
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 employment, work, and pay eligible for the purpose of
3 calculating retirement benefits includes retroactive
4 reinstatement, retroactive rescission of suspension, retroactive
5 pay differential, and back pay that are restored to an employee
6 as part of an administrative, arbitral, or judicial proceeding,
7 subject to certification that the retroactive reinstatement,
8 retroactive rescission of suspension, retroactive pay
9 differential, and back pay that are restored otherwise satisfy
10 the requirements of chapter 88, Hawaii Revised Statutes,
11 including:

12 (1) The definition of "service" in section 88-21, Hawaii
13 Revised Statutes;

14 (2) The calculation of credit for a year of service in
15 section 88-50, Hawaii Revised Statutes;



- 1 (3) The definition of "compensation" in section 88-21.5,
- 2 Hawaii Revised Statutes, to prevent significant non-
- 3 base pay increases;
- 4 (4) Compliance with the employer reporting requirements of
- 5 section 88-103.7, Hawaii Revised Statutes;
- 6 (5) Payment of the actuarial value of employee
- 7 contributions; and
- 8 (6) Payment of the actuarial value of employer
- 9 contributions.

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

13 "§88- Retroactive reinstatement; retroactive recission
14 of suspension; retroactive pay differential; back pay. Upon
15 certification by the system, the retroactive reinstatement,
16 retroactive recission of suspension, retroactive pay
17 differential, or back pay awarded to an employee pursuant to the
18 final adjudication of a court of competent jurisdiction, as
19 defined in section 88-21, shall be considered service under
20 section 88-21, compensation under section 88-21.5, or both;
21 provided that:



- 1 (1) For the reinstatement, recission of suspension, pay
2 differential, or back pay to be considered:
- 3 (A) Service under section 88-21, the employee shall
4 appeal the employee's involuntary termination or
5 unpaid suspension, be retroactively reinstated to
6 employment or have the suspension rescinded in
7 whole or in part, and be awarded back pay,
8 pursuant to the final adjudication of a court of
9 competent jurisdiction; provided further that:
- 10 (i) The days of retroactive employment for which
11 back pay is awarded pursuant to the final
12 adjudication of a court of competent
13 jurisdiction and paid by the State or county
14 shall be considered service;
- 15 (ii) The days of service shall not exceed the
16 number of days that the employee would have
17 provided service if the individual had not
18 been suspended or terminated; and
- 19 (iii) The service shall be credited to the extent
20 that the service satisfies the requirements
21 for credit as provided in this chapter; or



1 (B) Compensation under section 88-21.5, the employee
2 shall challenge the employee's compensation and
3 be subsequently awarded a retroactive pay or back
4 pay differential pursuant to the final
5 adjudication of a court of competent
6 jurisdiction; provided further that:

7 (i) The amount of a retroactive pay differential
8 awarded pursuant to the final adjudication
9 of a court of competent jurisdiction and
10 paid by the State or county shall be
11 considered a differential and shall not
12 exceed the amount and type of differential
13 available to other similarly situated
14 employees, available by pay schedule, or
15 comparable to the employee's own history of
16 pay differential;

17 (ii) The amount of back pay awarded pursuant to
18 the final adjudication of a court of
19 competent jurisdiction and paid by the State
20 or county shall be considered pay and shall
21 not exceed either the amount and type of pay



1 under normal salary adjustments available to
2 other similarly situated employees,
3 available by pay schedule, or comparable to
4 the employee's own history of compensation;
5 the pay attributable to the number of
6 workdays that occurred between the date that
7 the employee's absence began until the
8 employee's date of reinstatement; or the pay
9 that the employee would have received had
10 the employee not been suspended or
11 terminated; and

12 (iii) Differential or pay shall be considered
13 compensation to the extent the type of
14 differential or pay meets the requirements
15 of section 88-21.5;

16 (2) The requirements of section 88-103.7 shall be
17 satisfied with respect to any retroactive
18 reinstatement, retroactive rescission of suspension,
19 retroactive pay differential, or back pay awarded
20 pursuant to the final adjudication of a court of



1 competent jurisdiction and paid by the State and
2 county;

3 (3) The employee shall make a lump sum payment to the
4 system in the amount of the actuarial present value,
5 as determined by the system, of contributions that the
6 employee would have contributed had the employee's
7 employment not been suspended or terminated, and
8 compound interest thereon at the assumed rate of
9 return; provided further that class C service shall be
10 credited at no cost;

11 (4) The employer shall make a lump sum payment to the
12 system in the amount of the actuarial present value,
13 as determined by the system, of contributions that the
14 employer would have contributed pursuant to sections
15 88-123 through 88-126 had the employee's employment
16 not been suspended or terminated, along with compound
17 interest thereon at the assumed rate of return; and

18 (5) If the employee was terminated, the employee shall
19 repay:



- 1 (A) The actuarial present value, as determined by the
- 2 system, of any amount in employee contributions
- 3 that were refunded to the employee; and
- 4 (B) The actuarial present value, as determined by the
- 5 system, of any service or disability allowance
- 6 that was paid to the employee, at the time of the
- 7 employee's termination."

8 SECTION 3. Section 88-21, Hawaii Revised Statutes, is
9 amended as follows:

10 1. By adding a new definition to be appropriately inserted
11 and to read:

12 "Final adjudication of a court of competent jurisdiction"
13 means:

- 14 (1) The final decision of a court, an administrative
- 15 proceeding, or an arbitration proceeding from which
- 16 either no appeal may be filed or no appeal has been
- 17 filed within the time allowed;
- 18 (2) A stipulated judgment;
- 19 (3) A court-approved settlement;
- 20 (4) A settlement adopted by court order or referenced in
- 21 an order of dismissal;



1 (5) A third-party arbitrator's decision from which either
2 no appeal may be filed or no appeal has been filed
3 within the time allowed; or

4 (6) Other final resolution of an appeal or challenge from
5 which either no appeal may be filed or no appeal has
6 been filed within the time allowed."

7 2. By amending the definition of "service" to read:

8 "'Service": service as an employee paid by the State or
9 county, and also: [~~service~~]

10 (1) Service during the period of a leave of absence or
11 exchange if the individual is paid by the State or
12 county during the period of the leave of absence or
13 exchange; [~~and service~~]

14 (2) Service during the period of an unpaid leave of
15 absence or exchange if the individual is engaged in
16 the performance of a governmental function or if the
17 unpaid leave of absence is an approved leave of
18 absence for professional improvement; provided that,
19 for the period of the leave of absence or exchange
20 without pay, the individual makes the same
21 contribution to the system as the individual would



1 have made if the individual had not been on the leave
2 of absence[~~-~~]; and

3 (3) Service pursuant to section 88- .

4 Cafeteria managers and cafeteria workers shall be considered as
5 paid by the State, regardless of the source of funds from which
6 they are paid."

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

9 "**§88-21.5 Compensation.** (a) For a member who became a
10 member before July 1, 2012[~~-unless~~]:

11 (1) Unless a different meaning is plainly required by
12 context, "compensation" as used in this part[~~-~~
13 "~~compensation~~"] means:

14 [~~+1~~] (A) Normal periodic payments of money for
15 service the right to which accrues on a regular
16 basis in proportion to the service performed;

17 [~~+2~~] (B) Overtime, differentials, and supplementary
18 payments;

19 [~~+3~~] (C) Bonuses and lump sum salary supplements;

20 [~~and~~]



1 ~~[(4)]~~ (D) Elective salary reduction contributions
2 under sections 125, 403(b), and 457(b) of the
3 Internal Revenue Code of 1986, as amended~~[-]~~; and
4 (E) Back pay or retroactive pay differentials of
5 those payments authorized in subparagraphs (A)
6 through (D), and certified pursuant to section
7 88- ; and

8 (2) Bonuses and lump sum salary supplements shall be
9 deemed earned when payable; provided that bonuses or
10 lump sum salary supplements in excess of one-twelfth
11 of compensation for the twelve months prior to the
12 month in which the bonus or lump sum salary supplement
13 is payable, exclusive of overtime, bonuses, and lump
14 sum salary supplements, shall be deemed earned:

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

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



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

4 (1) Means:

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

8 (B) Shortage differentials;

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

12 (D) Twelve-month differentials for employees of the
13 department of education; and

14 (E) Back pay or retroactive pay differentials of
15 those payments authorized in subparagraphs (A)
16 through (D), and certified as compensation
17 pursuant to section 88- ; and

18 (2) Shall not include any other additional or extra
19 payments to an employee or officer, including
20 overtime, supplementary payments, bonuses, lump sum
21 salary supplements, allowances, or differentials,



1 including differentials for stand-by duty, temporary
2 unusual work hazards, compression differentials, or
3 temporary differentials, except for those expressly
4 authorized pursuant to [~~subsection (b)~~] subparagraphs
5 (1) (B) [~~, (b) (1) (C), and (b) (1) (D)~~] through (1) (E)."

6 SECTION 5. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 6. This Act shall take effect on January 1, 2050.



Report Title:

City and County of Honolulu Package; Retirement Benefits;
Employees' Retirement System

Description:

Ensures that employment, work, and pay eligible for the purpose of calculating retirement benefits includes retroactive reinstatement, retroactive rescission of suspension, retroactive pay differential, and back pay that are restored to an employee as part of an administrative, arbitral, or judicial proceeding. Effective 1/1/2050. (SD2)

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