D., on June 1, 2023. Act 46 allows service credits and compensation for the purposes of calculating Employees' Retirement System (ERS) benefits to include retroactive reinstatement, retroactive rescission of suspension, and back pay/retroactive payment, that are restored to an employee as part of a certified Final Resolution of Claims.

Act 46 (SLH 2023) can be found here:

https://www.capitol.hawaii.gov/sessions/session2023/bills/GM1146_.PDF

The requirements for certification of service and compensation by the ERS pursuant to Act 46 generally include (but are not limited to):

1. An employee's appeal or challenge to an employer's termination or suspension of employment, or denial of compensation available to comparable employees;
2. A final resolution of claims of the employee's appeal or challenge, that meets the requirements of Act 46, including but not limited to:
 - a. Provisions requiring the employer's retroactive reinstatement or retroactive rescission of termination or suspension of the employee, and retroactive adjustment of pay for the period and in the amount the employee would have earned had the employee not been terminated or suspended, or the employer's retroactive adjustment of pay in the amount the employee would have earned had the employee received compensation available to comparable employees;
 - b. Provisions requiring the employer's payment of back pay for the period and in the amount the employee would have earned had the employee not been terminated or



Employees' Retirement System
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- suspended, or retroactive pay in the amount the employee would have earned had the employee received the compensation available to comparable employees; and
- c. A specification of the amount, purpose and nature of back pay/retroactive payments ordered, awarded or agreed to, for each monthly or semi-monthly period in which the employee would have provided service or received compensation had the employee not been suspended or terminated, or had the employee received the compensation available to comparable employees;
3. The employer's retroactive reinstatement or retroactive rescission of termination or suspension of the employee, and retroactive adjustment of pay for the period and in the amount the employee would have earned had the employee not been terminated or suspended, or the employer's retroactive adjustment of pay in the amount the employee would have earned had the employee received the compensation available to comparable employees;
 4. The employer's payment of back pay for the period and in the amount the employee would have earned had the employee not been terminated or suspended, or retroactive pay in the amount the employee would have earned had the employee received the compensation available to comparable employees, and all other amounts due under the final resolution of claims;
 5. Proposed employer reporting meeting the requirements of Hawaii Revised Statutes §§ 88-103.7 (Information from the State and counties) and 88-21.5 (Compensation);
 6. A terminated or retired employee's lump sum payment to the ERS of the actuarial present value (to be determined by the ERS) of all accumulated contributions, hypothetical account balances and/or retirement allowances previously provided by the ERS to the employee;
 7. The employer's lump sum payment of the actuarial present value of employee contributions (to be determined by the ERS) for the service and compensation to be certified; and
 8. The employer's lump sum payment of the actuarial present value of employer contributions (to be determined by the ERS) for the service and compensation to be certified.

All requirements must be met before certification of service and compensation can be made.

Attached is the form for certification of service credits and compensation pursuant to Act 46. The filing of the form starts the review process. The form is to be completed by the employer, employee or their authorized representative, and should be filed together with documents listed in Section D (REQUIRED DOCUMENTS) of the form. Other than those documents and records identified in Section D of the application form, no additional personnel or payroll documents or contributions should be reported until requested by the ERS. The ERS may request additional documents from the employer while processing the application. The ERS will then provide the employee and employer with the actuarial present value of amounts due to the ERS which must be paid in full as part of the certification process.

Certain retroactive payments are not subject to Act 46 and should continue to be reported following the usual reporting requirements of HRS § 88-21.5 and § 88-103.7. Retroactive payments are not subject to Act 46 where made:

1. To all comparable employees;
2. Pursuant to terms of employment (i.e., collective bargaining agreement provisions), that provide for the payments based on employment, work and (where applicable) conditions/circumstances under which work was rendered, in the subject position; and
3. Based on:
 - a. The employee's actual employment in the subject position;
 - b. The employee's actual work rendered in the subject position; and
 - c. where applicable, actual conditions/circumstances under which work was rendered in the subject position (e.g., conditions/circumstances required for overtime, differentials and supplementary payments);that satisfy the terms of employment.

Thus, retroactive payments not subject to Act 46 include, for example, retroactive payments of normal periodic pay made to remedy clerical errors, retroactive hazard pay made applicable and paid at the same time to all comparable employees pursuant to existing collective bargaining agreements, and retroactive pay increases made applicable and paid at the same time to all comparable employees pursuant to re-negotiated collective bargaining agreements, where there is no adoption of artificially created employment, work, or conditions/circumstances set forth in a final resolution of claims to establish service and/or compensation.

This memorandum supersedes my memorandum regarding Employee/Employer Settlement Agreements and Awards issued on December 17, 2021, and my memorandum regarding Act 46 issued on October 23, 2023.

If you have any questions, please contact Bart Asato, Program Specialist, at 808-586-1768 or email dbf.ers.admin.programspecialist@hawaii.gov.

**EMPLOYEES' RETIREMENT SYSTEM
OF THE STATE OF HAWAII**
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808-586-1735

**APPLICATION FOR CERTIFICATION OF SERVICE AND/OR
COMPENSATION PURSUANT TO A FINAL RESOLUTION OF CLAIMS**

This is an application for the certification of service and/or compensation pursuant to a Final Resolution of Claims.

SECTION A: APPLICANT'S INFORMATION

Name of Applicant *: _____

Check one: Employee: _____ Employer (Department/Agency): _____

Care of (Applicant's representative, if any)**: _____

* An application must be filed by an ERS member/retirant, their Employer, or their authorized representative.

** Applications submitted by a third-party (such as an attorney) on behalf of an applicant will not be processed unless the ERS is provided with a letter containing the original signature of the applicant, or court order, verifying that the third-party is authorized to act on the applicant's behalf.

SECTION B: EMPLOYEE/RETIRANT INFORMATION

Name: _____ Full SSN: _____ - _____ - _____

Address: _____

Email: _____ Phone Number: _____

SECTION C: EMPLOYER INFORMATION

Employer/Department/Agency: _____

Division/Branch: _____

Employer Contact Name: _____ Phone Number: _____

Employer Contact Email: _____

Employer Contact Address: _____

SECTION D: REQUIRED DOCUMENTS

The following required documents are hereby provided in support of this application (check each submission):

- _____ 1. All final resolutions of claims, which shall include a specification of the amount, purpose and nature of back pay/retroactive payments ordered, awarded or agreed to, for each monthly or semi-monthly period in which the Employee would have provided service or received compensation had the Employee not been suspended or terminated, or had the Employee received the compensation available to comparable employees;

 - _____ 2. All personnel records for the period reflecting the Employer's retroactive reinstatement or retroactive rescission of suspension of the Employee, and retroactive adjustment of pay for the period and in the amount the Employee would have earned had the Employee not been terminated or suspended, or the Employer's retroactive adjustment of pay in the amount the Employee would have earned had the Employee received the compensation available to comparable employees; and

 - _____ 3. Cancelled check(s), pay stubs or verification of electronic funds transfer, reflecting the Employer's payment of back pay/retroactive pay and all other amounts due under the final resolutions of claims.
-

SECTION E: ATTESTATION

I attest that:

- 1. The Employer has retroactively reinstated or retroactively rescinded the suspension of the Employee, and retroactively adjusted pay for the period and in the amount the Employee would have earned had the Employee not been terminated or suspended, or the Employer has retroactively adjusted pay in the amount the Employee would have earned had the Employee received the compensation available to comparable employees;
 - 2. The Employer has provided payment of all back pay/retroactive pay, and all other amounts due under the final resolutions of claims; and
 - 3. Certification of service and/or compensation is not sought in relation to:
 - a. Any date/time or amount for which the Employer has not paid the Employee back pay/retroactive pay;
 - b. Any dates that precede or succeed the dates the Employee would have provided service had the Employee not been terminated or suspended;
 - c. Any amount that exceeds the compensation the Employee would have earned had the Employee not been terminated or suspended, or had the Employee received the compensation available to comparable employees; or
 - d. Any amounts provided for: (i) for damages other than back pay/retroactive pay (including but not limited to quantifiable damages, pain and suffering, emotional distress, and other general damages); (ii) attorneys' fees; (iii) interest; (iv) penalties; (v) the failure to hire; (vi) an agreement for the Employee to resign or otherwise terminate employment; or (vii) amounts paid by persons other than the Employer.
-

SECTION F: ACKNOWLEDGEMENT

I acknowledge that:

1. During the review for certification of service and compensation, the ERS may request, and the Employer and Employee will provide, additional documents and information, including but not limited to:
 - a. Document(s) initiating the Employee’s underlying appeal/challenge (and identifying the Employee’s claims);
 - b. Additional documents and information related to the Employee’s underlying appeal/challenge;
 - c. Additional documents and information related to the final resolution of claims;
 - d. Any additional agreements, awards and/or orders (other than the final resolutions of claims) resulting from the Employee’s underlying appeal/challenge, and information related thereto;
 - e. Additional documents and information related to the Employer’s retroactive reinstatement or retroactive rescission of suspension of the Employee, and/or retroactive adjustment of pay;
 - f. Additional personnel records;
 - g. Additional documents and information related to pay, back pay, and retroactive pay;
 - h. Additional documents and information related to compensation available to comparable employees;
 - i. Additional documents and information related to any amounts due under the final resolutions of claims; and
 - j. A proposed employer reporting complying with the requirements of HRS 88-103.7, including an allocation of back pay/retroactive payments to monthly or semi-monthly periods, by amount, purpose and nature; and
2. Upon filing this application and providing the required documents identified in Section D or any requested documents identified in Section F, as part of the certification process of a Final Resolution of claims, the ERS will identify the actuarial present value of amounts due to the ERS; and
3. The ERS will not certify service and/or compensation pursuant to a final resolution of claims until the ERS is in receipt of all amounts due to the ERS from the Employee and Employer.

SECTION G: SIGNATURE(S) (At least one signature is required for ERS review)

Employee: _____ Date _____

Employer: _____ Date _____