S T A T E O F N E W Y O R K

9226

I N A S S E M B L Y

February 7, 2012

Introduced by M. of A. DenDEKKER -- read once and referred to the Committee on Governmental Employees

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:

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

S 1203. Overtime. A member's final average salary shall be calculated in accordance with such provisions of article eight or article eleven of this chapter as govern the member's benefits, except that earnings classified as overtime compensation in an amount in excess of fifteen percent of a member's annual wages not classified as overtime compensation shall be excluded from such calculation, PROVIDED HOWEVER, ANY OVERTIME EARNED WHICH IS MANDATORY OVERTIME, AS DEFINED BY SECTION TWO OF THIS CHAPTER, SHALL NOT BE EXCLUDED. "Overtime compensation" shall mean, for purposes of this section, compensation paid under any law or policy under which employees are paid at a rate greater than their standard rate for additional hours worked beyond those required, including compensation paid under section one hundred thirty-four of the civil service law and section ninety of the general municipal law.

S 2. Subdivision 24 of section 501 of the retirement and social security law, as amended by section 1 of part B of chapter 504 of the laws of 2009, is amended to read as follows:

24. "Wages" shall mean regular compensation earned by and paid to a member by a public employer, except that for members who first join the state and local employees' retirement system on or after January first, two thousand ten, overtime compensation paid in any year in excess of the overtime ceiling, as defined by this subdivision, EXCEPT FOR ANY OVERTIME COMPENSATION EARNED WHICH IS MANDATORY OVERTIME, AS DEFINED BY SECTION TWO OF THIS CHAPTER shall not be included in the definition of wages. "Overtime compensation" shall mean, for purposes of this section,

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

LBD14233-01-2

compensation paid under any law or policy under which employees are paid at a rate greater than their standard rate for additional hours worked beyond those required, including compensation paid under section one hundred thirty-four of the civil service law and section ninety of the general municipal law. The "overtime ceiling" shall mean fifteen thousand dollars per annum on January first, two thousand ten, and shall be increased by three percent each year thereafter. For the purpose of calculation a member's primary federal social security retirement or disability benefit, wages shall, in any calendar year, be limited to the portion of the member's wages which would be subject to tax under section three thousand one hundred twenty-one of the internal revenue code of nineteen hundred fifty-four, or any predecessor or successor provision relating thereto, if such member was employed by a private employer.

S 3. Subdivision l of section 601 of the retirement and social security law, as amended by section 5 of part B of chapter 504 of the laws of 2009, is amended to read as follows:

l. "Wages" shall mean regular compensation earned by and paid to a member by a public employer, except that for members who first join the New York state and local employees' retirement system or the New York state teachers' retirement system on or after January first, two thousand ten, overtime compensation paid in any year in excess of the overtime ceiling, as defined by this subdivision, EXCEPT FOR ANY OVERTIME COMPENSATION EARNED WHICH IS MANDATORY OVERTIME, AS DEFINED BY SECTION TWO OF THIS CHAPTER, shall not be included in the definition of wages. "Overtime compensation" shall mean, for purposes of this section, compensation paid under any law or policy under which employees are paid at a rate greater than their standard rate for additional hours worked beyond those required, including compensation paid under section one hundred thirty-four of the civil service law and section ninety of the general municipal law. The "overtime ceiling" shall mean fifteen thousand dollars per annum on January first, two thousand ten, and shall be increased by three per cent each year thereafter.

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

37. "MANDATORY OVERTIME." INVOLUNTARY OVERTIME REQUIRED PURSUANT TO ANY LAW, RULE OR REGULATION.

S 5. This act shall take effect immediately.