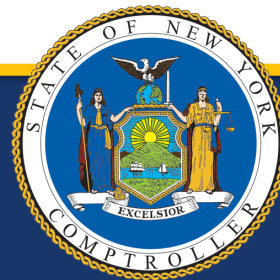


**Office of Operations’  
2023 Virtual Fall Conference**

**Processing Payments Pursuant to Court  
Orders, Awards and Settlement Agreements  
“Back Pays”**

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New York State Comptroller  
**THOMAS P. DINAPOLI**

# Back Pays

- Objectives
  - Discuss [Payroll Bulletin 1217](#)
  - Discuss the Processing of Back Pays
    - Types of Back Pays
    - Agency Responsibilities
    - OSC Responsibilities
    - Process Flowchart and Instructions
    - Garnishment and Unemployment Insurance Recovery
    - Tax Treatments
    - Earnings and Action Reason Codes
  - Frequently Asked Questions



# Payroll Bulletin 1217

## New Requirements and Procedures for Processing Salary Payments Pursuant to Court Orders, Awards and Settlement Agreements

- Outlines full procedures for submitting back pays
- Includes chart of Earnings Codes for use in Job Data and Time Entry
- “Back Pay” in this presentation will be used as a catch-all phrase for all Court Orders, Awards and Settlement Agreements



# Types of Back Pays

- **Court Order**
  - State or Federal Court Determination
- **Award**
  - Arbitrator Decision
  - Administrative Agency – ex. Division of Human Rights
- **Settlement Agreement**
  - Judicial Settlement Agreement – after court proceeding has begun
  - Administrative Settlement Agreement – after non-court proceeding has begun (i.e., contract grievance)
    - By Administrative Agency
    - By individual authorized to resolve a grievance under a collective bargaining unit
  - Pre-Adjudicatory Settlement Agreement – before any type of court or administrative agency, or proceeding under a collective bargaining agreement (i.e., grievance) has begun
  - Consent Award – Court Order or Award issued by Judge or Arbitrator using terms agreed to by the parties (treated as a Judicial or Administrative Settlement)



# Agency Payroll Office Responsibilities

- Understand intent of the back pay and how it is to be processed in PayServ
- Submit signed documentation, calculation of pay due to employee, and [AC 3300-S](#) form (Pre-Adjudicatory Settlements only) to the Payroll Salary Awards mailbox, [PayrollSalaryAwards@osc.ny.gov](mailto:PayrollSalaryAwards@osc.ny.gov)
- Answer questions from OSC regarding back pay documentation
- Enter transactions in PayServ once approved
- Review calculated paychecks to verify payments are correct
- Verify transactions are entered in HR systems like NYSTEP or other agency HR systems

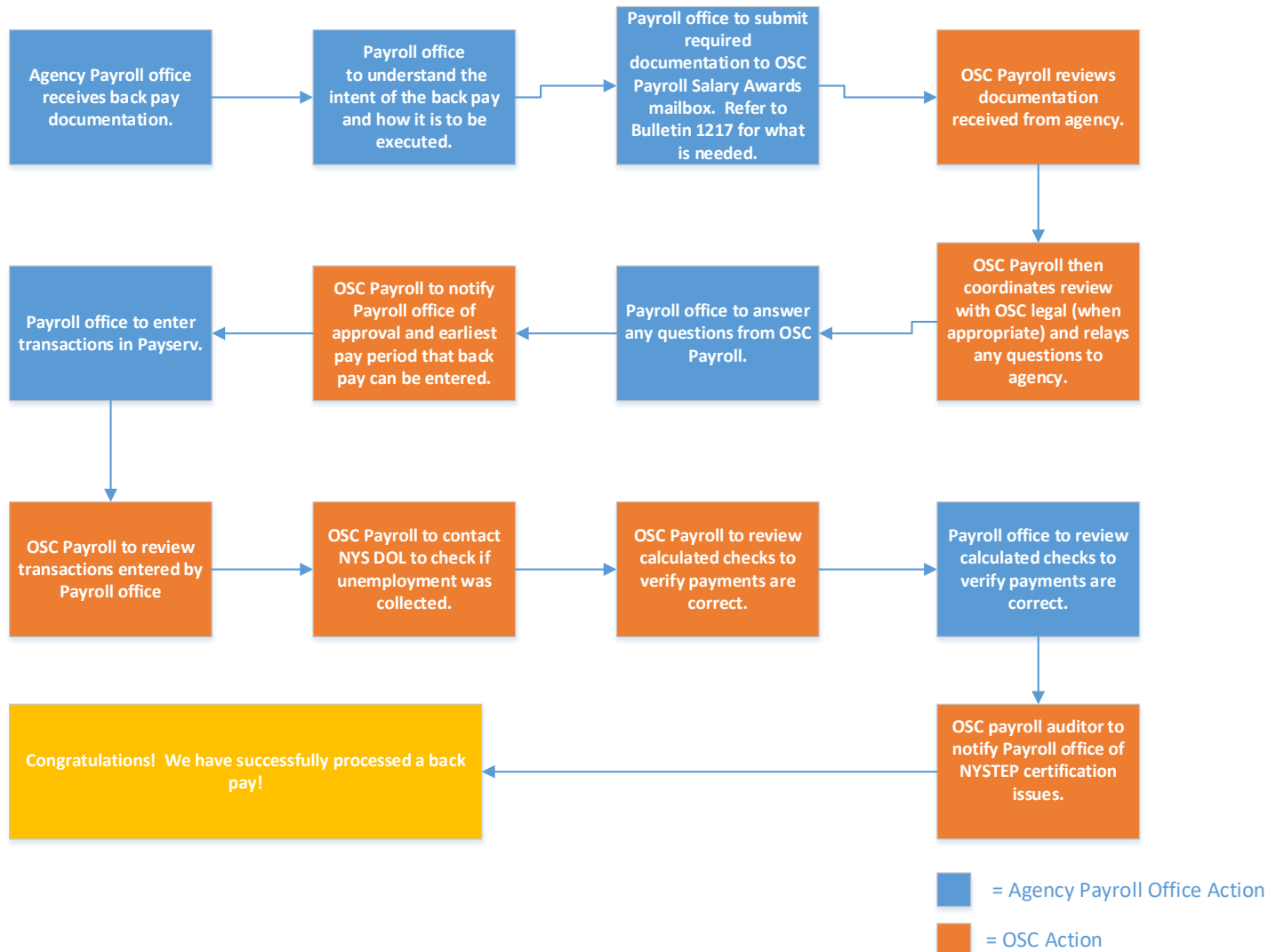


# OSC Responsibilities

- Review documentation once received
- Coordinate review with OSC Legal Services when appropriate and relay questions from Legal Counsel to agency
- Notify agency of approval and earliest pay period back pay can be submitted
- Review transactions entered by agency
- Contact NYS Department of Labor for possible Unemployment Insurance recovery
- Review calculated paychecks
- Notify agency of NYSTEP certification issues



# Steps to Process Back Pays



# Processing Back Pays

Once approved by OSC, transactions may be entered in PayServ

- Restoration to Payroll
  - Job Data or Correct History Request (ex. Return from Leave, Rehire, Termination)
    - If requested via Correct History, state that the transaction is related to a back pay in the Job Request comment box
  - RGS in Time Entry
    - Entered Pay Period by Pay Period – do not combine pay periods unless instructed by OSC
    - Additional Pay factors cannot be added to the RGS – RGS is for base annual pay only
  - Restart or Enter Additional Pay factors like Location Pay (LOC) or Longevity Pay (LLS)
  - Enter Additional Pay Adjustments or Overpayments if needed
  - Review Retroactive Calculations





# Processing Back Pays

- Lump Sum Payments
  - If back pay calls for a flat lump sum payment, transaction is entered in Time Entry using designated back pay or front pay code (See Summary of Requirements slide or [Payroll Bulletin 1217](#))
- General Comments – Restorations and Lump Sums
  - All back pay transactions require a General Comment from the agency detailing the transactions and money due to the employee
  - OSC will also enter a separate comment documenting the approval and payments



# Processing Back Pays

- Non-Salary Payments
  - Payments that do not represent salary or wages are not processed through PayServ
  - Agencies must follow applicable financial channels (e.g., the Statewide Financial System) in order to make these payments
  - Generally, these payments are taxable and are reported on an IRS Form 1099
  - More information on non-salary payments is contained in the [OSC Guide to Financial Operations, Chapter XII.6.U](#)
  - Examples of Non-Wage Payments:
    - Attorney's Fees
    - Compensatory Damages
    - Punitive Damages
    - Interest



# Garnishments and Unemployment Insurance Recovery

## Garnishments

- OSC will calculate any garnishment(s) owed by an employee for the time period being paid and make the necessary deduction.

## Unemployment Insurance Recovery

- An employee cannot receive both back pay and Unemployment benefits for the same period of time. If the employee did collect Unemployment during a back pay period, the Unemployment will be recouped.
- OSC will contact the NYS Department of Labor to determine whether the employee received Unemployment benefits during the back pay period.
- If the employee did receive Unemployment benefits, the agency will be instructed by OSC to submit a deduction (Deduction Code 433) to recover the Unemployment monies that are owed to the NYS Department of Labor.
  - OSC will not contact agencies if no recoupment is needed.



# Garnishments and Unemployment Insurance Recovery

- When recovering the Unemployment benefits, the employee must be left with enough monies equivalent to the regular net earnings if the employee is still active on the payroll.
- If there is not enough to recover all Unemployment, OSC will reduce the deduction to recover as much as possible. The NYS Department of Labor will follow up with agencies with instructions on recovering the remaining amount.



# Taxes

- Taxes for back pay will be calculated using the employee's current tax information on the Federal, State, or Local Tax Data page. Employees are permitted to change tax information for the payment but at their own discretion, and any changes must be entered into PayServ timely for the applicable check date. **OSC cannot provide tax guidance to agencies or employees.**
- Agencies can refer to the Tax Treatment section of [Payroll Bulletin 1217](#) for more information and [Payroll Bulletin 1575](#) for discussion on Supplemental Wages.
- Back Pay will be reported as wages in the year that it is paid. The agency must contact the appropriate Retirement System to ensure that the employee is given retirement service credit for the proper time period.



# Summary of Requirements

## SUMMARY OF REQUIREMENTS FOR SALARY PAYMENTS PURSUANT TO COURT ORDERS, AWARDS AND SETTLEMENT AGREEMENTS

	EMail Electronic Copy of appropriate provisions to Payroll Services Salary Award Mailbox	Indicate the Amounts or Portions that are Taxable or Non-Taxable	Identify payment details (e.g., front pay, back pay, interest, compensatory damages, etc.) if not identified in final decision	Include rationale for front pay, if part of Settlement Agreement	Submit Certification Form AC-3300-S Signed by General Counsel or Agency Head	Maintain Documentation On file for six years	CODES		
							REASON	TIME ENTRY*	
								Front Pay	Back Pay
Court Order	X	X	X				COU	FPO	BPO
Award	X	X	X				AWD	FPA	BPA
Judicial Settlement Agreement	X	X	X	X			JSA	FJS	BJS
Administrative Settlement Agreement	X	X	X	X			ASA	FAS	BAS
Pre-Adudicatory Settlement Agreement	X	X	X	X	X	X	PSA	FPS	BPS

### Payment Type

\* The above Time Entry codes are to be used to replace Earnings Code BSA. Agencies must continue to use RGS wherever appropriate.

This chart is also in [Payroll Bulletin 1217](#).



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# Frequently Asked Questions

**The employee was suspended but  
has now returned to work.  
Can I put them back on the payroll?**

- Yes. The employee can be returned to the payroll without OSC approval on the date they physically returned to work.
- “Physically returned” means that the employee has resumed work duties on behalf of the agency.
- If this return is retroactive, enter a general comment clarifying that they did physically return to work.



# Frequently Asked Questions

**The agency is voluntarily withdrawing a Notice of Discipline (NOD) and the employee is due retroactive payment. Does that need OSC approval to enter?**

- No. OSC does not need to review and approve NOD withdrawals in advance and the payment may be entered immediately. However, OSC may question the agency if it is entered. The agency must enter a general comment explaining the NOD withdrawal.





# Frequently Asked Questions

**The employee has a back pay document (arbitration award) but is not due any money. Does this need OSC approval?**

- No, if the employee is not due any money, OSC does not need to give approval to enter transactions. However, OSC may question the transaction and reserves the right to request backup documentation for any transaction at any time.
- A fine assessed to an employee also does not need OSC approval to enter.



# Frequently Asked Questions

## How long will it take for the back pay to be approved?

- OSC cannot provide guidance for how long the approval will take, as each case is evaluated based on its own merits. OSC will notify the agency once the back pay is approved.
- OSC cannot guarantee a payment can be paid within a time frame stated in a back pay document.
- Agencies should submit requests for payment as soon as possible to allow for review and approval time.



# Frequently Asked Questions

**The employee will receive a large payment.  
Can the payment be paid in multiple tax years?**

- No. OSC cannot permit a back pay to be split into multiple payments. Under the Internal Revenue Code, an employer cannot hold or postpone income to an employee from one tax year to another.



# Frequently Asked Questions

## Who is the agency point of contact for OSC questions relating to a back pay document?

- The agency payroll officer who submitted the back pay to [PayrollSalaryAwards@osc.ny.gov](mailto:PayrollSalaryAwards@osc.ny.gov) is the point of contact OSC will use for all questions relating to the back pay request. The agency Payroll Office may need to reach out to other agency offices (ex. Legal Counsel, Labor Relations units) to answer OSC questions as needed.
- OSC will not reach out to agency Labor Relations, Legal Counsel, Union Representatives or other agency representatives without extenuating circumstances.
- In rare circumstances, OSC may ask agencies to reach out to arbitrators or courts to clarify terms of a back pay.



# Questions and Contact Information

All questions relating to Court Orders,  
Arbitration Awards, and/or Settlement  
Agreements may be sent to:

[PayrollSalaryAwards@osc.ny.gov](mailto:PayrollSalaryAwards@osc.ny.gov)



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