

Effective 3/25/2016

49-12-102 Definitions.

As used in this chapter:

- (1) "Benefits normally provided":
 - (a) means a benefit offered by an employer, including:
 - (i) a leave benefit of any kind;
 - (ii) insurance coverage of any kind if the employer pays some or all of the premium for the coverage;
 - (iii) employer contributions to a health savings account, health reimbursement account, health reimbursement arrangement, or medical expense reimbursement plan; and
 - (iv) a retirement benefit of any kind if the employer pays some or all of the cost of the benefit; and
 - (b) does not include:
 - (i) a payment for social security;
 - (ii) workers' compensation insurance;
 - (iii) unemployment insurance;
 - (iv) a payment for Medicare;
 - (v) a payment or insurance required by federal or state law that is similar to a payment or insurance listed in Subsection (1)(b)(i), (ii), (iii), or (iv);
 - (vi) any other benefit that state or federal law requires an employer to provide an employee who would not otherwise be eligible to receive the benefit; or
 - (vii) any benefit that an employer provides an employee in order to avoid a penalty or tax under the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 and the Health Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and related federal regulations, including a penalty imposed by Internal Revenue Code, Section 4980H.
- (2)
 - (a) "Compensation" means, except as provided in Subsection (2)(c), the total amount of payments made by a participating employer to a member of this system for services rendered to the participating employer, including:
 - (i) bonuses;
 - (ii) cost-of-living adjustments;
 - (iii) other payments currently includable in gross income and that are subject to social security deductions, including any payments in excess of the maximum amount subject to deduction under social security law;
 - (iv) amounts that the member authorizes to be deducted or reduced for salary deferral or other benefits authorized by federal law; and
 - (v) member contributions.
 - (b) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code, Section 401(a)(17).
 - (c) "Compensation" does not include:
 - (i) the monetary value of remuneration paid in kind, including a residence or use of equipment;
 - (ii) the cost of any employment benefits paid for by the participating employer;
 - (iii) compensation paid to a temporary employee, an exempt employee, or an employee otherwise ineligible for service credit;
 - (iv) any payments upon termination, including accumulated vacation, sick leave payments, severance payments, compensatory time payments, or any other special payments; or

- (v) any allowances or payments to a member for costs or expenses paid by the participating employer, including automobile costs, uniform costs, travel costs, tuition costs, housing costs, insurance costs, equipment costs, and dependent care costs.
- (d) The executive director may determine if a payment not listed under this Subsection (2) falls within the definition of compensation.
- (3) "Final average salary" means the amount calculated by averaging the highest five years of annual compensation preceding retirement subject to Subsections (3)(a), (b), (c), (d), and (e).
 - (a) Except as provided in Subsection (3)(b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
 - (b) In cases where the participating employer provides acceptable documentation to the office, the limitation in Subsection (3)(a) may be exceeded if:
 - (i) the member has transferred from another agency; or
 - (ii) the member has been promoted to a new position.
 - (c) If the member retires more than six months from the date of termination of employment, the member is considered to have been in service at the member's last rate of pay from the date of the termination of employment to the effective date of retirement for purposes of computing the member's final average salary only.
 - (d) If the member has less than five years of service credit in this system, final average salary means the average annual compensation paid to the member during the full period of service credit.
 - (e) The annual compensation used to calculate final average salary shall be based on:
 - (i) a calendar year for a member employed by a participating employer that is not an educational institution; or
 - (ii) a contract year for a member employed by an educational institution.
- (4) "Participating employer" means an employer which meets the participation requirements of Sections 49-12-201 and 49-12-202.
- (5)
 - (a) "Regular full-time employee" means an employee whose term of employment for a participating employer contemplates continued employment during a fiscal or calendar year and whose employment normally requires an average of 20 hours or more per week, except as modified by the board, and who receives benefits normally provided by the participating employer.
 - (b) "Regular full-time employee" includes:
 - (i) a teacher whose term of employment for a participating employer contemplates continued employment during a school year and who teaches half-time or more;
 - (ii) a classified school employee:
 - (A) who is hired before July 1, 2013; and
 - (B) whose employment normally requires an average of 20 hours per week or more for a participating employer, regardless of benefits provided;
 - (iii) an officer, elective or appointive, who earns \$500 or more per month, indexed as of January 1, 1990, as provided in Section 49-12-407;
 - (iv) a faculty member or employee of an institution of higher education who is considered full-time by that institution of higher education; and

- (v) an individual who otherwise meets the definition of this Subsection (5) who performs services for a participating employer through a professional employer organization or similar arrangement.
- (c) "Regular full-time employee" does not include a classified school employee:
 - (i)
 - (A) who is hired on or after July 1, 2013; and
 - (B) who does not receive benefits normally provided by the participating employer even if the employment normally requires an average of 20 hours per week or more for a participating employer;
 - (ii)
 - (A) who is hired before July 1, 2013;
 - (B) who did not qualify as a regular full-time employee before July 1, 2013;
 - (C) who does not receive benefits normally provided by the participating employer; and
 - (D) whose employment hours are increased on or after July 1, 2013, to require an average of 20 hours per week or more for a participating employer; or
 - (iii) who is a person working on a contract:
 - (A) for the purposes of vocational rehabilitation and the employment and training of people with significant disabilities; and
 - (B) that has been set aside from procurement requirements by the state pursuant to Section 63G-6a-805 or the federal government pursuant to 41 U.S.C. Sec. 8501 et seq.
- (6) "System" means the Public Employees' Contributory Retirement System created under this chapter.
- (7) "Years of service credit" means:
 - (a) a period consisting of 12 full months as determined by the board;
 - (b) a period determined by the board, whether consecutive or not, during which a regular full-time employee performed services for a participating employer, including any time the regular full-time employee was absent on a paid leave of absence granted by a participating employer or was absent in the service of the United States government on military duty as provided by this chapter; or
 - (c) the regular school year consisting of not less than eight months of full-time service for a regular full-time employee of an educational institution.

Amended by Chapter 227, 2016 General Session

Amended by Chapter 304, 2016 General Session