

STATE OF NEW YORK

1457

2017-2018 Regular Sessions

IN SENATE

January 9, 2017

Introduced by Sens. AVELLA, COMRIE, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

AN ACT to amend the retirement and social security law, in relation to including mandatory overtime in a member's final average salary or wages

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 1203 of the retirement and social security law, as
2 added by section 1 of part A of chapter 504 of the laws of 2009, is
3 amended to read as follows:

4 § 1203. Overtime. A member's final average salary shall be calculated
5 in accordance with such provisions of article eight or article eleven of
6 this chapter as govern the member's benefits, except that earnings clas-
7 sified as overtime compensation in an amount in excess of fifteen
8 percent of a member's annual wages not classified as overtime compen-
9 sation shall be excluded from such calculation, provided, however, any
10 overtime earned which is mandatory overtime, as defined by section two
11 of this chapter, shall not be excluded. "Overtime compensation" shall
12 mean, for purposes of this section, compensation paid under any law or
13 policy under which employees are paid at a rate greater than their stan-
14 dard rate for additional hours worked beyond those required, including
15 compensation paid under section one hundred thirty-four of the civil
16 service law and section ninety of the general municipal law.

17 § 2. Subdivision 24 of section 501 of the retirement and social secu-
18 rity law, as amended by chapter 298 of the laws of 2016, is amended to
19 read as follows:

20 24. "Wages" shall mean regular compensation earned by and paid to a
21 member by a public employer, except that for members who first join the
22 state and local employees' retirement system on or after January first,
23 two thousand ten, overtime compensation paid in any year in excess of

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 the overtime ceiling, as defined by this subdivision, shall not be
2 included in the definition of wages, provided, however, that any over-
3 time compensation earned which is mandatory overtime, as defined by
4 section two of this chapter, shall be included in the definition of
5 wages. "Overtime compensation" shall mean, for purposes of this section,
6 compensation paid under any law or policy under which employees are paid
7 at a rate greater than their standard rate for additional hours worked
8 beyond those required, including compensation paid under section one
9 hundred thirty-four of the civil service law and section ninety of the
10 general municipal law. The "overtime ceiling" shall mean fifteen thou-
11 sand dollars per annum on January first, two thousand ten, and shall be
12 increased by three percent each year thereafter, provided, however, that
13 for members who first become members of the New York state and local
14 employees' retirement system on or after April first, two thousand
15 twelve, "overtime ceiling" shall mean fifteen thousand dollars per annum
16 on April first, two thousand twelve, and shall be increased each year
17 thereafter by a percentage to be determined annually by reference to the
18 consumer price index (all urban consumers, CPI-U, U.S. city average, all
19 items, 1982-84=100), published by the United States bureau of labor
20 statistics, for each applicable calendar year. Said percentage shall
21 equal the annual inflation as determined from the increase in the
22 consumer price index in the one year period ending on the December thir-
23 ty-first prior to the cost-of-living adjustment effective on the ensuing
24 April first. For the purpose of calculation a member's primary federal
25 social security retirement or disability benefit, wages shall, in any
26 calendar year, be limited to the portion of the member's wages which
27 would be subject to tax under section three thousand one hundred twen-
28 ty-one of the internal revenue code of nineteen hundred fifty-four, or
29 any predecessor or successor provision relating thereto, if such member
30 was employed by a private employer. For members who first become members
31 of the New York state and local employees' retirement system on or after
32 the effective date of chapter eighteen of the laws of two thousand
33 twelve, the following items shall not be included in the definition of
34 wages: (a) wages in excess of the annual salary paid to the governor
35 pursuant to section three of article four of the state constitution, (b)
36 lump sum payments for deferred compensation, sick leave, accumulated
37 vacation or other credits for time not worked, (c) any form of termi-
38 nation pay, (d) any additional compensation paid in anticipation of
39 retirement, and (e) in the case of employees who receive wages from
40 three or more employers in a twelve month period, the wages paid by the
41 third and each successive employer. For New York city enhanced plan
42 members who receive the ordinary disability benefit provided for in
43 subdivision c-1 of section five hundred six of this article or the acci-
44 dental disability benefit provided for in paragraph three of subdivision
45 c of section five hundred seven of this article, the following items
46 shall not be included in the definition of wages: (a) lump sum payments
47 for deferred compensation, sick leave, accumulated vacation or other
48 credits for time not worked, (b) any form of termination pay, (c) any
49 additional compensation paid in anticipation of retirement, and (d) in
50 the case of employees who receive wages from three or more employers in
51 a twelve month period, the wages paid by the third and each successive
52 employer.

53 § 3. Subdivision 1 of section 601 of the retirement and social securi-
54 ty law, as amended by chapter 510 of the laws of 2015, is amended to
55 read as follows:

1 l. "Wages" shall mean regular compensation earned by and paid to a
2 member by a public employer, except that for members who first join the
3 New York state and local employees' retirement system or the New York
4 state teachers' retirement system on or after January first, two thou-
5 sand ten, overtime compensation paid in any year in excess of the over-
6 time ceiling, as defined by this subdivision, shall not be included in
7 the definition of wages, provided, however, that any overtime compen-
8 sation earned which is mandatory overtime, as defined by section two of
9 this chapter, shall be included in the definition of wages. "Overtime
10 compensation" shall mean, for purposes of this section, compensation
11 paid under any law or policy under which employees are paid at a rate
12 greater than their standard rate for additional hours worked beyond
13 those required, including compensation paid under section one hundred
14 thirty-four of the civil service law and section ninety of the general
15 municipal law. The "overtime ceiling" shall mean fifteen thousand
16 dollars per annum on January first, two thousand ten, and shall be
17 increased by three per cent each year thereafter, provided, however,
18 that for members who first become members of a public retirement system
19 of the state on or after April first, two thousand twelve, "overtime
20 ceiling" shall mean fifteen thousand dollars per annum on April first,
21 two thousand twelve, and shall be increased each year thereafter by a
22 percentage to be determined annually by reference to the consumer price
23 index (all urban consumers, CPI-U, U.S. city average, all items,
24 1982-84=100), published by the United States bureau of labor statistics,
25 for each applicable calendar year. Said percentage shall equal the annu-
26 al inflation as determined from the increase in the consumer price index
27 in the one year period ending on the December thirty-first prior to the
28 cost-of-living adjustment effective on the ensuing April first. For
29 members who first join a public retirement system of the state on or
30 after April first, two thousand twelve, the following items shall not be
31 included in the definition of wages: 1. wages in excess of the annual
32 salary paid to the governor pursuant to section three of article four of
33 the state constitution, 2. lump sum payments for deferred compensation,
34 sick leave, accumulated vacation or other credits for time not worked,
35 3. any form of termination pay, 4. any additional compensation paid in
36 anticipation of retirement, and 5. in the case of employees who receive
37 wages from three or more employers in a twelve month period, the wages
38 paid by the third and each additional employer.

39 § 4. Section 2 of the retirement and social security law is amended by
40 adding a new subdivision 37 to read as follows:

41 37. "Mandatory overtime." Involuntary overtime required pursuant to
42 any law, rule or regulation.

43 § 5. This act shall take effect immediately.