
SENATE BILL 6157

State of Washington 61st Legislature 2009 Regular Session

By Senators Prentice, Tom, Hobbs, and Fraser

Read first time 04/13/09. Referred to Committee on Ways & Means.

1 AN ACT Relating to the calculation of compensation for public
2 retirement purposes during the 2009-2011 fiscal biennium; and amending
3 RCW 41.40.010.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 41.40.010 and 2007 c 50 s 4 are each amended to read
6 as follows:

7 As used in this chapter, unless a different meaning is plainly
8 required by the context:

9 (1) "Retirement system" means the public employees' retirement
10 system provided for in this chapter.

11 (2) "Department" means the department of retirement systems created
12 in chapter 41.50 RCW.

13 (3) "State treasurer" means the treasurer of the state of
14 Washington.

15 (4)(a) "Employer" for plan 1 members, means every branch,
16 department, agency, commission, board, and office of the state, any
17 political subdivision or association of political subdivisions of the
18 state admitted into the retirement system, and legal entities
19 authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW; and the

1 term shall also include any labor guild, association, or organization
2 the membership of a local lodge or division of which is comprised of at
3 least forty percent employees of an employer (other than such labor
4 guild, association, or organization) within this chapter. The term may
5 also include any city of the first class that has its own retirement
6 system.

7 (b) "Employer" for plan 2 and plan 3 members, means every branch,
8 department, agency, commission, board, and office of the state, and any
9 political subdivision and municipal corporation of the state admitted
10 into the retirement system, including public agencies created pursuant
11 to RCW 35.63.070, 36.70.060, and 39.34.030; except that after August
12 31, 2000, school districts and educational service districts will no
13 longer be employers for the public employees' retirement system plan 2.

14 (5) "Member" means any employee included in the membership of the
15 retirement system, as provided for in RCW 41.40.023. RCW 41.26.045
16 does not prohibit a person otherwise eligible for membership in the
17 retirement system from establishing such membership effective when he
18 or she first entered an eligible position.

19 (6) "Original member" of this retirement system means:

20 (a) Any person who became a member of the system prior to April 1,
21 1949;

22 (b) Any person who becomes a member through the admission of an
23 employer into the retirement system on and after April 1, 1949, and
24 prior to April 1, 1951;

25 (c) Any person who first becomes a member by securing employment
26 with an employer prior to April 1, 1951, provided the member has
27 rendered at least one or more years of service to any employer prior to
28 October 1, 1947;

29 (d) Any person who first becomes a member through the admission of
30 an employer into the retirement system on or after April 1, 1951,
31 provided, such person has been in the regular employ of the employer
32 for at least six months of the twelve-month period preceding the said
33 admission date;

34 (e) Any member who has restored all contributions that may have
35 been withdrawn as provided by RCW 41.40.150 and who on the effective
36 date of the individual's retirement becomes entitled to be credited
37 with ten years or more of membership service except that the provisions

1 relating to the minimum amount of retirement allowance for the member
2 upon retirement at age seventy as found in RCW 41.40.190(4) shall not
3 apply to the member;

4 (f) Any member who has been a contributor under the system for two
5 or more years and who has restored all contributions that may have been
6 withdrawn as provided by RCW 41.40.150 and who on the effective date of
7 the individual's retirement has rendered five or more years of service
8 for the state or any political subdivision prior to the time of the
9 admission of the employer into the system; except that the provisions
10 relating to the minimum amount of retirement allowance for the member
11 upon retirement at age seventy as found in RCW 41.40.190(4) shall not
12 apply to the member.

13 (7) "New member" means a person who becomes a member on or after
14 April 1, 1949, except as otherwise provided in this section.

15 (8)(a) "Compensation earnable" for plan 1 members, means salaries
16 or wages earned during a payroll period for personal services and where
17 the compensation is not all paid in money, maintenance compensation
18 shall be included upon the basis of the schedules established by the
19 member's employer.

20 (i) "Compensation earnable" for plan 1 members also includes the
21 following actual or imputed payments, which are not paid for personal
22 services:

23 (A) Retroactive payments to an individual by an employer on
24 reinstatement of the employee in a position, or payments by an employer
25 to an individual in lieu of reinstatement in a position which are
26 awarded or granted as the equivalent of the salary or wage which the
27 individual would have earned during a payroll period shall be
28 considered compensation earnable and the individual shall receive the
29 equivalent service credit;

30 (B) If a leave of absence is taken by an individual for the purpose
31 of serving in the state legislature, the salary which would have been
32 received for the position from which the leave of absence was taken,
33 shall be considered as compensation earnable if the employee's
34 contribution is paid by the employee and the employer's contribution is
35 paid by the employer or employee;

36 (C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and
37 72.09.240;

1 (D) Compensation that a member would have received but for a
2 disability occurring in the line of duty only as authorized by RCW
3 41.40.038;

4 (E) Compensation that a member receives due to participation in the
5 leave sharing program only as authorized by RCW 41.04.650 through
6 41.04.670; and

7 (F) Compensation that a member receives for being in standby
8 status. For the purposes of this section, a member is in standby
9 status when not being paid for time actually worked and the employer
10 requires the member to be prepared to report immediately for work, if
11 the need arises, although the need may not arise.

12 (ii) "Compensation earnable" does not include:

13 (A) Remuneration for unused sick leave authorized under RCW
14 41.04.340, 28A.400.210, or 28A.310.490;

15 (B) Remuneration for unused annual leave in excess of thirty days
16 as authorized by RCW 43.01.044 and 43.01.041.

17 (b) "Compensation earnable" for plan 2 and plan 3 members, means
18 salaries or wages earned by a member during a payroll period for
19 personal services, including overtime payments, and shall include wages
20 and salaries deferred under provisions established pursuant to sections
21 403(b), 414(h), and 457 of the United States Internal Revenue Code, but
22 shall exclude nonmoney maintenance compensation and lump sum or other
23 payments for deferred annual sick leave, unused accumulated vacation,
24 unused accumulated annual leave, or any form of severance pay.

25 "Compensation earnable" for plan 2 and plan 3 members also includes
26 the following actual or imputed payments, which are not paid for
27 personal services:

28 (i) Retroactive payments to an individual by an employer on
29 reinstatement of the employee in a position, or payments by an employer
30 to an individual in lieu of reinstatement in a position which are
31 awarded or granted as the equivalent of the salary or wage which the
32 individual would have earned during a payroll period shall be
33 considered compensation earnable to the extent provided above, and the
34 individual shall receive the equivalent service credit;

35 (ii) In any year in which a member serves in the legislature, the
36 member shall have the option of having such member's compensation
37 earnable be the greater of:

1 (A) The compensation earnable the member would have received had
2 such member not served in the legislature; or

3 (B) Such member's actual compensation earnable received for
4 nonlegislative public employment and legislative service combined. Any
5 additional contributions to the retirement system required because
6 compensation earnable under (b)(ii)(A) of this subsection is greater
7 than compensation earnable under (b)(ii)(B) of this subsection shall be
8 paid by the member for both member and employer contributions;

9 (iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045,
10 and 72.09.240;

11 (iv) Compensation that a member would have received but for a
12 disability occurring in the line of duty only as authorized by RCW
13 41.40.038;

14 (v) Compensation that a member receives due to participation in the
15 leave sharing program only as authorized by RCW 41.04.650 through
16 41.04.670; and

17 (vi) Compensation that a member receives for being in standby
18 status. For the purposes of this section, a member is in standby
19 status when not being paid for time actually worked and the employer
20 requires the member to be prepared to report immediately for work, if
21 the need arises, although the need may not arise.

22 (9)(a) "Service" for plan 1 members, except as provided in RCW
23 41.40.088, means periods of employment in an eligible position or
24 positions for one or more employers rendered to any employer for which
25 compensation is paid, and includes time spent in office as an elected
26 or appointed official of an employer. Compensation earnable earned in
27 full time work for seventy hours or more in any given calendar month
28 shall constitute one service credit month except as provided in RCW
29 41.40.088. Compensation earnable earned for less than seventy hours in
30 any calendar month shall constitute one-quarter service credit month of
31 service except as provided in RCW 41.40.088. Only service credit
32 months and one-quarter service credit months shall be counted in the
33 computation of any retirement allowance or other benefit provided for
34 in this chapter. Any fraction of a year of service shall be taken into
35 account in the computation of such retirement allowance or benefits.
36 Time spent in standby status, whether compensated or not, is not
37 service.

1 (i) Service by a state employee officially assigned by the state on
2 a temporary basis to assist another public agency, shall be considered
3 as service as a state employee: PROVIDED, That service to any other
4 public agency shall not be considered service as a state employee if
5 such service has been used to establish benefits in any other public
6 retirement system.

7 (ii) An individual shall receive no more than a total of twelve
8 service credit months of service during any calendar year. If an
9 individual is employed in an eligible position by one or more employers
10 the individual shall receive no more than one service credit month
11 during any calendar month in which multiple service for seventy or more
12 hours is rendered.

13 (iii) A school district employee may count up to forty-five days of
14 sick leave as creditable service solely for the purpose of determining
15 eligibility to retire under RCW 41.40.180 as authorized by RCW
16 28A.400.300. For purposes of plan 1 "forty-five days" as used in RCW
17 28A.400.300 is equal to two service credit months. Use of less than
18 forty-five days of sick leave is creditable as allowed under this
19 subsection as follows:

20 (A) Less than twenty-two days equals one-quarter service credit
21 month;

22 (B) Twenty-two days equals one service credit month;

23 (C) More than twenty-two days but less than forty-five days equals
24 one and one-quarter service credit month.

25 (b) "Service" for plan 2 and plan 3 members, means periods of
26 employment by a member in an eligible position or positions for one or
27 more employers for which compensation earnable is paid. Compensation
28 earnable earned for ninety or more hours in any calendar month shall
29 constitute one service credit month except as provided in RCW
30 41.40.088. Compensation earnable earned for at least seventy hours but
31 less than ninety hours in any calendar month shall constitute one-half
32 service credit month of service. Compensation earnable earned for less
33 than seventy hours in any calendar month shall constitute one-quarter
34 service credit month of service. Time spent in standby status, whether
35 compensated or not, is not service.

36 Any fraction of a year of service shall be taken into account in
37 the computation of such retirement allowance or benefits.

1 (i) Service in any state elective position shall be deemed to be
2 full time service, except that persons serving in state elective
3 positions who are members of the Washington school employees'
4 retirement system, teachers' retirement system, public safety
5 employees' retirement system, or law enforcement officers' and
6 firefighters' retirement system at the time of election or appointment
7 to such position may elect to continue membership in the Washington
8 school employees' retirement system, teachers' retirement system,
9 public safety employees' retirement system, or law enforcement
10 officers' and firefighters' retirement system.

11 (ii) A member shall receive a total of not more than twelve service
12 credit months of service for such calendar year. If an individual is
13 employed in an eligible position by one or more employers the
14 individual shall receive no more than one service credit month during
15 any calendar month in which multiple service for ninety or more hours
16 is rendered.

17 (iii) Up to forty-five days of sick leave may be creditable as
18 service solely for the purpose of determining eligibility to retire
19 under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of
20 plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal
21 to two service credit months. Use of less than forty-five days of sick
22 leave is creditable as allowed under this subsection as follows:

- 23 (A) Less than eleven days equals one-quarter service credit month;
- 24 (B) Eleven or more days but less than twenty-two days equals one-
25 half service credit month;
- 26 (C) Twenty-two days equals one service credit month;
- 27 (D) More than twenty-two days but less than thirty-three days
28 equals one and one-quarter service credit month;
- 29 (E) Thirty-three or more days but less than forty-five days equals
30 one and one-half service credit month.

31 (10) "Service credit year" means an accumulation of months of
32 service credit which is equal to one when divided by twelve.

33 (11) "Service credit month" means a month or an accumulation of
34 months of service credit which is equal to one.

35 (12) "Prior service" means all service of an original member
36 rendered to any employer prior to October 1, 1947.

37 (13) "Membership service" means:

- 38 (a) All service rendered, as a member, after October 1, 1947;

1 (b) All service after October 1, 1947, to any employer prior to the
2 time of its admission into the retirement system for which member and
3 employer contributions, plus interest as required by RCW 41.50.125,
4 have been paid under RCW 41.40.056 or 41.40.057;

5 (c) Service not to exceed six consecutive months of probationary
6 service rendered after April 1, 1949, and prior to becoming a member,
7 in the case of any member, upon payment in full by such member of the
8 total amount of the employer's contribution to the retirement fund
9 which would have been required under the law in effect when such
10 probationary service was rendered if the member had been a member
11 during such period, except that the amount of the employer's
12 contribution shall be calculated by the director based on the first
13 month's compensation earnable as a member;

14 (d) Service not to exceed six consecutive months of probationary
15 service, rendered after October 1, 1947, and before April 1, 1949, and
16 prior to becoming a member, in the case of any member, upon payment in
17 full by such member of five percent of such member's salary during said
18 period of probationary service, except that the amount of the
19 employer's contribution shall be calculated by the director based on
20 the first month's compensation earnable as a member.

21 (14)(a) "Beneficiary" for plan 1 members, means any person in
22 receipt of a retirement allowance, pension or other benefit provided by
23 this chapter.

24 (b) "Beneficiary" for plan 2 and plan 3 members, means any person
25 in receipt of a retirement allowance or other benefit provided by this
26 chapter resulting from service rendered to an employer by another
27 person.

28 (15) "Regular interest" means such rate as the director may
29 determine.

30 (16) "Accumulated contributions" means the sum of all contributions
31 standing to the credit of a member in the member's individual account,
32 including any amount paid under RCW 41.50.165(2), together with the
33 regular interest thereon.

34 (17)(a) "Average final compensation" for plan 1 members, means the
35 annual average of the greatest compensation earnable by a member during
36 any consecutive two year period of service credit months for which
37 service credit is allowed; or if the member has less than two years of

1 service credit months then the annual average compensation earnable
2 during the total years of service for which service credit is allowed.

3 (b) "Average final compensation" for plan 2 and plan 3 members,
4 means the member's average compensation earnable of the highest
5 consecutive sixty months of service credit months prior to such
6 member's retirement, termination, or death. Periods constituting
7 authorized leaves of absence may not be used in the calculation of
8 average final compensation except under RCW 41.40.710(2) or (c) of this
9 subsection.

10 (c) In calculating average final compensation under this subsection
11 for a member of plan 1, 2, or 3, the department of retirement systems
12 shall include any compensation forgone by the member during the 2009-
13 2011 fiscal biennium as a result of reduced work hours, voluntary leave
14 without pay, or temporary furloughs if the reduced compensation is an
15 integral part of the employer's expenditure reduction efforts, as
16 certified by the employer.

17 (18) "Final compensation" means the annual rate of compensation
18 earnable by a member at the time of termination of employment.

19 (19) "Annuity" means payments for life derived from accumulated
20 contributions of a member. All annuities shall be paid in monthly
21 installments.

22 (20) "Pension" means payments for life derived from contributions
23 made by the employer. All pensions shall be paid in monthly
24 installments.

25 (21) "Retirement allowance" means the sum of the annuity and the
26 pension.

27 (22) "Employee" or "employed" means a person who is providing
28 services for compensation to an employer, unless the person is free
29 from the employer's direction and control over the performance of work.
30 The department shall adopt rules and interpret this subsection
31 consistent with common law.

32 (23) "Actuarial equivalent" means a benefit of equal value when
33 computed upon the basis of such mortality and other tables as may be
34 adopted by the director.

35 (24) "Retirement" means withdrawal from active service with a
36 retirement allowance as provided by this chapter.

37 (25) "Eligible position" means:

1 (a) Any position that, as defined by the employer, normally
2 requires five or more months of service a year for which regular
3 compensation for at least seventy hours is earned by the occupant
4 thereof. For purposes of this chapter an employer shall not define
5 "position" in such a manner that an employee's monthly work for that
6 employer is divided into more than one position;

7 (b) Any position occupied by an elected official or person
8 appointed directly by the governor, or appointed by the chief justice
9 of the supreme court under RCW 2.04.240(2) or 2.06.150(2), for which
10 compensation is paid.

11 (26) "Ineligible position" means any position which does not
12 conform with the requirements set forth in subsection (25) of this
13 section.

14 (27) "Leave of absence" means the period of time a member is
15 authorized by the employer to be absent from service without being
16 separated from membership.

17 (28) "Totally incapacitated for duty" means total inability to
18 perform the duties of a member's employment or office or any other work
19 for which the member is qualified by training or experience.

20 (29) "Retiree" means any person who has begun accruing a retirement
21 allowance or other benefit provided by this chapter resulting from
22 service rendered to an employer while a member.

23 (30) "Director" means the director of the department.

24 (31) "State elective position" means any position held by any
25 person elected or appointed to statewide office or elected or appointed
26 as a member of the legislature.

27 (32) "State actuary" or "actuary" means the person appointed
28 pursuant to RCW 44.44.010(2).

29 (33) "Plan 1" means the public employees' retirement system, plan
30 1 providing the benefits and funding provisions covering persons who
31 first became members of the system prior to October 1, 1977.

32 (34) "Plan 2" means the public employees' retirement system, plan
33 2 providing the benefits and funding provisions covering persons who
34 first became members of the system on and after October 1, 1977, and
35 are not included in plan 3.

36 (35) "Plan 3" means the public employees' retirement system, plan
37 3 providing the benefits and funding provisions covering persons who:

38 (a) First become a member on or after:

1 (i) March 1, 2002, and are employed by a state agency or institute
2 of higher education and who did not choose to enter plan 2; or

3 (ii) September 1, 2002, and are employed by other than a state
4 agency or institute of higher education and who did not choose to enter
5 plan 2; or

6 (b) Transferred to plan 3 under RCW 41.40.795.

7 (36) "Index" means, for any calendar year, that year's annual
8 average consumer price index, Seattle, Washington area, for urban wage
9 earners and clerical workers, all items, compiled by the bureau of
10 labor statistics, United States department of labor.

11 (37) "Index A" means the index for the year prior to the
12 determination of a postretirement adjustment.

13 (38) "Index B" means the index for the year prior to index A.

14 (39) "Index year" means the earliest calendar year in which the
15 index is more than sixty percent of index A.

16 (40) "Adjustment ratio" means the value of index A divided by index
17 B.

18 (41) "Annual increase" means, initially, fifty-nine cents per month
19 per year of service which amount shall be increased each July 1st by
20 three percent, rounded to the nearest cent.

21 (42) "Separation from service" occurs when a person has terminated
22 all employment with an employer. Separation from service or employment
23 does not occur, and if claimed by an employer or employee may be a
24 violation of RCW 41.40.055, when an employee and employer have a
25 written or oral agreement to resume employment with the same employer
26 following termination. Mere expressions or inquiries about
27 postretirement employment by an employer or employee that do not
28 constitute a commitment to reemploy the employee after retirement are
29 not an agreement under this subsection.

30 (43) "Member account" or "member's account" for purposes of plan 3
31 means the sum of the contributions and earnings on behalf of the member
32 in the defined contribution portion of plan 3.

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