

STATE OF NEW YORK

5256--A

2017-2018 Regular Sessions

IN SENATE

March 17, 2017

Introduced by Sen. GOLDEN -- (at request of the State Comptroller) --
read twice and ordered printed, and when printed to be committed to
the Committee on Civil Service and Pensions -- committee discharged,
bill amended, ordered reprinted as amended and recommitted to said
committee

AN ACT to amend the retirement and social security law, in relation to
standardizing the overtime reporting period for certain members of the
New York state and local employees' retirement system

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

1 Section 1. Subdivision 24 of section 501 of the retirement and social
2 security law, as amended by chapter 298 of the laws of 2016, is amended
3 to read as follows:

4 24. (a) "Wages" shall mean regular compensation earned by and paid to
5 a member by a public employer, except that for members who first join
6 the state and local employees' retirement system on or after January
7 first, two thousand ten, overtime compensation paid in any year in
8 excess of the overtime ceiling, as defined by this subdivision, shall
9 not be included in the definition of wages.

10 (b) "Overtime compensation" shall mean, for purposes of this section,
11 compensation paid under any law or policy under which employees are paid
12 at a rate greater than their standard rate for additional hours worked
13 beyond those required, including compensation paid under section one
14 hundred thirty-four of the civil service law and section ninety of the
15 general municipal law.

16 (c)(i) The "overtime ceiling" shall mean fifteen thousand dollars per
17 annum on January first, two thousand ten, and shall be increased by
18 three percent each year thereafter, provided, however, that for members
19 who first become members of the New York state and local employees'
20 retirement system on or after April first, two thousand twelve, "over-
21 time ceiling" shall mean fifteen thousand dollars per annum on April

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

LBD07063-05-7

1 first, two thousand twelve, and shall be increased each year thereafter
2 by a percentage to be determined annually by reference to the consumer
3 price index (all urban consumers, CPI-U, U.S. city average, all items,
4 1982-84=100), published by the United States bureau of labor statistics,
5 for each applicable calendar year. Said percentage shall equal the annu-
6 al inflation as determined from the increase in the consumer price index
7 in the one year period ending on the December thirty-first [~~prior to~~]
8 ~~preceding~~ the [~~cost-of-living~~] overtime ceiling adjustment effective on
9 the ensuing April first.

10 (ii) Commencing January first, two thousand eighteen, and each year
11 thereafter, the overtime ceiling percentage shall be increased by an
12 amount equal to the annual inflation as determined from the increase in
13 the consumer price index in the one year period ending on the September
14 thirtieth prior to the overtime ceiling adjustment effective on the
15 ensuing January first.

16 (d) For the purpose of calculation a member's primary federal social
17 security retirement or disability benefit, wages shall, in any calendar
18 year, be limited to the portion of the member's wages which would be
19 subject to tax under section three thousand one hundred twenty-one of
20 the internal revenue code of nineteen hundred fifty-four, or any prede-
21 cessor or successor provision relating thereto, if such member was
22 employed by a private employer.

23 (e) For members who first become members of the New York state and
24 local employees' retirement system on or after the effective date of
25 chapter eighteen of the laws of two thousand twelve, the following items
26 shall not be included in the definition of wages: (a) wages in excess of
27 the annual salary paid to the governor pursuant to section three of
28 article four of the state constitution, (b) lump sum payments for
29 deferred compensation, sick leave, accumulated vacation or other credits
30 for time not worked, (c) any form of termination pay, (d) any additional
31 compensation paid in anticipation of retirement, and (e) in the case of
32 employees who receive wages from three or more employers in a twelve
33 month period, the wages paid by the third and each successive employer.

34 (f) For New York city enhanced plan members who receive the ordinary
35 disability benefit provided for in subdivision c-1 of section five
36 hundred six of this article or the accidental disability benefit
37 provided for in paragraph three of subdivision c of section five hundred
38 seven of this article, the following items shall not be included in the
39 definition of wages: (a) lump sum payments for deferred compensation,
40 sick leave, accumulated vacation or other credits for time not worked,
41 (b) any form of termination pay, (c) any additional compensation paid in
42 anticipation of retirement, and (d) in the case of employees who receive
43 wages from three or more employers in a twelve month period, the wages
44 paid by the third and each successive employer.

45 § 2. Subdivision 1 of section 601 of the retirement and social securi-
46 ty law, as amended by chapter 510 of the laws of 2015, is amended to
47 read as follows:

48 1. (a) "Wages" shall mean regular compensation earned by and paid to a
49 member by a public employer, except that for members who first join the
50 New York state and local employees' retirement system or the New York
51 state teachers' retirement system on or after January first, two thou-
52 sand ten, overtime compensation paid in any year in excess of the over-
53 time ceiling, as defined by this subdivision, shall not be included in
54 the definition of wages.

55 (b) "Overtime compensation" shall mean, for purposes of this section,
56 compensation paid under any law or policy under which employees are paid

1 at a rate greater than their standard rate for additional hours worked
2 beyond those required, including compensation paid under section one
3 hundred thirty-four of the civil service law and section ninety of the
4 general municipal law.

5 (c) The "overtime ceiling" shall mean fifteen thousand dollars per
6 annum on January first, two thousand ten, and shall be increased by
7 three per cent each year thereafter, provided, however, that:

8 (i) for members who first become members of a public retirement system
9 of the state on or after April first, two thousand twelve, "overtime
10 ceiling" shall mean fifteen thousand dollars per annum on April first,
11 two thousand twelve, and shall be increased each year thereafter by a
12 percentage to be determined annually by reference to the consumer price
13 index (all urban consumers, CPI-U, U.S. city average, all items,
14 1982-84=100), published by the United States bureau of labor statistics,
15 for each applicable calendar year. Said percentage shall equal the annu-
16 al inflation as determined from the increase in the consumer price index
17 in the one year period ending on the December thirty-first ~~[prior to]~~
18 preceding the ~~[cost-of-living]~~ overtime ceiling adjustment effective on
19 the ensuing April first.

20 (ii) Commencing January first, two thousand eighteen, and each year
21 thereafter, the overtime ceiling percentage shall be increased by an
22 amount equal to the annual inflation as determined from the increase in
23 the consumer price index in the one year period ending on the September
24 thirtieth prior to the overtime ceiling adjustment effective on the
25 ensuing January first.

26 (d) For members who first join a public retirement system of the state
27 on or after April first, two thousand twelve, the following items shall
28 not be included in the definition of wages: 1. wages in excess of the
29 annual salary paid to the governor pursuant to section three of article
30 four of the state constitution, 2. lump sum payments for deferred
31 compensation, sick leave, accumulated vacation or other credits for time
32 not worked, 3. any form of termination pay, 4. any additional compen-
33 sation paid in anticipation of retirement, and 5. in the case of employ-
34 ees who receive wages from three or more employers in a twelve month
35 period, the wages paid by the third and each additional employer.

36 § 3. This act shall take effect immediately.

FISCAL NOTE. -- Pursuant to Legislative Law, Section 50:

This bill will change the date of the annual increase in the overtime ceiling that can be included in the calculation of final average salary for Tier 6 members of certain public retirement systems from April 1 to January 1. The annual increase will be based on the increase in the consumer price index in the one year period ending on the September thirtieth prior to each ensuing January first. This change will become effective on January 1, 2018.

If this bill is enacted, insofar as it would affect the New York State and Local Employees Retirement System, we estimate that there would be a small initial administrative cost to the system.

Summary of relevant resources:

The membership data used in measuring the impact of the proposed change was the same as that used in the March 31, 2016 actuarial valuation. Distributions and other statistics can be found in the 2016 Report of the Actuary and the 2016 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2015 and 2016 Annual Report to the Comptroller on Actuarial Assumptions, and

the Codes Rules and Regulations of the State of New York: Audit and Control.

The Market Assets and GASB Disclosures are found in the March 31, 2016 New York State and Local Retirement System Financial Statements and Supplementary Information.

I am a member of the American Academy of Actuaries and meet the Qualification Standards to render the actuarial opinion contained herein.

This estimate, dated February 13, 2017 and intended for use only during the 2017 Legislative Session, is Fiscal Note No. 2017-21, prepared by the Actuary for the New York State and Local Retirement System.

FISCAL NOTE. -- Pursuant to Legislative Law, Section 50:

This bill would amend Section 501 and Section 601 of the Retirement and Social Security Law to change the date of the annual increase in the overtime ceiling that can be used in the calculation of final average salary for Tier 6 members from April 1st to January 1st. This bill also provides that the annual increase in the overtime ceiling will be based on the increase in the Consumer Price Index (CPI) in the one year period ending on the September 30th prior to each ensuing January 1st. These changes will commence January 1, 2018.

It is estimated that there will be no annual cost to the employers of members of the New York State Teachers' Retirement System if this bill is enacted.

Employee data is from the System's most recent actuarial valuation files, consisting of data provided by the employers to the Retirement System. Data distributions and statistics can be found in the System's Comprehensive Annual Financial Report (CAFR). System assets are as reported in the System's financial statements, and can also be found in the CAFR. Actuarial assumptions and methods are provided in the System's Actuarial Valuation Report.

The source of this estimate is Fiscal Note 2017-13 dated March 31, 2017 prepared by the Actuary of the New York State Teachers' Retirement System and is intended for use only during the 2017 Legislative Session. I, Richard A. Young, am the Actuary for the New York State Teachers' Retirement System. I am a member of the American Academy of Actuaries and I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.