



Montana Teachers' Retirement System FACT SHEET: Termination Pay

Termination pay for TRS purposes includes lump-sum payouts of sick and vacation leave, severance pay, retirement incentives, and/or other cash payments that are contingent upon termination of employment and that are paid to you at the time of retirement. It is considered “paid at the time of retirement” if it is paid to you within 60 days of a termination of employment¹ that is concurrent with your TRS retirement.

Termination pay *does not* include:

- amounts that are not wages under section 3121 of the Internal Revenue Code (IRC)
- amounts payable from a deferred compensation plan under section 457(f) of the IRC
- amounts that are not paid at the time of termination and retirement
- amounts paid under a retirement incentive, severance pay plan, or other arrangement where the member is allowed to elect *either* a cash payment that constitutes termination pay *or* a non-cash benefit or deferred compensation that does not. (For example, health insurance premiums do not meet the definition of termination pay; therefore, an arrangement under which an employer allows a member to elect either a cash payment or health insurance premiums in lieu of cash is not termination pay for TRS purposes.)

Like all earned compensation, termination pay is taxable when it is paid to you. Your employer must withhold Social Security (FICA) and Medicare taxes from your termination pay. However, whether or not income tax is withheld from termination pay will depend upon several factors.

This Fact Sheet will help you understand the options available to you as well as the associated costs, benefits, timing, and tax implications of the decisions you will need to make about termination pay before you retire.

Will termination pay increase my TRS retirement benefit?

You *may* elect to use termination pay to increase your retirement benefit if you wish. TRS will collect both member and employer contributions on the termination pay to fund the resulting benefit increase. The amount of those contributions will depend upon the termination pay option you elect. In addition, the *timing* of your election will determine whether your employer will withhold member contributions from termination pay and remit it to TRS on a tax-deferred basis (known as “employer pick-up”) or whether you will be required to pay the member contributions yourself with after-tax dollars (often called an “out of pocket” cost).

Termination Pay Option 1 produces the greatest increase to your retirement benefit and therefore has the highest cost in terms of both member and employer contributions. Under this option, your termination pay is divided by the number of years used to calculate your Average Final Compensation (AFC).² The resulting amount then is added to your earned compensation for the AFC years only. TRS performs an actuarial calculation to determine the contributions needed to fund the benefit increase on Termination Pay Option 1. In some cases, the member contributions actually exceed the termination pay amount.

Termination Pay Option 2 produces a lesser increase to your retirement benefit and has a lower cost in terms of both member and employer contributions. Under this option, the termination pay amount is divided by your *total* years of creditable service to determine an annual amount. The annual amount then is added to your earned

¹ For more information, see the TRS Fact Sheet *Terminating Employment and Retiring With TRS*.

² A Tier 1 member’s AFC is based on the three highest consecutive years. A Tier 2 member’s AFC is based on the five highest consecutive years. Members may view their tier by logging into My TRS and selecting “My Benefit Estimator.”

compensation for each year used to calculate your AFC. Employer and member contributions are collected at the regular rate, so member contributions for Termination Pay Option 2 never exceed the termination pay amount.

Termination Pay Option 3 means you waive your right to include termination pay in the calculation of your TRS retirement benefit. TRS does not collect employer or member contributions on Termination Pay Option 3.

When and how should I make a termination pay election with TRS?

Before you make an election, it is important that you understand both the tax consequences and the possibility that you will owe out-of-pocket member contributions to TRS. If your future termination pay amount is unknown, it is best not to make an election until you have more information.

Most members who elect Termination Pay Option 1 or Option 2 do so by completing TRS Form 129 *Termination Pay Irrevocable Election* form (known as a **TPIEF**), which allows member contributions to be made on a tax-deferred basis through employer pick-up. A TPIEF is employer-specific and remains in effect for as long as you work for that TRS employer. As indicated in the form's title, an election made on this form is **irrevocable**. Once you have an effective TPIEF on file with TRS, you cannot change your mind.

For this reason, TRS suggests you wait until your final year of work to make an election, when your employer can provide a reasonably accurate estimate of your termination pay amount based on your accrued vacation and sick leave, severance pay, retirement incentives, and so on. TRS recommends the following timeline:³

1. Six to 12 months before you plan to retire, ask your employer for an estimate of your termination pay.
2. Contact TRS to request an estimate of benefits (EOB) with that termination pay amount included in the calculations.
 - The EOB will show all benefit allowances available to you, the benefit increases produced by Termination Pay Option 1 and Option 2, and the cost of those increases in terms of member contributions.
3. To elect Termination Pay Option 1 or Option 2 with the advantage of tax deferral on member contributions (employer pick-up), both you and your employer must carefully complete and sign the TPIEF (with your signature notarized) **at least 90 days** before your termination date. The original, fully completed TPIEF then must be submitted to TRS.
 - If you will use termination pay from more than one TRS employer, you need to complete a TPIEF for each employer.
 - **Do not** complete a TPIEF if you wish to waive your right to use termination pay in the calculation of your retirement benefit (Termination Pay Option 3).

When is a TPIEF effective and what does it do? An *effective TPIEF* is one that you and your employer fully complete and sign **at least 90 days before your date of termination** of employment and submit to TRS. It is effective as of the date on which you and your employer sign it, and it cannot be changed or withdrawn by you or your employer. As stated previously, an effective TPIEF allows member contributions on termination pay to be withheld by your employer and paid to TRS on a tax-deferred basis.

What additional requirements and limitations apply to a TPIEF? Your employer must report to TRS the total gross amount of your termination pay and the full amount must be used in the calculation of your retirement benefit.

³ For more details, see the TRS "Preparing For Retirement" webpage at trs.mt.gov.

Your employer must pick-up from your termination pay, to the extent possible, all member contributions owed on the termination pay. No amount required to be picked up may be paid directly to you. If you elect Termination Pay Option 1 and the required member contributions exceed the amount of termination pay available to be picked up, you must pay the remaining member contributions with after-tax dollars by writing a personal check to TRS. Member contributions paid with after-tax dollars are subject to the limitation under Section 415 of the IRC.

The TPIEF will not apply to any contributions paid to TRS prior to the effective date of the TPIEF, and you may not prepay any portion of the required member contributions.

What if I sign a TPIEF less than 90 days before I terminate employment? The TPIEF is void and employer pick-up of member contributions is not available. There are no exceptions to this requirement.

Is a TPIEF I complete with an employer effective for all future employment with that employer? Once you sign a TPIEF with an employer, it is effective until you terminate employment with that employer. If you terminate employment with the employer but do not retire with TRS at the same time, the TPIEF is void.

If you retire with TRS under an effective TPIEF with an employer, the TPIEF is effective only with respect to the termination of employment concurrent with that retirement. If you are employed by the employer again after your initial retirement, are returned to active member status with TRS, and earn at least 3 full years of creditable service, you will need to complete a new TPIEF with the employer to use any termination pay in the calculation of an additional benefit amount at the time of reinstatement of your retirement benefit.

What if I have an effective TPIEF on file but I die before retiring? If a monthly retirement benefit is payable to your beneficiary(ies), the terms of the TPIEF will be enforced as if you survived to retirement. Your employer will be required to report the termination pay and remit employer and picked-up member contributions to TRS, and your beneficiary(ies) will be required to remit any amount owed out-of-pocket for member contributions.

If I did not sign a TPIEF at least 90 days before terminating employment, can I still use termination pay to increase my benefit? Yes, with the understanding that you are responsible for paying all required member contributions by personal check (i.e., with after-tax dollars). In the absence of an effective TPIEF, you may include all or a portion of your termination pay in the calculation of your benefit under Termination Pay Option 1 or Option 2. TRS staff will explain the options and requirements to you during the retirement application process.

How do I elect Termination Pay Option 3? If you want to receive your termination pay in cash from your employer rather than using it to increase your TRS retirement benefit, **do not** complete a TPIEF. You will simply mark this option on your TRS retirement application and on TRS Form 113 *Retirement Termination Pay*, which will be included in the application packet you receive from TRS.

Questions?

If you have any questions about the content of this Fact Sheet, please contact us.

Montana Teachers' Retirement System ♦ 406-444-3134 ♦ 866-600-4045 ♦ trs.mt.gov

Please Note: This Fact Sheet is intended to provide a concise, easy-to-understand summary of TRS law and policy. The actual application of TRS law will depend upon the specific circumstances and facts presented. In determining the rights and obligations of any person, TRS law will supersede any contradictory information provided in this Fact Sheet.