

JAN 19 2023

A BILL FOR AN ACT

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to ensure that
2 compensation eligible for the purpose of calculating retirement
3 benefits and service time includes pay and service that are
4 restored to an employee as part of an administrative, arbitral,
5 or judicial proceeding.

6 SECTION 2. Chapter 88, Hawaii Revised Statutes, is amended
7 by adding a new section to part II, subpart B, to be
8 appropriately designated and to read as follows:

9 "§88- Service credit and compensation; back pay. (a)
10 Service or compensation awarded to an employee pursuant to the
11 final adjudication of a court of competent jurisdiction shall be
12 considered service under section 88-21 or compensation under
13 section 88-21.5, respectively, under the following conditions:

14 (1) For:

15 (A) Service, the employee appeals an involuntary
16 termination or unpaid suspension and is
17 subsequently awarded back pay and is



1 retroactively reinstated to employment or has the
2 suspension rescinded in whole or in part pursuant
3 to the final adjudication of a court of competent
4 jurisdiction; provided that:

5 (i) The service credit shall be for the period
6 of retroactive employment for which back pay
7 is awarded; and

8 (ii) The amount of service credited to the
9 employee shall not exceed the period of
10 absence that the employee would have worked
11 but for their suspension or termination; or

12 (B) Compensation, the employee challenges
13 compensation and is subsequently awarded:

14 (i) A retroactive pay differential pursuant to
15 the final adjudication of a court of
16 competent jurisdiction, then the pay
17 differential that is awarded shall
18 constitute compensation; or

19 (ii) Back pay pursuant to the final adjudication
20 of a court of competent jurisdiction, then
21 the amount of back pay that constitutes



1 compensation shall include normal salary
2 adjustments and shall be based on the number
3 of workdays between the date the employee's
4 absence began until the employee's date of
5 reinstatement and shall not exceed what the
6 employee would have received had the
7 employee not been suspended or terminated;

8 (2) The employee makes contributions to the system based
9 on the applicable rate set forth in section 88-45 and
10 in the amount that the employee would have contributed
11 had the employee's employment not been suspended or
12 terminated;

13 (3) The employer makes contributions to the system based
14 on the contribution rate or rates in effect for the
15 plan during the period of service covered by the back
16 pay award, and in the amount the employer would have
17 contributed had the employee's employment not been
18 suspended or terminated along with compound interest
19 at the actuarial valuation rate for contributions
20 payable from the date the contribution was due until
21 paid; and



1 (4) If the employee was terminated, the employee repays:

2 (A) Any amount in employee contributions that were
3 refunded to the employee; and

4 (B) Any service or disability allowance that was paid
5 to the employee,
6 at the time of the employee's termination.

7 (b) Upon satisfaction of the requirements under subsection
8 (a), the employee shall be entitled to all the membership rights
9 and service credit that would have accrued but for the member's
10 challenged suspension or involuntary termination upon receipt by
11 the system of the full amount due."

12 SECTION 3. Section 88-21, Hawaii Revised Statutes, is
13 amended by:

14 1. Adding a new definition to be appropriately inserted
15 and to read as follows:

16 "Final adjudication of a court of competent jurisdiction"
17 means:

18 (1) The final decision of a court, an administrative
19 proceeding, or an arbitration proceeding from which no
20 appeal may be filed or which no appeal has been filed
21 within the time allowed;



- 1 (2) A stipulated judgment
- 2 (3) A court-approved settlement;
- 3 (4) A settlement adopted by court order or referenced in
- 4 an order of dismissal;
- 5 (5) A third-party arbitrator decision from which no appeal
- 6 may be filed or from which no appeal has been filed
- 7 within the time allowed; or
- 8 (6) Other final resolution of an appeal or challenge from
- 9 which no appeal may be filed or from which no appeal
- 10 has been filed within the time allowed."

11 2. Amending the definition of "base pay" and "service" to
 12 read as follows:

13 "'Base pay" means the normal periodic payments of money for
 14 service, the right to which accrues on a regular basis in
 15 proportion to the service performed; recurring differentials;
 16 [~~and~~] elective salary reduction contributions under sections
 17 125, 403(b), and 457(b) of the Internal Revenue Code of 1986, as
 18 amended[~~-~~]; back pay pursuant to section 88- ; and pay
 19 differential pursuant to section 88- ;

20 "Service": service as an employee paid by the State or
 21 county, and also: [~~service~~]



1 (1) Service during the period of a leave of absence or
 2 exchange if the individual is paid by the State or
 3 county during the period of the leave of absence or
 4 exchange; [~~and service~~]

5 (2) Service during the period of an unpaid leave of
 6 absence or exchange if the individual is engaged in
 7 the performance of a governmental function or if the
 8 unpaid leave of absence is an approved leave of
 9 absence for professional improvement; provided that,
 10 for the period of the leave of absence or exchange
 11 without pay, the individual makes the same
 12 contribution to the system as the individual would
 13 have made if the individual had not been on the leave
 14 of absence[-]; and

15 (3) Service pursuant to section 88- .
 16 Cafeteria managers and cafeteria workers shall be considered as
 17 paid by the State, regardless of the source of funds from which
 18 they are paid."

19 SECTION 4. Section 88-21.5, Hawaii Revised Statutes, is
 20 amended to read as follows:

1 "**§88-21.5 Compensation.** (a) For a member who became a
2 member before July 1, 2012~~[, unless]~~:

3 (1) Unless a different meaning is plainly required by
4 context, "compensation" as used in this part~~[, "~~
5 "~~compensation~~"] means:

6 ~~[+1]~~ (A) Normal periodic payments of money for
7 service the right to which accrues on a regular
8 basis in proportion to the service performed;

9 ~~[+2]~~ (B) Overtime, differentials, and supplementary
10 payments;

11 ~~[+3]~~ (C) Bonuses and lump sum salary supplements;
12 ~~[and]~~

13 ~~[+4]~~ (D) Elective salary reduction contributions
14 under sections 125, 403(b), and 457(b) of the
15 Internal Revenue Code of 1986, as amended~~[,]~~; and

16 (E) Back pay or pay differential considered as
17 compensation pursuant to section 88- ; and

18 (2) Bonuses and lump sum salary supplements shall be
19 deemed earned when payable; provided that bonuses or
20 lump sum salary supplements in excess of one-twelfth
21 of compensation for the twelve months prior to the



1 month in which the bonus or lump sum salary supplement
2 is payable, exclusive of overtime, bonuses, and lump
3 sum salary supplements, shall be deemed earned:

4 [~~1~~] (A) During the period agreed-upon by the
5 employer and employee, but in any event over a
6 period of not less than twelve months; or

7 [~~2~~] (B) In the absence of an agreement between the
8 employer and the employee, over the twelve months
9 prior to the date on which the bonus or lump sum
10 salary supplement is payable.

11 (b) For a member who becomes a member after June 30, 2012,
12 unless a different meaning is plainly required by context,
13 "compensation" as used in this part:

14 (1) Means:

15 (A) The normal periodic payments of money for
16 service, the right to which accrues on an hourly,
17 daily, monthly, or annual basis;

18 (B) Shortage differentials;

19 (C) Elective salary reduction contributions under
20 sections 125, 403(b), and 457(b) of the Internal
21 Revenue Code of 1986, as amended; [~~and~~]



1 (D) Twelve-month differentials for employees of the
2 department of education; and

3 (E) Back pay or pay differential considered as
4 compensation pursuant to section 88- ; and

5 (2) Shall not include any other additional or extra
6 payments to an employee or officer, including
7 overtime, supplementary payments, bonuses, lump sum
8 salary supplements, allowances, or differentials,
9 including differentials for stand-by duty, temporary
10 unusual work hazards, compression differentials, or
11 temporary differentials, except for those expressly
12 authorized pursuant to subsection (b) (1) (B),
13 (b) (1) (C), [~~and~~] (b) (1) (D) [~~-~~], and (b) (1) (E)."

14 SECTION 5. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 6. This Act shall take effect upon its approval.

17

INTRODUCED BY:

By Request



S.B. NO. 211

Report Title:

City and County of Honolulu Package; Retirement Benefits; ERS

Description:

Clarifies that service and compensation awarded as part of an administrative, arbitral, or judicial proceeding are included in the calculation of retirement benefits and service time for the Employees' Retirement System.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

