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:

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:

§ 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.

§ 2. Subdivision 24 of section 501 of the retirement and social security law, as amended by chapter 298 of the laws of 2016, 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

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

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the overtime ceiling, as defined by this subdivision, shall not be included in the definition of wages**, provided, however, that any overtime compensation earned which is mandatory overtime, as defined by section two of this chapter, shall 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 percent each year thereafter, provided, however, that for members who first become members of the New York state and local employees' retirement system on or after April first, two thousand twelve, "overtime ceiling" shall mean fifteen thousand dollars per annum on April first, two thousand twelve, and shall be increased each year thereafter by a percentage to be determined annually by reference to the consumer price index (all urban consumers, CPI-U, U.S. city average, all items, 1982-84=100), published by the United States bureau of labor statistics, for each applicable calendar year. Said percentage shall equal the annual inflation as determined from the increase in the consumer price index in the one year period ending on the December thirty-first prior to the cost-of-living adjustment effective on the ensuing April first. 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. For members who first become members of the New York state and local employees' retirement system on or after the effective date of chapter eighteen of the laws of two thousand twelve, the following items shall not be included in the definition of wages: (a) wages in excess of the annual salary paid to the governor pursuant to section three of article four of the state constitution, (b) lump sum payments for deferred compensation, sick leave, accumulated vacation or other credits for time not worked, (c) any form of termination pay, (d) any additional compensation paid in anticipation of retirement, and (e) in the case of employees who receive wages from three or more employers in a twelve month period, the wages paid by the third and each successive employer. For New York city enhanced plan members who receive the ordinary disability benefit provided for in subdivision c-1 of section five hundred six of this article or the accidental disability benefit provided for in paragraph three of subdivision c of section five hundred seven of this article, the following items shall not be included in the definition of wages: (a) lump sum payments for deferred compensation, sick leave, accumulated vacation or other credits for time not worked, (b) any form of termination pay, (c) any additional compensation paid in anticipation of retirement, and (d) in the case of employees who receive wages from three or more employers in a twelve month period, the wages paid by the third and each successive employer.

§ 3. Subdivision 1 of section 601 of the retirement and social security law, as amended by chapter 510 of the laws of 2015, 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, shall not be included in the definition of wages**, provided, however, that any overtime compensation earned which is mandatory overtime, as defined by section two of this chapter, shall 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, provided, however, that for members who first become members of a public retirement system of the state on or after April first, two thousand twelve, "overtime ceiling" shall mean fifteen thousand dollars per annum on April first, two thousand twelve, and shall be increased each year thereafter by a percentage to be determined annually by reference to the consumer price index (all urban consumers, CPI-U, U.S. city average, all items, 1982-84=100), published by the United States bureau of labor statistics, for each applicable calendar year. Said percentage shall equal the annual inflation as determined from the increase in the consumer price index in the one year period ending on the December thirty-first prior to the cost-of-living adjustment effective on the ensuing April first. For members who first join a public retirement system of the state on or after April first, two thousand twelve, the following items shall not be included in the definition of wages: 1. wages in excess of the annual salary paid to the governor pursuant to section three of article four of the state constitution, 2. lump sum payments for deferred compensation, sick leave, accumulated vacation or other credits for time not worked, 3. any form of termination pay, 4. any additional compensation paid in anticipation of retirement, and 5. in the case of employees who receive wages from three or more employers in a twelve month period, the wages paid by the third and each additional employer.

§ 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.

§ 5. This act shall take effect immediately.