WAC 415-02-140 What is excess compensation and how is the employer's excess compensation billing calculated? (1) **What is excess compensation?** Excess compensation refers to certain payments from an employer to an employee when the payment is used in the calculation of the employee's retirement allowance. The following payments are excess compensation when they are reportable compensation and used in the calculation of the employee's retirement allowance:

(a) A cash out of unused annual leave in excess of two hundred forty hours;

(b) A cash out of other forms of leave, including sick leave and holiday leave;

(c) A payment for a personal expense, if the payment qualifies as reportable compensation in the employee's own retirement system;

(d) That portion of any payment, such as an overtime or incentive payment, that exceeds twice the employee's regular rate of pay for the period of time that the overtime or incentive payment applies; and

(e) A termination or severance payment.

(2) **How does the payment of excess compensation affect employers?** The department determines how much an employee's retirement benefit will increase as a result of the excess compensation, and bills the employer or employers for the present value of that increase.

(a) If an employee cashes out annual leave while working concurrently for two or more employers and the total cash-outs result in excess compensation, each employer's billing will be based on:

(i) The number of hours cashed out by that employer in relation to the total number of hours cashed out by all employers; and

(ii) The hourly rate paid by that employer.

Example: Brian, a PERS 1 member, separated from employment at Agency A and Agency B at the same time. He cashed out 75 hours of annual leave from Agency A and 225 hours from Agency B, resulting in a total of 300 hours that will be used in the calculation of his average final compensation (AFC). A cash-out of unused annual leave in excess of two hundred forty hours is excess compensation (see subsection (1)(a) of this section). Therefore, sixty hours of the cash-out is excess compensation. (300 hours - 240 hours = 60 hours of excess compensation.)

Employer	Total hours cashed out	Percentage of total hours cashed out	Excess compensation billing will be based on:
Agency A	75 hours	25% (75/300)	15 hours (60 hours of excess compensation hours x 25% = 15 hours) at the hourly rate paid by Agency A.
Agency B	225 hours	75% (225/300)	45 hours (60 hours of excess compensation hours x 75% = 45 hours) at the hourly rate paid by Agency B.

(b) If an employee cashes out annual leave from two or more **successive** employers during his/her AFC period and the total cash-outs result in excess compensation, the department will:

(i) Determine the hours cashed out sequentially (employer by employer);

(ii) Identify the employer at the time the cumulative total cashed out exceeded two hundred forty hours, resulting in excess compensation; and

(iii) Bill the employer, identified in (b)(ii) of this subsection, and any subsequent employers during the AFC period, for the number of excess compensation hours each cashed out.

Example: Deborah is a TRS 1 member who changed employment three times during her AFC period.

1. When Deborah separated employment from School District A, she cashed out 156 hours of annual leave;
2. When she separated employment from School District B, she cashed out 96 hours of annual leave; and
3. When she separated from School District C, she cashed out an additional 48 hours of annual leave.

School District	Annual Leave Cash-out	Rationale and Determination
A 7/1/03 - 6/30/04	156	The department will not bill School District A because excess compensation did not result from the 156 hours of annual leave Deborah cashed out at School District A.
B 7/1/04 - 2/28/05	96	The cumulative total of the annual leave cashed out by School District A and School District B exceeds 240 hours, and results in 12 hours of excess compensation[1]. School District B's excess compensation billing will be based on 12 hours at the hourly rate paid by School District B.
C 3/1/05 - 6/30/05	48	Since the cumulative total exceeded 240 hours prior to Deborah's employment with School District C, all of the leave cashed out by Agency C is excess compensation. School District C's excess compensation billing will be based on 48 hours at the hourly rate paid by School District C.

[1] 156 hours (cashed out by School District A) plus 96 hours (cashed out by Agency B) = 252 hours. A cash-out of unused annual leave in excess of two hundred forty hours is excess compensation (subsection (1)(a) of this section). 252 hours - 240 hours = 12 hours of excess compensation.

(3) **How is the excess compensation billing calculated?** To determine the amount of each employer's excess compensation billing, the department:

(a) Determines the increased amount of the employee's monthly retirement allowance that will result from the increase in the AFC, based on a standard benefit allowance (benefit option one);

(b) Determines the actuarial factor, based on the employee's age and retirement plan, from WAC 415-02-340; and

(c) Divides the amount of the monthly benefit increase in (a) of this subsection by the actuarial factor in (b) of this subsection.

If two or more employers are responsible for an employee's excess compensation, the department will calculate the bill for each employer individually, based solely on the excess compensation attributed to that employer. See subsection (2)(a) and (b) of this section.

(4) **Examples:**

(a) **Example 1: Excess compensation arising from cash out of sick leave (PERS Plan 1):**

Denise is a 59 year-old PERS Plan 1 member working for a public utility district. She will retire with thirty years of service, and will cash out $8,000 in sick leave. Denise earned her two highest years of pay during her last two years of employment; therefore, the department will use these years to compute her AFC.

Year 1	**-**	$59,000 Salary
Year 2	**-**	$61,000 Salary + $8,000 sick leave cash out

Q: Did Denise receive excess compensation?
A: Yes. Under subsection (1)(b) of this section, the $8,000 sick leave cash out is excess compensation.

Q: Will the excess compensation increase Denise's retirement allowance?
A: Yes. Denise's retirement allowance will increase by $200/month as shown:

Without the excess compensation (cash out):

AFC	=	$59,000 + $61,000 = $120,000 $120,000/24 = $5,000/month
Retirement allowance	=	2% x 30 years x $5,000 = $3,000/month

With the excess compensation (cash out):

AFC	=	$59,000 + $61,000 + $8,000 = $128,000 $128,000/24 = $5,333.33/month
Retirement allowance	=	2% x 30 years x $5,333.33 =$3,200/ month

Difference in retirement allowances:

$3,200/month - $3,000/month = $200/month

Q: What is the employer's excess compensation billing?
A: The employer must pay $24,565.50, as shown:

Using an annuity factor of 0.0081415[1]:

$$\frac{\$200/\text{month}}{0.0081415} = \$24,565.50$$

[1]Based on Denise's age of 59. The factor can be found in the table in WAC 415-02-340.

(b) **Example 2: Excess compensation arising from cash out of leave (TRS Plan 1):**

George is a TRS Plan 1 member who has 28 years of service and is retiring at age 55 from a school district. The collective bargaining agreement provides two days of personal holiday leave per year and allows for the cash out at retirement of any unused balance of personal holiday leave. Personal leave days are defined as "other forms of leave" under subsection (1)(b) of this section. The following example shows the computation of excess compensation:

Year 1	**-**	$52,500 Salary

Year 2	**-**	$54,000 Salary + $900 for four days of personal leave cash out

Q: Did George receive excess compensation?
A: Yes. Under subsection (1)(b) of this section, the $900 leave cash out is excess compensation.

Q: Will the excess compensation increase George's retirement allowance?
A: Yes. George's retirement allowance will increase by $21/month as shown:

Without the excess compensation (cash out):

AFC	=	$52,500 + $54,000 = $106,500 $106,500/24 = $4,437.50/month
Retirement allowance	=	2% x 28 years x $4,437.50 =$2,485/month

With the excess compensation (cash out):

AFC	=	$52,500 + $54,000 + $900 = $107,400 $107,400/24 = $4,475/month
Retirement allowance	=	2% x 28 years x $4,475 = $2,506/month

Difference in retirement allowances:

$2,506/month - $2,485/month = $21/month

Q: What is the employer's excess compensation billing?
A: The employer must pay $2,802.28, as shown:

Using an annuity factor of 0.0074939[2]:

$$\frac{\$21/\text{month}}{0.0074939} = \$2{,}802.28$$

[2]Based on George's age of 55. The factor can be found in the table in WAC 415-02-340.

(c) **Example 3: Excess compensation from bonus.**
Susan is retiring at age 65 in PERS Plan 2. Susan's employer awarded her a $15,083.33 bonus for work she did on a special project in February. The department will compute Susan's excess compensation as follows:

Year 1	**-**	$59,000 Salary
Year 2	**-**	$59,000 Salary
Year 3	**-**	$59,000 Salary
Year 4	**-**	$59,000 Salary
Year 5	**-**	$76,083.33 (includes a $15,083.33 bonus for services provided in the month of February).

Q: Did Susan receive excess compensation?
A: Yes. Under subsection (1)(d) of this section, the portion of the bonus that exceeds twice the employee's regular rate of pay for that period ($4,916.67) is excess compensation, as shown:

Regular monthly rate:	$61,000/12 = $5,083.33/month
Twice February's monthly rate:	2 x $5,083.33 = $10,166.66
Excess compensation:	$15,083.33 - $10,166.66 = $4,916.67

Q: Will the excess compensation increase Susan's retirement allowance?
A: Yes. It increases by $49.16/month, as shown:

Without excess compensation (portion of bonus):

AFC	=	$59,000 + $59,000 + $59,000 + $59,000 +$76,083.33 - $4,916.67 = $307,166.66 $307,166.66/60 = $5,119.44/month
Retirement allowance	=	2% x 30 years x $5,119.44 = $3,071.67/month

With the excess compensation (portion of bonus):

AFC	=	$59,000 + $59,000 + $59,000 + $59,000 + $76,083.33 = $312,083.33 $312,083.33/60 = $5,201.39/month
Retirement allowance	=	2% x 30 years x $5,201.39 = $3,120.83/month

Difference in retirement allowances:

$3,120.83/month - $3,071.67/month = $49.16/month

Q: What is the employer's excess compensation billing?
A: The employer must pay $6,784.62, as shown:

Using an annuity factor of 0.0072458:

$$\frac{\$49.16/\text{month}}{0.0072458} = \$6,784.62$$

[Statutory Authority: RCW 41.50.050(5) and 41.50.150. WSR 05-12-107, § 415-02-140, filed 5/27/05, effective 6/27/05; WSR 03-06-043, § 415-02-140, filed 2/27/03, effective 4/1/03.]