

ACT 46

S.B. NO. 211

A Bill for an Act Relating to the Employees' Retirement System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to ensure that employment, work, and pay eligibility for the purpose of calculating retirement benefits includes retroactive reinstatement, retroactive rescission of suspension, and

retroactive payments that are restored to an employee as part of a judicial, administrative, or arbitral proceeding, or pursuant to a settlement of claims, subject to certification by the system that the retroactive reinstatement, retroactive rescission of suspension, and retroactive payments that are restored otherwise satisfy the requirements of chapter 88, Hawaii Revised Statutes, including:

- (1) The definition of “service” in section 88-21, Hawaii Revised Statutes;
- (2) The calculation of credit for a year of service in section 88-50, Hawaii Revised Statutes;
- (3) The definition of “compensation” in section 88-21.5, Hawaii Revised Statutes, to prevent significant non-base pay increases;
- (4) Compliance with the employer reporting requirements of section 88-103.7, Hawaii Revised Statutes;
- (5) Payment of the actuarial value of employee contributions; and
- (6) Payment of the actuarial value of employer contributions.

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

“§88- Retroactive reinstatement; retroactive rescission of suspension; retroactive payments. (a) Upon certification by the system, the retroactive reinstatement, retroactive rescission of suspension, and retroactive payment provided to an employee pursuant to a final resolution of claims shall be considered service under section 88-21, compensation under section 88-21.5, or both; provided that:

- (1) For the reinstatement, rescission of suspension, or payment to be considered:
 - (A) Service under section 88-21, the employee shall appeal the employee’s involuntary termination or unpaid suspension, be retroactively reinstated to employment or have the suspension rescinded in whole or in part, and be provided back pay, pursuant to a final resolution of claims; provided further that:
 - (i) The dates of retroactive employment or retroactive rescission of suspension for which back pay is provided pursuant to a final resolution of claims and paid by the State or county do not precede or succeed the dates the employee would have provided service if the employee had not been suspended or terminated;
 - (ii) A final resolution of claims specifies the dates of retroactive employment or retroactive rescission of suspension, and the amount, purpose, and nature of retroactive payments for each monthly period in which the employee would have provided service if the employee had not been suspended or terminated;
 - (iii) The dates of retroactive employment or retroactive rescission of suspension provided pursuant to a final resolution of claims would otherwise have been considered service as provided in this chapter; and
 - (iv) The service shall be credited to the extent it would otherwise have been credited as provided in this chapter; and
 - (B) Compensation under section 88-21.5, the employee shall challenge an involuntary termination, unpaid suspension, or the employee’s compensation and be subsequently provided a retroactive payment pursuant to a final resolution of claims; provided further that:

- (i) The amount, purpose, nature, and duration of a retroactive payment provided pursuant to a final resolution of claims and paid by the State or county do not exceed the amount, purpose, nature, and duration of compensation available to comparable employees (including but not limited to employees with similar positions, class, title, pay range or wage scale, step, bargaining unit, contract type, function, job category, and pay rate code through the same employer, department, or agency, available by pay schedule, or comparable to the employee's own history of compensation), less any compensation actually paid to the employee and reported to the system by the State or county, where applicable; do not exceed the compensation attributable to the number of workdays for which retroactive payment is owed; and when added to the compensation actually paid to the employee by the State or county and reported to the system, if any, results in compensation to the employee that does not exceed the compensation that the employee would have earned had the employee not been suspended or terminated, or had the employee received the compensation available to comparable employees;
 - (ii) Retroactive payments provided pursuant to a final resolution of claims would otherwise have been considered compensation, as provided in section 88-21.5(a) or (b), respectively, depending on when the employee became a member, and this chapter; and
 - (iii) Any amounts provided to the employee for damages, attorney's fees, interest or penalties, payments for failure to hire, or payments made as part of an agreement for the employee to resign or otherwise terminate employment shall not be considered compensation for purposes of the system;
- (2) The requirements of section 88-103.7 and this chapter shall be satisfied with respect to any retroactive reinstatement, retroactive rescission of suspension, retroactive pay differential, or back pay pursuant to a final resolution of claims and paid by the State and county, including but not limited to an allocation of the amount, purpose, and nature of a retroactive payment for each monthly period in which it would have been earned had the employee not been suspended or terminated, or had the employee received the compensation available to comparable employees, subject to the retroactive payments provided pursuant to a final resolution of claims and paid by the State or county as set forth in paragraphs (1)(A) and (B);
- (3) The employer has made a lump sum payment to the system in the amount of the actuarial present value, as determined by the system, of contributions that the employee would have contributed, as provided in this chapter, for the service and compensation to be certified pursuant to this section, which shall include compound interest thereon at the assumed rate of return; provided further that:
- (A) Class C service shall be credited at no cost; and
 - (B) Any portion of the lump sum payment in excess of the actuarial present value, as determined by the system, of contributions that the employee would have contributed, as provided in this

- chapter, for the service and compensation certified pursuant to this section, shall be returned to the employer;
- (4) As a condition of the employer's obligation under paragraph (3), the employee has paid to the employer the contributions the employee would have contributed, as provided in this chapter, for the service and compensation to be certified pursuant to this section;
 - (5) The employer has made a lump sum payment to the system in the amount of the actuarial present value, as determined by the system, of contributions that the employer would have contributed, as provided in this chapter, for the service and compensation to be certified pursuant to this section, which shall include compound interest thereon at the assumed rate of return; provided further that any portion of the lump sum payment in excess of the actuarial present value, as determined by the system, of contributions that the employer would have contributed, as provided in this chapter, for the service and compensation certified pursuant to this section, shall be returned to the employer;
 - (6) An employee who appeals an involuntary termination, is retroactively reinstated to employment pursuant to a final resolution of claims, and has:
 - (A) Been paid their accumulated contributions or hypothetical account balance after the involuntary termination date and as a result of the involuntary termination, has made a lump sum payment to the system in the amount of the actuarial present value, as determined by the system, of the accumulated contributions or hypothetical account that were paid to the employee; or
 - (B) Received an allowance on service retirement, ordinary disability retirement, or service-connected disability retirement after the involuntary termination date and as a result of the involuntary termination, has made a lump sum payment to the system in the amount of the actuarial present value, as determined by the system, of any allowance on service retirement, ordinary disability retirement, or service-connected disability retirement received by the employee; and
 - (7) Notwithstanding this section, if the system determines that a contribution exceeds the limits of any Internal Revenue Code requirements that apply to the system, the system shall not accept the contributions and shall return the contributions.
 - (b) As used in this section, "final resolution of claims" means:
 - (1) The final decision of a court, an administrative proceeding, or an arbitration proceeding from which either no appeal may be filed or no appeal has been filed within the time allowed;
 - (2) A stipulated judgment;
 - (3) A settlement of claims, including but not limited to a settlement of a labor grievance, that is in writing, signed, and dated by the parties to the settlement, and a court-approved settlement;
 - (4) A settlement adopted by court order or referenced in an order of dismissal;
 - (5) A third-party arbitrator's decision from which either no appeal may be filed or no appeal has been filed within the time allowed; or
 - (6) A settlement or other final resolution of an appeal or challenge from which either no appeal may be filed or no appeal has been filed within the time allowed."

SECTION 3. Section 88-21, Hawaii Revised Statutes, is amended by amending the definition of “service” to read as follows:

““Service”: service as an employee paid by the State or county, and also: [service]

- (1) Service during the period of a leave of absence or exchange if the individual is paid by the State or county during the period of the leave of absence or exchange; ~~and service~~
- (2) Service during the period of an unpaid leave of absence or exchange if the individual is engaged in the performance of a governmental function or if the unpaid leave of absence is an approved leave of absence for professional improvement; provided that, for the period of the leave of absence or exchange without pay, the individual makes the same contribution to the system as the individual would have made if the individual had not been on the leave of absence[-]; and
- (3) Service pursuant to section 88-

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

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

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

- (1) Unless a different meaning is plainly required by context, “compensation” as used in this part[-, “~~compensation~~”] means:
 - ~~[(+)]~~ (A) Normal periodic payments of money for service the right to which accrues on a regular basis in proportion to the service performed;
 - ~~[(2)]~~ (B) Overtime, differentials, and supplementary payments;
 - ~~[(3)]~~ (C) Bonuses and lump sum salary supplements; ~~[and]~~
 - ~~[(4)]~~ (D) Elective salary reduction contributions under sections 125, 403(b), and 457(b) of the Internal Revenue Code of 1986, as amended[-]; and
 - (E) Retroactive payments of those purposes and nature authorized in subparagraphs (A) through (D), and certified as compensation pursuant to section 88-
- (2) Bonuses and lump sum salary supplements shall be deemed earned when payable; provided that bonuses or lump sum salary supplements in excess of one-twelfth of compensation for the twelve months ~~[prior to]~~ before the month in which the bonus or lump sum salary supplement is payable, exclusive of overtime, bonuses, and lump sum salary supplements, shall be deemed earned:
 - ~~[(+)]~~ (A) During the period agreed-upon by the employer and employee, but in any event over a period of ~~[not]~~ no less than twelve months; or
 - ~~[(2)]~~ (B) In the absence of an agreement between the employer and the employee, over the twelve months ~~[prior to]~~ before the date on which the bonus or lump sum salary supplement is payable[-]; and
- (3) Retroactive payments shall be deemed earned when it would have been earned, as determined by the system pursuant to section 88-
- (b) For a member who becomes a member after June 30, 2012, unless a different meaning is plainly required by context, “compensation” as used in this part:

- (1) Means:
 - (A) The normal periodic payments of money for service, the right to which accrues on an hourly, daily, monthly, or annual basis;
 - (B) Shortage differentials;
 - (C) Elective salary reduction contributions under sections 125, 403(b), and 457(b) of the Internal Revenue Code of 1986, as amended; ~~and~~
 - (D) Twelve-month differentials for employees of the department of education; and
 - (E) Retroactive payments of those purposes and nature of payments authorized in subparagraphs (A) through (D), and certified as compensation pursuant to section 88- :
- (2) Shall not include any other additional or extra payments to an employee or officer, including overtime, supplementary payments, bonuses, lump sum salary supplements, allowances, or differentials, including differentials for stand-by duty, temporary unusual work hazards, compression differentials, or temporary differentials, except for those expressly authorized pursuant to ~~[subsection (b)(1)(B), (b)(1)(C), and (b)(1)(D);]~~ paragraphs (1)(B) through (1)(E); and
- (3) Retroactive payments shall be deemed earned when it would have been earned, as determined by the system pursuant to section 88- .”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

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

(Approved June 1, 2023.)

Note

1. Edited pursuant to HRS §23G-16.5.