



## bulletin

### 2021 legislative change affecting TRS employers

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#### House Bill 88: Generally Revise Laws on Administration of TRS

This “housekeeping bill” amended the definition of **earned compensation** in 19-20-101, MCA, to clearly state:

Cash paid in lieu of any direct employer-paid or noncash benefit that has previously been or would be paid or provided to or on behalf of the employee at the employee's request or direction is considered a fringe benefit and not earned compensation.

The amended language takes effect July 1, 2021 and will be codified as part of the definition of “earned compensation” in 19-20-101, MCA, when the 2021 codes are published later this year. To read the language now, go to [leg.mt.gov](http://leg.mt.gov), click “Bill Search,” and look up **HB 88**. You’ll find the amended language in Section 1.

#### *Background*

TRS has long distinguished between a true “conversion of fringe benefits” (where an employer no longer offers or provides the employer-paid fringe benefit) and a “cash in lieu of fringe benefits” situation (where an employer gives one or more employees the option to elect between receiving the fringe benefit or receiving additional cash compensation instead of the fringe benefit). The amended language reflects this longstanding distinction.

#### *Examples*

- An employer discontinues providing employer-sponsored health insurance and instead pays its employees an additional \$500.00 per month in cash compensation. Because this employer has converted the fringe benefit to compensation, it **is reportable to TRS as earned compensation**.
- An employer continues to provide employer-sponsored health insurance but allows an employee to elect to receive *either* the employer-sponsored health insurance *or* an additional \$500.00 per month in cash compensation. Because this employer is providing a “cash in lieu of benefits” election to its employee(s), the \$500.00 per month of compensation paid “in lieu” of employer-sponsored health insurance **is not reportable to TRS as earned compensation**.

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- An employer provides an option for one employee to receive either a direct employer-paid fringe benefit or additional cash compensation instead of the direct employer-paid fringe benefit. (For example, the employee is allowed to elect *either* a contribution of \$1,000.00 paid by the employer to a tax-sheltered annuity on the employee’s behalf *or* \$1,000.00 in additional cash compensation in lieu of the employer’s contribution to the tax-sheltered annuity.) This employer is providing a “cash in lieu of benefits” election to that employee, and the cash payment made in lieu of the benefit *is **not reportable to TRS as earned compensation.***

### *Summary*

If you offer one or more of your employees the option to receive either a direct employer-paid or noncash benefit or cash compensation instead of the benefit, any cash compensation elected by the employee under such an option is excluded from the definition of “earned compensation” for TRS purposes. The cash compensation is not reportable to TRS and will not be used in the calculation of an employee’s average final compensation at the time of retirement.

The amended language in 19-20-101, MCA, does not apply to circumstances where an actual conversion of fringe benefits has occurred; i.e., you no longer offer or provide the direct employer-paid or non-cash benefit to any employee and you convert the fringe benefit to cash compensation for all employees. In this case, the cash compensation is reportable to TRS and may be used in the calculation of the employee’s average final compensation at the time of retirement.

### **Questions?**

If you have questions about any information provided in this bulletin, please call TRS at (406) 444-3134 or toll free at (866) 600-4045.