

4337

2015-2016 Regular Sessions

I N A S S E M B L Y

January 30, 2015

Introduced by M. of A. DenDEKKER, ROBINSON, BENEDETTO, MOSLEY, CRESPO, STECK, COOK, MARKEY, HOOPER, BROOK-KRASNY -- Multi-Sponsored by -- M. of A. ARROYO, GRAF, ROBERTS -- 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:

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,

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

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

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

46 1. "Wages" shall mean regular compensation earned by and paid to a
47 member by a public employer, except that for members who first join the
48 New York state and local employees' retirement system or the New York
49 state teachers' retirement system on or after January first, two thou-
50 sand ten, overtime compensation paid in any year in excess of the over-
51 time ceiling, as defined by this subdivision, shall not be included in
52 the definition of wages, PROVIDED, HOWEVER, THAT ANY OVERTIME COMPEN-
53 SATION EARNED WHICH IS MANDATORY OVERTIME, AS DEFINED BY SECTION TWO OF
54 THIS CHAPTER, SHALL BE INCLUDED IN THE DEFINITION OF WAGES. "Overtime
55 compensation" shall mean, for purposes of this section, compensation
56 paid under any law or policy under which employees are paid at a rate

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

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

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

32 S 5. This act shall take effect immediately.