

OPERS

# Pick-up Plans

*A guide for Employers*





## ABOUT PICK-UP PLANS: GENERAL OVERVIEW

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Contributions to the OPERS retirement plans are made by the employer and the employee. Under Section 414(h)(2) of the Internal Revenue Code, an employer may pick up the employee's portion of the retirement contribution to a qualified pension plan. Taxes for the pick-up contributions may then be deferred until the employee receives the contributions as either a refund after termination of employment or as retirement benefits. Without a pick-up plan, employee contributions to a qualified pension plan are generally taxable at the time the contribution is made. A pick-up plan allows deferral of the income taxes on the employee's required contribution amount.

### Two types of pick-up plans:

**1 Fringe benefit employer pick-up:** The employee contribution is paid by the employer as a fringe benefit.

**2 Salary reduction employer pick-up:** The employee contribution is paid by the employer, and the employee's gross salary is reduced by the amount of the contribution.

Typically, the full amount of the required retirement contributions is covered under one of these plans, but partial amounts may be picked up. Under a partial pick-up plan, the employer must provide two reports of retirement contributions:

- One for the portion that is picked up (tax-deferred).
- One for the portion that is not picked up and is subject to taxation at the time of the contribution.

### Guidelines for all pick-up plans:

- No federal income, state income, or school district income taxes are withheld from the picked up (tax-deferred) retirement contributions.
- The contributions are not reported as taxable income on the employee's W-2 form for federal, state or school district purposes.
- Contributions are taxable for local taxes and may be subject to Medicare taxation.
- Carryover public employees are not eligible for pick-up plans.

If a pick-up plan is to be discontinued, OPERS must be notified in writing, identifying the plan by number. The action to abolish must be executed by the same authority(ies) that created the plan.

## DIFFERENCES BETWEEN FRINGE BENEFIT AND SALARY REDUCTION PICK-UP PLANS

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### **Fringe benefit**

The employer pays (picks up) the employee's contribution instead of giving the employee an increase in salary. The employee's gross salary does not change, but the take-home pay increases by the pick-up amount, which is also the cost to the employer. There is no change to the final average salary.

Elected officials, whose salaries are set by statute, are generally not eligible to participate in a fringe benefit pick-up plan, because the amount picked up is treated as additional compensation which is not permitted under the statute (Ohio Attorney General Opinions 1984-036, 1984-058, 2004-048).

### **Salary reduction**

The employer reduces the employee's gross salary by the amount of the employee contribution (the pick-up), so there is no cost to the employer. The employee pays less in federal and state income taxes because of the reduction in gross salary, so there is an increase in take-home pay. The IRS requires the salary reduction to be reported on the year-end W-2. Note: An employee will not have basis (salary base) under a plan for the amounts that are pick-up contributions.

Unlike a fringe benefit pick-up plan, a salary reduction pick-up plan does not increase an employee's overall compensation. Therefore, elected officials whose salaries are set by statute may participate in salary reduction pick-up plans.

## A COMPARISON OF THE TWO PLANS USING HYPOTHETICAL NUMBERS:

	No Pickup Plan	Salary Reduction	Fringe Benefit
Salary	1,000.00	1,000.00	1,000.00
Salary with pick-up reduction	1,000.00	900.00	1,000.00
Taxable income	1,000.00	900.00	1,000.00
Federal income tax (at 15%)	150.00	135.00	150.00
State tax (at 2%)	20.00	18.00	20.00
City tax (at 2%)	20.00	20.00	22.00
Medicare (at 1.45%)	14.50	14.50	15.95
Pension contribution	100.00	100.00	100.00
Additional take-home pay	0.00	17.00	96.55
Earnable salary (pensionable earnings)	1,000.00	1,000.00	1,000.00
Costs to employer	0.00	0.00	100.00

**Note:** The basis (salary base) for calculating city and Medicare tax under the fringe benefit method is \$1,100 salary. The pick-up amount of \$100 is NOT subject to federal income tax, but is taxed at city and Medicare rates.

## HOW TO IMPLEMENT PICK-UP PLAN

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**When a public employer chooses to implement a pick-up plan, the following steps must be taken:**

### Step 1

Draft a plan description that can be used as the resolution to be approved by your governing body. The plan description must include:

- Statement that either all employees or only certain employee classes are eligible to participate (do not use employee names, only use titles or positions).
- The first date of the reporting period for which the picked-up contributions will be reported to OPERS. This date must be later than the date that your resolution is adopted (Revenue Ruling 87-10). Pick-up plans cannot be retroactive.
- The following exact language to meet IRS requirements (*Revenue Rulings 81-35, 81-36 and 2006-43*):
  - Contributions, although designated as employee contributions are employer-paid; and
  - Employees do not have the option to receive the contributions directly. All contributions are paid by the employer directly to the plan.
- You do not have to create a resolution. Sample resolutions are included in this brochure; however, you must tailor the resolution to your organization.

### Step 2

Send the draft resolution to OPERS Employer Services prior to presenting it to your governing body. OPERS will review the document to ensure all legal requirements for pick-up plans are fulfilled. We may request that you ask for a Private Letter Ruling from the IRS to confirm that your plan is in compliance before we approve the plan.

### Step 3

Your pick-up plan must be approved by your governing body and a copy of the approval documents must be submitted together with a cover letter to OPERS. Once approved by OPERS, you will receive a letter specifying the employer code you should use to report the portion of contributions you are picking-up. (Employer codes used to report tax-deferred or picked-up contributions end in the number eight).

## SAMPLE RESOLUTIONS FOR EMPLOYERS INCLUDE:

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### Sample Resolution For Fringe Benefit Pick-up Plan

ORDINANCE NO. \_\_\_\_\_

RESOLUTION THAT THE (NAME OF PUBLIC EMPLOYER ENTITY) WILL PICK UP THE STATUTORILY REQUIRED CONTRIBUTION TO THE OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM FOR THE EMPLOYEES OF THE (NAME OF PUBLIC EMPLOYER ENTITY) PURSUANT TO IRC SECTION 414(h)(2).

WHEREAS, pursuant to federal and Ohio laws, the (NAME OF PUBLIC EMPLOYER ENTITY) may offset future salary increases and “pick up” (assume and pay) the contributions statutorily required by such elected officials and covered employees to the Ohio Public Employees Retirement System (OPERS) and such individuals will not be required to pay federal and state income taxes on such contributions; and

NOW THEREFORE BE IT ORDAINED BY THE (NAME OF PUBLIC EMPLOYER ENTITY) OHIO, THAT:

**SECTION 1:** Effective (INSERT DATE) the full amount of the statutorily required employee contributions to OPERS shall be picked up and paid as a fringe benefit by the (NAME OF PUBLIC EMPLOYER ENTITY) for each person within any of the classes established in Section 2 herein. The pick-up shall be an offset against future salary increases. This “pick up” by the (NAME OF PUBLIC EMPLOYER ENTITY) shall be designated as public employee contributions and shall be in lieu of contributions to OPERS by each person within any of the classes established in Section 2 herein. No person subject to this “pick up” shall have the option of choosing to receive the statutorily required contribution to OPERS directly instead of having it “picked up” by the (NAME OF PUBLIC EMPLOYER ENTITY) or of being excluded from the “pick up”. The (NAME OF PUBLIC EMPLOYER ENTITY) shall, in reporting and making remittance to OPERS, report that the public employees contribution for each person subject to this “pick up” has been made as provided by the statute. Therefore, contributions, although designated as employee contributions, are employer-paid, and employees do not have the option to receive the contributions directly. All contributions are paid by the employer directly to the plan.

**SECTION 2:** The “pick up” by the (NAME OF PUBLIC EMPLOYER ENTITY) provided by this ordinance shall apply to all persons that are employees of the (NAME OF PUBLIC EMPLOYER ENTITY) who are or become contributing members of OPERS.

**SECTION 3:** Under the fringe-benefit method of employer pick up, salary is not modified; however, the employer will pay the employees’ statutorily required contribution to OPERS.

**SECTION 4:** The treasurer and/or the clerk are hereby authorized and directed to implement the provisions of this ordinance to institute the “pick up” of the statutorily required contributions to OPERS for those persons reflected in Section 2 herein so as to enable them to have their employee contributions paid by their employer.

Adopted, (INSERT DATE HERE)

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
(NAME OF PUBLIC EMPLOYER ENTITY) Clerk

## SAMPLE RESOLUTIONS FOR EMPLOYERS INCLUDE:

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### Sample Resolution For Salary Reduction Pick-up Plan

ORDINANCE NO. \_\_\_\_\_

RESOLUTION THAT (NAME OF PUBLIC EMPLOYER ENTITY) WILL PICK UP THE STATUTORILY REQUIRED CONTRIBUTION TO THE OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM FOR THE EMPLOYEES OF THE (NAME OF PUBLIC EMPLOYER ENTITY) PURSUANT TO INTERNAL REVENUE CODE SECTION 414(h)(2).

WHEREAS, pursuant to federal and Ohio laws, the federal and state income taxes on a portion of the wages or salaries of the employees of the (NAME OF PUBLIC EMPLOYER ENTITY) will be deferred if (NAME OF PUBLIC EMPLOYER ENTITY) "picks up" (assumes and pays) the contributions statutorily required to be made by such elected officials and covered employees to Ohio Public Employees Retirement System (OPERS); and

WHEREAS, (NAME OF PUBLIC EMPLOYER ENTITY) will not incur any additional costs in the picking up of such contributions.

NOW THEREFORE BE IT ORDAINED BY (NAME OF PUBLIC EMPLOYER ENTITY) OHIO, THAT:

**SECTION 1:** Effective (INSERT DATE), the full amount of the statutorily required employee contributions to OPERS shall be withheld from the gross pay of each person within any of the classes established in Section 2 herein and shall be "picked up" (assumed and paid to OPERS) by the (NAME OF PUBLIC EMPLOYER ENTITY). This "pick up" by the (NAME OF PUBLIC EMPLOYER ENTITY) shall be designated as public employee contributions and shall be in lieu of contributions to OPERS by each person within any of the classes established in Section 2 herein. No person subject to this "pick up" shall have the option of choosing to receive the statutorily required contribution to OPERS directly instead of having it "picked up" by (NAME OF PUBLIC EMPLOYER ENTITY) or of being excluded from the "pick up". The (NAME OF PUBLIC EMPLOYER ENTITY) shall, in reporting and making remittance to OPERS, report that the public employees contribution for each person subject to this "pick up" has been made as provided by the statute. Therefore, contributions, although designated as employee contributions, are employer-paid, and employees do not have the option to receive the contributions directly. All contributions are paid by the employer directly to the plan.

**SECTION 2:** The "pick up" by the (NAME OF PUBLIC EMPLOYER ENTITY) provided by this ordinance shall apply to all persons that are employees of the (NAME OF PUBLIC EMPLOYER ENTITY) who are or become contributing members of OPERS.

**SECTION 3:** The (NAME OF PUBLIC EMPLOYER ENTITY'S) method of payment of salary to employees who are participants in OPERS is hereby modified as provided in Section 4, in order to provide for a salary reduction pick up of employee contributions to OPERS.

**SECTION 4:** The total salary for each employee shall be the salary otherwise payable under the (NAME OF PUBLIC EMPLOYER ENTITY) policies. Such total salary of each employee shall be payable by the (NAME OF PUBLIC EMPLOYER ENTITY) in two parts: (a) deferred salary and (b) cash salary. An employee's deferred salary shall be equal to that percentage of that employee's total salary which is required from time to time by OPERS to be paid as an employee contribution by that employee, and shall be paid by the (NAME OF PUBLIC EMPLOYER ENTITY) to OPERS on behalf of that employee as a pick up and in lieu of the OPERS employee contribution otherwise payable by that employee. An employee's cash salary shall be equal to that employee's total salary less the amount of the pick up for that employee, and shall be payable, subject to applicable payroll deductions, to that employee. The (NAME OF PUBLIC EMPLOYER ENTITY) shall compute and remit its employer contributions to OPERS based upon an employee's total salary. The total combined expenditures of the (NAME OF PUBLIC EMPLOYER ENTITY) for such employees' total salaries payable under applicable (NAME OF PUBLIC EMPLOYER ENTITY) policies and the pick-up provisions of this resolution shall not be greater than the amounts it would have paid for those items had this provision not been in effect.

## INSTRUCTIONS FOR USING THESE DOCUMENTS

1. All blanks must be completed to make the resolution specific to your entity and situation.
2. Refer to employee(s) included in the plan by job title and classification; do not use names.
3. Resolution must be on your organization's letterhead.
4. Sample resolutions assume all employees are eligible to participate. If fewer than all employees will be eligible under your pick-up plan, you must specify the eligible classes of employees in Section 2 of the sample resolution.
5. For questions, contact Employer Services at 888-400-0965.

*Note: OPERS reserves the right to request that you ask for a Private Letter Ruling from the IRS to confirm your plan is in compliance.*



This publication is written in plain language for use by members of the Ohio Public Employees Retirement System. It is not intended as a substitute for the federal or state law, namely the Ohio Revised Code, the Ohio Administrative Code, or the Internal Revenue Code, nor will its interpretation prevail should a conflict arise between it and the Ohio Revised Code, Ohio Administrative Code, or Internal Revenue Code. Rules governing the retirement system are subject to change periodically either by statute of the Ohio General Assembly, regulation of the Ohio Public Employees Retirement Board, or regulation of the Internal Revenue Code. If you have questions about this material, please contact our office or seek legal advice from your attorney.

This document reflects information as of the date listed herein. There is no promise, guarantee, contract or vested right to access to health care coverage or a premium allowance. The board has the discretion to review, rescind, modify or change the health care plan at any time.

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