

Effective 5/9/2017

Superseded 3/22/2018

49-22-102 Definitions.

As used in this chapter:

- (1) "Benefits normally provided" has the same meaning as defined in Section 49-12-102.
- (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 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;
 - (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; or
 - (vi) a teacher salary bonus described in Section 53A-17a-173.
 - (d) The executive director may determine if a payment not listed under this Subsection (2) falls within the definition of compensation.
- (3) "Corresponding Tier I system" means the system or plan that would have covered the member if the member had initially entered employment before July 1, 2011.
- (4) "Final average salary" means the amount calculated by averaging the highest five years of annual compensation preceding retirement subject to Subsections (4)(a), (b), (c), (d), and (e).
 - (a) Except as provided in Subsection (4)(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 (4)(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.
- (5) "Participating employer" means an employer which meets the participation requirements of:
 - (a) Sections 49-12-201 and 49-12-202;
 - (b) Sections 49-13-201 and 49-13-202;
 - (c) Section 49-19-201; or
 - (d) Section 49-22-201 or 49-22-202.
- (6)
 - (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 appointive officer whose appointed position is full time as certified by the participating employer;
 - (iv) the governor, the lieutenant governor, the state auditor, the state treasurer, the attorney general, and a state legislator;
 - (v) an elected official not included under Subsection (6)(b)(iv) whose elected position is full time as certified by the participating employer;
 - (vi) a faculty member or employee of an institution of higher education who is considered full time by that institution of higher education; and
 - (vii) an individual who otherwise meets the definition of this Subsection (6) who performs services for a participating employer through a professional employer organization or similar arrangement.
 - (c) "Regular full-time employee" does not include:
 - (i) a firefighter service employee as defined in Section 49-23-102;
 - (ii) a public safety service employee as defined in Section 49-23-102;
 - (iii) a classified school employee:
 - (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;
 - (iv) a classified school employee:
 - (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
 - (E) who is a person working on a contract:
 - (I) for the purposes of vocational rehabilitation and the employment and training of people with significant disabilities; and
 - (II) 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.
- (7) "System" means the New Public Employees' Tier II Contributory Retirement System created under this chapter.
- (8) "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.