

# Salary Deferral/Payback Program

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## A. General Information

The salary deferral/payback program is a method of distributing pay to employees over a longer period (typically 12 months) than their assignment or normal working period. An example is a faculty member whose employment assignment is for nine months (September – May) and he/she wishes to be paid over 12 months.

Pay spread over 12 months also allows for family insurance and/or dental and vision insurances to be deducted from the employee's pay on a pre-tax basis for the full year.

## B. Definitions

1. Assignment Period – The employee's original or normal working period. The period must begin on the first of the month. This period does not include any shorter period in the year of hire (see Short Period).
2. Payback Period – The period in which the employee is paid the amount deferred during the Assignment Period.
3. Extended Period – The period the employee will be paid under the salary deferral program including the Short Period or Assignment Period and the Payback period.
4. Short Period – An initial period of less than the actual Assignment Period. Allowable only for newly hired employees.
5. Plan Year – The year corresponding to the start of the Assignment Period.
6. Funds Deferred – The total amount withheld in the Assignment Period and not yet repaid to the employee in the Payback Period.
7. Deferral Amount – The amount subtracted from each of the employee's paychecks during the Assignment Period.
8. Payback Amount – The monthly amount paid to the employee during the Payback Period.

## C. Participation Requirements and Restrictions

1. The employee must have a qualifying assignment. The employee must be exempt as defined by the Federal Labor Standards Act.
2. Salary deferral/payback program only applies to the employee's primary assignment.
3. The employee must have a recurring Assignment Period beginning July 1, August 1, or September 1.
4. The employee must have an Assignment Period ending on April 30, May 31, or June 30.
5. Employees are not allowed to draw on Funds Deferred.
6. The employee does not earn any interest on the Funds Deferred.
7. The employee must follow the plan for the full Plan Year with no exceptions. Any cancellations/revocations of the salary deferral election will apply to the start of the next Plan Year.

#### D. Deferral Periods

The employee may opt to spread pay over 1, 2, 3 months depending on the length of the employees Assignment Period.

<u>Assignment Period</u>	<u>Current Assignment Length</u>	<u>Payback Period</u>	<u>Extended Period Length</u>
July 1 – May 31	11	June	12
August 1 – April 30	9	May, June, July	12
August 1 – May 31	10	June	11
August 1 – May 31	10	June, July	12
September 1 – May 31	9	June	10
September 1 – May 31	9	June, July	11
September 1 – May 31	9	June, July, August	12
September 1 – June 30	10	July, August	12

#### E. Year of Hire Exceptions/Accommodations

##### 1. Short Period

Employees that begin employment (new hires) on the first of the month but after the start of the Assignment Period for future years may initiate a Short Period salary deferral. A Short Period salary deferral will result in a higher Deferral Amount and a lower Payback Amount (lower pay for the Extended Period). For example, an employee that is hired to start on October 1 but has an Assignment Period of September 1 – May 31 for all future years may participate in the salary deferral program at the time of hire.

##### 2. Special Considerations

Any employee with an initial Short Period will need special language in their contract and will need to have their annual salary and contract period adjusted for year 2 of employment.

#### F. Employee Pay

1. The Deferral Amount, a portion of the employee's pay, is deducted from his/her check during the Assignment Period.
2. The Deferral Amount is held in a non-interest-bearing withholding account until the Payback Period.
3. The Funds Deferred are paid to the employee over the Payback Period.
4. Applicable taxes and benefits are withheld when the employee is paid in the Payback Period.
5. Employees that start employment in a month after the start of their Assignment Period may initiate a Short Period Salary Deferral on the first of a month.
6. Short Period Salary Deferral will result in higher salary deferral and lower pay during the Deferral Period.

#### G. Expenses, Benefits and Fringe Benefit Rate

1. The employee's pay is expensed over the Assignment Period.
2. The department/college is charged the labor and average fringe benefit rate over the Assignment Period.
3. Employee benefits are deducted and paid over the Extended Period.

#### H. Separation from Employment

1. If the employee separates from the University, the Deferred Amount will be refunded to the employee at the time of separation.
2. Any outstanding overpayment balance will be deducted from final pay amounts.

#### I. Calculation

1. The employee's annual salary divided by the Assignment Period Length less the employee's annual salary divided by the Extended Period Length equals the monthly Deferral Amount.

2. Regular Period Example:

Assignment Period = August 1 – May 31, Assignment Length = 10,

Extended Period = August 1 – July 31, Extended Period Length = 12,

Annual Salary = \$60,000

\$60,000 (annual salary) / 10 (Assignment Period Length)	\$6,000
\$60,000 (annual salary) / 12 (Extended Period Length)	<u>(\$5,000)</u>
Monthly Deferral Amount.	\$1,000

Employee gross pay for months August – May \$5,000/month \$50,000

Payback amount in months June – July \$5,000/month \$10,000

Total paid to employee over extended period \$60,000

Department expense and fringe benefit rate base \$6,000/month August – May (no amounts charged to the department June – July).

3. Short Period Example:

Assignment Period = August 1 – May 31, Assignment Length = 10,

Short Period = October 1 – May 31, Short Period Length = 8

Extended Period = October 1 – July 31, Extended Period Length = 10

Annual Salary = \$60,000

Short Period Salary = \$48,000 (\$60,000 (annual salary)/10 (Assignment Period Length) \* 8 (Short Period Length))

\$60,000 (annual salary)/10 (Assignment Period Length)	\$6,000
\$48,000 (Short Period salary)/10 (Extended Period Length)	<u>(\$4,800)</u>
Monthly Deferral Amount	\$1,200

Employee gross pay for months October – May \$4,800/month \$38,400

Payback amount in months June – July \$4,800/month \$9,600

Total paid to employee over extended period \$48,000

Department expense and fringe benefit rate base \$6,000/month October – May (no amounts charged to the department June – July).

#### J. Election/Revocation of Election

1. The Salary Deferral/Payback Program Election to Defer Receipt of Pay Form must be completed and submitted to [payroll.services@okstate.edu](mailto:payroll.services@okstate.edu) 30 days prior to the start of the Assignment Period/Plan Year.
2. New employees must complete and submit a Salary Deferral Payback Program election no later than 10 days prior to the start of the Deferral Period.
3. The election is irrevocable during the Plan Year.
4. The election may be revoked before the start of a new Plan Year by completing the Salary Deferral/Payback Program Election to Defer Receipt of Pay Form cancellation section on or before 30 days prior to the start of the Assignment Period/Plan Year.

K. Regulatory References

The IRS issued final regulations regarding U.S. Code 26 Section 409A which apply to compensation that workers earn in one year but that is not paid until a future year. This is referred to as nonqualified deferred compensation (NQDC). Section 409A does **not** apply to qualified deferred compensation plans such as section 401(k) or to a section 403(b) or 457(b) salary reduction plan.

This salary deferral/payback program is considered to be NQDC under section 409A since the program allows compensation earned in one calendar year to be paid in a later calendar year.