
A BILL FOR AN ACT

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to ensure that
2 employment, work, and pay eligibility for the purpose of
3 calculating retirement benefits includes retroactive
4 reinstatement, retroactive rescission of suspension, and
5 retroactive payments that are restored to an employee as part of
6 a judicial, administrative, or arbitral proceeding, or pursuant
7 to a settlement of claims, subject to certification by the
8 system that the retroactive reinstatement, retroactive
9 rescission of suspension, and retroactive payments that are
10 restored otherwise satisfy the requirements of chapter 88,
11 Hawaii Revised Statutes, including:

12 (1) The definition of "service" in section 88-21, Hawaii
13 Revised Statutes;

14 (2) The calculation of credit for a year of service in
15 section 88-50, Hawaii Revised Statutes;

16 (3) The definition of "compensation" in section 88-21.5,
17 Hawaii Revised Statutes, to prevent significant

18 non-base pay increases;



- 1 (4) Compliance with the employer reporting requirements of
- 2 section 88-103.7, Hawaii Revised Statutes;
- 3 (5) Payment of the actuarial value of employee
- 4 contributions; and
- 5 (6) Payment of the actuarial value of employer
- 6 contributions.

7 SECTION 2. Chapter 88, Hawaii Revised Statutes, is amended
 8 by adding a new section to part II, subpart B, to be
 9 appropriately designated and to read as follows:

10 "§88- Retroactive reinstatement; retroactive rescission
 11 of suspension; retroactive payments. (a) Upon certification by
 12 the system, the retroactive reinstatement, retroactive
 13 rescission of suspension, and retroactive payment provided to an
 14 employee pursuant to a final resolution of claims shall be
 15 considered service under section 88-21, compensation under
 16 section 88-21.5, or both; provided that:

17 (1) For the reinstatement, rescission of suspension, or
 18 payment to be considered:

19 (A) Service under section 88-21, the employee shall
 20 appeal the employee's involuntary termination or
 21 unpaid suspension, be retroactively reinstated to



1 employment or have the suspension rescinded in
2 whole or in part, and be provided back pay,
3 pursuant to a final resolution of claims;
4 provided further that:
5 (i) The dates of retroactive employment or
6 retroactive rescission of suspension for
7 which back pay is provided pursuant to a
8 final resolution of claims and paid by the
9 State or county do not precede or succeed
10 the dates the employee would have provided
11 service if the employee had not been
12 suspended or terminated;
13 (ii) A final resolution of claims specifies the
14 dates of retroactive employment or
15 retroactive rescission of suspension, and
16 the amount, purpose, and nature of
17 retroactive payments for each monthly period
18 in which the employee would have provided
19 service if the employee had not been
20 suspended or terminated;



- 1 (iii) The dates of retroactive employment or
- 2 retroactive rescission of suspension
- 3 provided pursuant to a final resolution of
- 4 claims would otherwise have been considered
- 5 service as provided in this chapter; and
- 6 (iv) The service shall be credited to the extent
- 7 it would otherwise have been credited as
- 8 provided in this chapter; and
- 9 (B) Compensation under section 88-21.5, the employee
- 10 shall challenge an involuntary termination,
- 11 unpaid suspension, or the employee's compensation
- 12 and be subsequently provided a retroactive
- 13 payment pursuant to a final resolution of claims;
- 14 provided further that:
- 15 (i) The amount, purpose, nature, and duration of
- 16 a retroactive payment provided pursuant to a
- 17 final resolution of claims and paid by the
- 18 State or county do not exceed the amount,
- 19 purpose, nature, and duration of
- 20 compensation available to comparable
- 21 employees (including but not limited to



1 employees with similar positions, class,
2 title, pay range or wage scale, step,
3 bargaining unit, contract type, function,
4 job category, and pay rate code through the
5 same employer, department, or agency,
6 available by pay schedule, or comparable to
7 the employee's own history of compensation),
8 less any compensation actually paid to the
9 employee and reported to the system by the
10 State or county, where applicable; do not
11 exceed the compensation attributable to the
12 number of workdays for which retroactive
13 payment is owed; and when added to the
14 compensation actually paid to the employee
15 by the State or county and reported to the
16 system, if any, results in compensation to
17 the employee that does not exceed the
18 compensation that the employee would have
19 earned had the employee not been suspended
20 or terminated, or had the employee received



1 the compensation available to comparable
2 employees;

3 (ii) Retroactive payments provided pursuant to a
4 final resolution of claims would otherwise
5 have been considered compensation, as
6 provided in section 88-21.5(a) or (b),
7 respectively, depending on when the employee
8 became a member, and this chapter; and

9 (iii) Any amounts provided to the employee for
10 damages, attorney's fees, interest or
11 penalties, payments for failure to hire, or
12 payments made as part of an agreement for
13 the employee to resign or otherwise
14 terminate employment shall not be considered
15 compensation for purposes of the system;

16 (2) The requirements of section 88-103.7 and this chapter
17 shall be satisfied with respect to any retroactive
18 reinstatement, retroactive rescission of suspension,
19 retroactive pay differential, or back pay pursuant to
20 a final resolution of claims and paid by the State and
21 county, including but not limited to an allocation of



1 the amount, purpose, and nature of a retroactive
2 payment for each monthly period in which it would have
3 been earned had the employee not been suspended or
4 terminated, or had the employee received the
5 compensation available to comparable employees,
6 subject to the retroactive payments provided pursuant
7 to a final resolution of claims and paid by the State
8 or county as set forth in paragraphs (1) (A) and (B);
9 (3) The employer has made a lump sum payment to the system
10 in the amount of the actuarial present value, as
11 determined by the system, of contributions that the
12 employee would have contributed, as provided in this
13 chapter, for the service and compensation to be
14 certified pursuant to this section, which shall
15 include compound interest thereon at the assumed rate
16 of return; provided further that:
17 (A) Class C service shall be credited at no cost; and
18 (B) Any portion of the lump sum payment in excess of
19 the actuarial present value, as determined by the
20 system, of contributions that the employee would
21 have contributed, as provided in this chapter,



1 for the service and compensation certified
2 pursuant to this section, shall be returned to
3 the employer;

4 (4) As a condition of the employer's obligation under
5 paragraph (3), the employee has paid to the employer
6 the contributions the employee would have contributed,
7 as provided in this chapter, for the service and
8 compensation to be certified pursuant to this section;

9 (5) The employer has made a lump sum payment to the system
10 in the amount of the actuarial present value, as
11 determined by the system, of contributions that the
12 employer would have contributed, as provided in this
13 chapter, for the service and compensation to be
14 certified pursuant to this section, which shall
15 include compound interest thereon at the assumed rate
16 of return; provided further that any portion of the
17 lump sum payment in excess of the actuarial present
18 value, as determined by the system, of contributions
19 that the employer would have contributed, as provided
20 in this chapter, for the service and compensation



1 certified pursuant to this section, shall be returned
2 to the employer;

3 (6) An employee who appeals an involuntary termination, is
4 retroactively reinstated to employment pursuant to a
5 final resolution of claims, and has:

6 (A) Been paid their accumulated contributions or
7 hypothetical account balance after the
8 involuntary termination date and as a result of
9 the involuntary termination, has made a lump sum
10 payment to the system in the amount of the
11 actuarial present value, as determined by the
12 system, of the accumulated contributions or
13 hypothetical account that were paid to the
14 employee; or

15 (B) Received an allowance on service retirement,
16 ordinary disability retirement, or
17 service-connected disability retirement after the
18 involuntary termination date and as a result of
19 the involuntary termination, has made a lump sum
20 payment to the system in the amount of the
21 actuarial present value, as determined by the



1 system, of any allowance on service retirement,
2 ordinary disability retirement, or
3 service-connected disability retirement received
4 by the employee; and

5 (7) Notwithstanding this section, if the system determines
6 that a contribution exceeds the limits of any Internal
7 Revenue Code requirements that apply to the system,
8 the system shall not accept the contributions and
9 shall return the contributions.

10 (b) As used in this section, "final resolution of claims"
11 means:

12 (1) The final decision of a court, an administrative
13 proceeding, or an arbitration proceeding from which
14 either no appeal may be filed or no appeal has been
15 filed within the time allowed;

16 (2) A stipulated judgment;

17 (3) A settlement of claims, including but not limited to a
18 settlement of a labor grievance, that is in writing,
19 signed, and dated by the parties to the settlement,
20 and a court-approved settlement;



1 (4) A settlement adopted by court order or referenced in
2 an order of dismissal;

3 (5) A third-party arbitrator's decision from which either
4 no appeal may be filed or no appeal has been filed
5 within the time allowed; or

6 (6) A settlement or other final resolution of an appeal or
7 challenge from which either no appeal may be filed or
8 no appeal has been filed within the time allowed."

9 SECTION 3. Section 88-21, Hawaii Revised Statutes, is
10 amended by amending the definition of "service" to read as
11 follows:

12 ""Service": service as an employee paid by the State or
13 county, and also: [~~service~~]

14 (1) Service during the period of a leave of absence or
15 exchange if the individual is paid by the State or
16 county during the period of the leave of absence or
17 exchange; [~~and service~~]

18 (2) Service during the period of an unpaid leave of
19 absence or exchange if the individual is engaged in
20 the performance of a governmental function or if the
21 unpaid leave of absence is an approved leave of



1 absence for professional improvement; provided that,
2 for the period of the leave of absence or exchange
3 without pay, the individual makes the same
4 contribution to the system as the individual would
5 have made if the individual had not been on the leave
6 of absence[-]; and

7 (3) Service pursuant to section 88- .

8 Cafeteria managers and cafeteria workers shall be considered as
9 paid by the State, regardless of the source of funds from which
10 they are paid."

11 SECTION 4. Section 88-21.5, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§88-21.5 Compensation.** (a) For a member who became a
14 member before July 1, 2012 [~~unless~~]:

15 (1) Unless a different meaning is plainly required by
16 context, "compensation" as used in this part [~~or~~
17 "~~compensation~~"] means:

18 [~~(1)~~] (A) Normal periodic payments of money for
19 service the right to which accrues on a regular
20 basis in proportion to the service performed;



1 ~~[-2-]~~ (B) Overtime, differentials, and supplementary
2 payments;
3 ~~[-3-]~~ (C) Bonuses and lump sum salary supplements;
4 ~~[and]~~
5 ~~[-4-]~~ (D) Elective salary reduction contributions
6 under sections 125, 403(b), and 457(b) of the
7 Internal Revenue Code of 1986, as amended~~[-]~~; and
8 (E) Retroactive payments of those purposes and nature
9 authorized in subparagraphs (A) through (D), and
10 certified as compensation pursuant to section
11 88- ;
12 (2) Bonuses and lump sum salary supplements shall be
13 deemed earned when payable; provided that bonuses or
14 lump sum salary supplements in excess of one-twelfth
15 of compensation for the twelve months ~~[prior to]~~
16 before the month in which the bonus or lump sum salary
17 supplement is payable, exclusive of overtime, bonuses,
18 and lump sum salary supplements, shall be deemed
19 earned:



1 ~~[(1)]~~ (A) During the period agreed-upon by the
2 employer and employee, but in any event over a
3 period of ~~[not]~~ no less than twelve months; or

4 ~~[(2)]~~ (B) In the absence of an agreement between the
5 employer and the employee, over the twelve months
6 ~~[prior to]~~ before the date on which the bonus or
7 lump sum salary supplement is payable~~[-]~~; and

8 (3) Retroactive payments shall be deemed earned when it
9 would have been earned, as determined by the system
10 pursuant to section 88-_____.

11 (b) For a member who becomes a member after June 30, 2012,
12 unless a different meaning is plainly required by context,
13 "compensation" as used in this part:

14 (1) Means:

15 (A) The normal periodic payments of money for
16 service, the right to which accrues on an hourly,
17 daily, monthly, or annual basis;

18 (B) Shortage differentials;

19 (C) Elective salary reduction contributions under
20 sections 125, 403(b), and 457(b) of the Internal
21 Revenue Code of 1986, as amended; ~~[and]~~



- 1 (D) Twelve-month differentials for employees of the
2 department of education; and
- 3 (E) Retroactive payments of those purposes and nature
4 of payments authorized in subparagraphs (A)
5 through (D), and certified as compensation
6 pursuant to section 88- ;
- 7 (2) Shall not include any other additional or extra
8 payments to an employee or officer, including
9 overtime, supplementary payments, bonuses, lump sum
10 salary supplements, allowances, or differentials,
11 including differentials for stand-by duty, temporary
12 unusual work hazards, compression differentials, or
13 temporary differentials, except for those expressly
14 authorized pursuant to [~~subsection (b)(1)(B),~~
15 ~~(b)(1)(C), and (b)(1)(D).~~] paragraphs (1)(B) through
16 (1)(E); and
- 17 (3) Retroactive payments shall be deemed earned when it
18 would have been earned, as determined by the system
19 pursuant to section 88- ."

20 SECTION 5. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 6. This Act shall take effect upon its approval.



Report Title:

City and County of Honolulu Package; Retirement Benefits;
Employees' Retirement System

Description:

Ensures that employment, work, and pay eligibility for the purpose of calculating retirement benefits includes retroactive reinstatement, retroactive rescission of suspension, and retroactive payments that are restored to an employee as part of a judicial, administrative, or arbitral proceeding, or pursuant to a settlement of claims. (CD1)

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