§ 443. Final average salary. a. The salary base used for the computation of benefits upon retirement, hereinafter called in this article final average salary, applicable to all members of the retirement systems who are subject to the provisions of this article, shall be the average salary earned by such a member during any three consecutive years which provide the highest average salary, exclusive of any form of termination pay (which shall include any compensation in anticipation of retirement), or any lump sum payment for deferred compensation, sick leave, or accumulated vacation credit, or any other payment for time not worked (other than compensation received while on sick leave or authorized leave of absence); provided, however, if the salary or wages earned during any year included in the period used to determine final average salary exceeds that of the average of the previous two years by more than twenty percentum, the amount in excess of twenty percentum shall be excluded from the computation of final average salary. Where the period used to determine final average salary is the period which immediately precedes the date of retirement, any month or months (not in excess of twelve) which would otherwise be included in computing final average salary but during which the member was on authorized leave of absence at partial pay or without pay shall be excluded from the computation of final average salary and the month or an equal number of months immediately preceding such period shall be substituted in lieu thereof.

b. Notwithstanding the provisions of subdivision a of this section, with respect to the members of the New York state employees' retirement system, the New York state and local police and fire retirement system and the New York city teachers' retirement system, the final average salary, shall be equal to one-third of the highest total salary earned during any continuous period of employment for which the member was credited with three years of service credit, exclusive of any form of termination pay (which shall include any compensation in anticipation of retirement), any lump sum payment for deferred compensation, sick leave, or accumulated vacation credit, or any other payment for time not worked (other than compensation received while on sick leave or authorized leave of absence); provided, however, if the salary earned during any year of credited service included in the period used to determine final

average salary exceeds the average of the salaries of the previous two years of credited service by more than twenty per centum, the amount in excess of twenty per centum shall be excluded from the computation of final average salary.

c. Notwithstanding the provisions of subdivisions a and b of this section, with respect to police officers and firefighters as defined in section four hundred fifty of this chapter, the final average salary of an employee who has been a member of a retirement system for less than one year shall be the projected one year salary, with the calculation based upon a twelve month projection of the sums earned in the portion of the year worked. If a member has been employed for more than one year but less than two years, then the member's final average salary shall be the average of the first year and projected second year earnings based upon the calculation above, and if more than two years, but less than three years, then one-third the total of the first two years of employment plus the projected third year's earnings, calculated as indicated above.

d. Notwithstanding the provisions of subdivisions a and b of this section, the final average salary of an employee who has been a member of the New York city employees' retirement system or the New York city teachers' retirement system for less than one year shall be the projected one year salary, with the calculation based upon a twelve month projection of the sums earned in the portion of the year worked. If a member has been employed for more than one year but less than two years, then the member's final average salary shall be the average of the first year and projected second year earnings based upon the calculation above, and if more than two years, but less than three years, then one-third the total of the first two years of employment plus the projected third year's earnings, calculated as indicated above.

e. Subject to the provisions of subdivision d of this section, and notwithstanding the provisions of subdivision a of this section, with respect to members of the New York city employees' retirement system and the New York city board of education retirement system who are subject to the provisions of this article, the final average salary shall be

determined pursuant to the provisions of paragraph twelve of subdivision e of section 13-638.4 of the administrative code of the city of New York.

f. Notwithstanding the provisions of subdivisions a, b and c of this section, a participating employer may elect, pursuant to the provisions of paragraph d of subdivision nine of section three hundred two of this chapter, to have the provisions of such paragraph apply to the police officers and firefighters in its employ who are subject to the provisions of this article.

f-1. A demand in collective negotiations for the additional pension benefit provided by subdivision f of this section shall not be subject to the provisions of paragraph (b) or (c) of subdivision four of section two hundred nine of the civil service law, nor shall such demand be subject to any provision for interest arbitration contained in any local law, resolution or ordinance adopted by any governmental entity pursuant to subdivision one of section two hundred twelve of the civil service law.

g. Notwithstanding the provisions of subdivisions a and c of this section, the benefits for the first twenty years or less of service of members of the New York city police pension fund, subchapter two, who are subject to the provisions of this article, and members of the fire department pension fund, subchapter two, who are subject to the provisions of this article, shall be determined by using a salary base equal to the salary earned by such member during the one-year period immediately prior to retirement or separation from service due to vesting, exclusive of any form of termination pay (which shall include any compensation in anticipation of retirement), or any lump sum payment for deferred compensation, sick leave, or accumulated vacation credit, or any other payment for time not worked (other than compensation received while on sick leave or authorized leave of absence); provided, however, if the salary or wages earned during the one-year period immediately prior to retirement or separation from service due to vesting exceeds that of the previous one-year period by more than twenty per centum, the amount in excess of twenty per centum shall be excluded

from the computation of final average salary. In determining final average salary, any month or months (not in excess of three) which would otherwise be included in computing final average salary but during which the member was on authorized leave of absence without pay shall be excluded from the computation of final average salary and the month or an equal number of months immediately preceding such period shall be substituted in lieu thereof.

h. Notwithstanding any general, special or local law, charter, administrative code, agreement, resolution or rule or regulation to the contrary, the salary base for members of the city of New York fire department pension fund whose employment with the fire department of the city of New York commenced on or after the first of July, two thousand to whom this article otherwise applies shall be determined in the same manner as the salary base for members of the city of New York fire department pension fund whose employment with the fire department of the city of New York commenced before the first of July, two thousand.

i. Notwithstanding any general, special or local law, charter, administrative code, agreement, resolution or rule or regulation to the contrary, the salary base for members of the New York city police pension fund whose employment with the police department of the city of New York commenced on or after the first of July, two thousand to whom this article otherwise applies shall be determined in the same manner as the salary base for members of the New York city police pension fund whose employment with the police department of the city of New York commenced before the first of July, two thousand.