# STATE OF NEW YORK

5413

2019-2020 Regular Sessions

# IN ASSEMBLY

February 12, 2019

Introduced by M. of A. FITZPATRICK, TAGUE -- Multi-Sponsored by -- M. of A. MANKTELOW -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the civil service law, in relation to improper employer practices relating to the continuation of pay, vacation and health care benefits; to amend the education law, in relation to eligible employees for retirement plans; and to amend the civil service law, in relation to disputed agreements

**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

Section 1. Paragraph (e) of subdivision 1 of section 209-a of the civil service law, as amended by chapter 244 of the laws of 2007, is amended to read as follows:

(e) to refuse to continue [~~all the~~] terms of an expired agreement **that relate to leaves of absence, active employees health insurance, holidays, salaries excluding step increases, and all other mandatory subjects of a bargaining agreement as defined by the public employment relations board case law prior to its conversion doctrine** until a new agreement is negotiated, unless the employee organization which is a party to such agreement has, during such negotiations or prior to such resolution of such negotiations, engaged in conduct violative of subdivision one of section two hundred ten of this article;

§ 2. Subdivision 3-a of section 390 of the education law, as added by chapter 18 of the laws of 2012, is amended to read as follows:

3-a. **(a)** Beginning July first, two thousand thirteen, the term "eligible employees" shall also mean any person excluded from or not encompassed within a negotiating unit within the meaning of article fourteen of the civil service law who would otherwise be entitled to receive a benefit under the retirement and social security law or the education law initially hired on or after July first, two thousand thirteen with estimated annual wages of seventy-five thousand per annum or greater.

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

LBD06010-02-9

Such estimate of annual wages to determine eligibility for the purposes of this subdivision shall be provided by the employer. For the purposes of this subdivision, a newly hired state employee whose immediate preceding employment was with another department, division, or agency of the state shall not be deemed to be an eligible employee.

**(b) Beginning January first, two thousand twenty, the term "eligible employees" shall also mean any person who would otherwise be entitled to receive a benefit under the retirement and social security law or the education law initially hired on or after January first, two thousand twenty who would otherwise be eligible for membership in the New York state and local employees' retirement system or the New York state teachers' retirement system. For the purpose of this paragraph, a newly hired state employee whose prior employment, immediately preceding such state employment, was with another department, division, or agency of the state shall not be deemed to be an eligible employee.**

§ 3. Section 209 of the civil service law is amended by adding a new subdivision 7 to read as follows:

**7. Notwithstanding any other provision of law to the contrary, for any dispute that is subject to the provisions of this section, the determination of the public arbitration panel on a disputed agreement shall not contain an increase in all compensation items subject to negotiation which is greater than two percent more than all compensation items subject to negotiation received by the employee organization in the agreement between the public employer and the employee organization immediately preceding the agreement being arbitrated.**

§ 4. This act shall take effect immediately. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.

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

This bill would amend Section 390 of the Education Law to expand the definition of the term "eligible employees" as it applies to eligibility to join the State University of New York Optional Retirement Program (ORP). The definition would now include any person initially hired on or after January 1, 2020 and who would otherwise be eligible for membership in the New York State Teachers' Retirement System (NYSTRS) or the New York State and Local Retirement System (NYSLRS). Currently only new employees with an annual salary of $75,000 or more and who are not represented by a collective bargaining unit are given the choice between joining a public retirement system (NYSTRS, NYSLRS) or the ORP. Newly hired employees of participating employers of NYSTRS whose immediately preceding employment was with another department, division or agency of the State of New York would not be deemed an eligible employee.

It is not possible to determine the total annual cost to the employers of members of the New York State Teachers' Retirement System since the number of newly hired employees who would choose to participate in the ORP each year cannot be estimated. The number of new entrants to the System could potentially decline each year if some newly hired employees opt to participate in the ORP. The System's outstanding liability under the defined benefit plan is funded over the average future remaining working lifetime of its members. Thus if the System experiences a large decline in the number of new entrants each year, this funding period would decrease resulting in potentially increasing costs to employers. It is strongly recommended that a full actuarial analysis and report be completed to fully and more quantitatively gauge all the potential costs

and implications before a structural change of this magnitude is undertaken.

Member 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 2019-12 dated January 24, 2019 prepared by the Actuary of the New York State Teachers' Retirement System and is intended for use only during the 2019 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.