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I N   A S S E M B L Y

March 31, 2014

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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 ASSEM-  
BLY, 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     S 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    S 2. Subdivision 24 of section 501 of the retirement and social secu-  
18    rity law, as amended by chapter 18 of the laws of 2012, 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  
24    the overtime ceiling, as defined by this subdivision, shall not be  
25    included in the definition of wages, PROVIDED, HOWEVER, THAT ANY OVER-  
26    TIME COMPENSATION EARNED WHICH IS MANDATORY OVERTIME, AS DEFINED BY  
27    SECTION TWO OF THIS CHAPTER, SHALL BE INCLUDED IN THE DEFINITION OF

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

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

38 S 3. Subdivision 1 of section 601 of the retirement and social securi-  
39 ty law, as amended by chapter 18 of the laws of 2012, is amended to read  
40 as follows:

41 1. "Wages" shall mean regular compensation earned by and paid to a  
42 member by a public employer, except that for members who first join the  
43 New York state and local employees' retirement system or the New York  
44 state teachers' retirement system on or after January first, two thou-  
45 sand ten, overtime compensation paid in any year in excess of the over-  
46 time ceiling, as defined by this subdivision, shall not be included in  
47 the definition of wages, PROVIDED, HOWEVER, THAT ANY OVERTIME COMPEN-  
48 SATION EARNED WHICH IS MANDATORY OVERTIME, AS DEFINED BY SECTION TWO OF  
49 THIS CHAPTER, SHALL BE INCLUDED IN THE DEFINITION OF WAGES. "Overtime  
50 compensation" shall mean, for purposes of this section, compensation  
51 paid under any law or policy under which employees are paid at a rate  
52 greater than their standard rate for additional hours worked beyond  
53 those required, including compensation paid under section one hundred  
54 thirty-four of the civil service law and section ninety of the general  
55 municipal law. The "overtime ceiling" shall mean fifteen thousand  
56 dollars per annum on January first, two thousand ten, and shall be

1 increased by three per cent each year thereafter, provided, however,  
2 that for members who first become members of a public retirement system  
3 of the state on or after April first, two thousand twelve, "overtime  
4 ceiling" shall mean fifteen thousand dollars per annum on April first,  
5 two thousand twelve, and shall be increased each year thereafter by a  
6 percentage to be determined annually by reference to the consumer price  
7 index (all urban consumers, CPI-U, U.S. city average, all items,  
8 1982-84=100), published by the United States bureau of labor statistics,  
9 for each applicable calendar year. Said percentage shall equal the annu-  
10 al inflation as determined from the increase in the consumer price index  
11 in the one year period ending on the December thirty-first prior to the  
12 cost-of-living adjustment effective on the ensuing April first. For  
13 members who first join a public retirement system of the state on or  
14 after April first, two thousand twelve, the following items shall not be  
15 included in the definition of wages: 1. wages in excess of the annual  
16 salary paid to the governor pursuant to section three of article four of  
17 the state constitution, 2. lump sum payments for deferred compensation,  
18 sick leave, accumulated vacation or other credits for time not worked,  
19 3. any form of termination pay, 4. any additional compensation paid in  
20 anticipation of retirement, and 5. in the case of employees who receive  
21 wages from three or more employers in a twelve month period, the wages  
22 paid by the third and each successive employer.

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

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

27 S 5. This act shall take effect immediately.