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# 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 eligible for the purpose of  
3 calculating retirement benefits includes retroactive  
4 reinstatement, retroactive rescission of suspension, retroactive  
5 pay differential, and back pay that are restored to an employee  
6 as part of an administrative, arbitral, or judicial proceeding,  
7 subject to certification that the retroactive reinstatement,  
8 retroactive rescission of suspension, retroactive pay  
9 differential, and back pay that are restored otherwise satisfy  
10 the requirements of chapter 88, Hawaii Revised Statutes,  
11 including:

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

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



1 (3) The definition of "compensation" in section 88-21.5,  
2 Hawaii Revised Statutes, to prevent significant non-  
3 base pay increases;

4 (4) Compliance with the employer reporting requirements of  
5 section 88-103.7, Hawaii Revised Statutes;

6 (5) Payment of the actuarial value of employee  
7 contributions; and

8 (6) Payment of the actuarial value of employer  
9 contributions.

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

13 "§88- Retroactive reinstatement; retroactive rescission  
14 of suspension; retroactive pay differential; back pay. Upon  
15 certification by the system, the retroactive reinstatement,  
16 retroactive rescission of suspension, retroactive pay  
17 differential, or back pay awarded to an employee pursuant to the  
18 final adjudication of a court of competent jurisdiction, as  
19 defined in section 88-21, shall be considered service under  
20 section 88-21, compensation under section 88-21.5, or both;  
21 provided that:



1        (1) For the reinstatement, rescission of suspension, pay  
2        differential, or back pay to be considered:  
3        (A) Service under section 88-21, the employee shall  
4        appeal the employee's involuntary termination or  
5        unpaid suspension, be retroactively reinstated to  
6        employment or have the suspension rescinded in  
7        whole or in part, and be awarded back pay,  
8        pursuant to the final adjudication of a court of  
9        competent jurisdiction; provided further that:  
10       (i) The days of retroactive employment for which  
11       back pay is awarded pursuant to the final  
12       adjudication of a court of competent  
13       jurisdiction and paid by the State or county  
14       shall be considered service;  
15       (ii) The days of service shall not exceed the  
16       number of days that the employee would have  
17       provided service if the individual had not  
18       been suspended or terminated; and  
19       (iii) The service shall be credited to the extent  
20       that the service satisfies the requirements  
21       for credit as provided in this chapter; or



1           (B) Compensation under section 88-21.5, the employee  
2           shall challenge the employee's compensation and  
3           be subsequently awarded a retroactive pay  
4           differential or back pay pursuant to the final  
5           adjudication of a court of competent  
6           jurisdiction; provided further that:  
7           (i) The amount of a retroactive pay differential  
8           awarded pursuant to the final adjudication  
9           of a court of competent jurisdiction and  
10           paid by the State or county shall be  
11           considered a differential and shall not  
12           exceed the amount and type of differential  
13           available to other similarly situated  
14           employees, available by pay schedule, or  
15           comparable to the employee's own history of  
16           pay differential;  
17           (ii) The amount of back pay awarded pursuant to  
18           the final adjudication of a court of  
19           competent jurisdiction and paid by the State  
20           or county shall be considered pay and shall  
21           not exceed either the amount and type of pay



1                   under normal salary adjustments available to  
2                   other similarly situated employees,  
3                   available by pay schedule, or comparable to  
4                   the employee's own history of compensation;  
5                   the pay attributable to the number of  
6                   workdays that occurred between the date that  
7                   the employee's absence began until the  
8                   employee's date of reinstatement; or the pay  
9                   that the employee would have received had  
10                   the employee not been suspended or  
11                   terminated; and

12                   (iii) Differential or pay shall be considered  
13                   compensation to the extent the type of  
14                   differential or pay meets the requirements  
15                   of section 88-21.5;

16                   (2) The requirements of section 88-103.7 shall be  
17                   satisfied with respect to any retroactive  
18                   reinstatement, retroactive rescission of suspension,  
19                   retroactive pay differential, or back pay awarded  
20                   pursuant to the final adjudication of a court of



1           competent jurisdiction and paid by the State and  
2           county;

3           (3) The employee shall make a lump sum payment to the  
4           system in the amount of the actuarial present value,  
5           as determined by the system, of contributions that the  
6           employee would have contributed had the employee's  
7           employment not been suspended or terminated, and  
8           compound interest thereon at the assumed rate of  
9           return; provided further that class C service shall be  
10           credited at no cost;

11           (4) The employer shall make a lump sum payment to the  
12           system in the amount of the actuarial present value,  
13           as determined by the system, of contributions that the  
14           employer would have contributed pursuant to sections  
15           88-123 through 88-126 had the employee's employment  
16           not been suspended or terminated, along with compound  
17           interest thereon at the assumed rate of return; and

18           (5) If the employee was terminated, the employee shall  
19           repay:



- 1           (A) The actuarial present value, as determined by the
- 2                           system, of any amount in employee contributions
- 3                           that were refunded to the employee; and
- 4           (B) The actuarial present value, as determined by the
- 5                           system, of any service or disability allowance
- 6                           that was paid to the employee, at the time of the
- 7                           employee's termination."

8           SECTION 3. Section 88-21, Hawaii Revised Statutes, is  
9 amended as follows:

10           1. By adding a new definition to be appropriately inserted  
11 and to read:

12           ""Final adjudication of a court of competent jurisdiction"  
13 means:

- 14           (1) The final decision of a court, an administrative
- 15                           proceeding, or an arbitration proceeding from which
- 16                           either no appeal may be filed or no appeal has been
- 17                           filed within the time allowed;
- 18           (2) A stipulated judgment;
- 19           (3) A court-approved settlement;
- 20           (4) A settlement adopted by court order or referenced in
- 21                           an order of dismissal;



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

4       (6) Other final resolution of an appeal or challenge from  
5       which either no appeal may be filed or no appeal has  
6       been filed within the time allowed."

7       2. By amending the definition of "service" to read:

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

10       (1) Service during the period of a leave of absence or  
11       exchange if the individual is paid by the State or  
12       county during the period of the leave of absence or  
13       exchange; [~~and service~~]

14       (2) Service during the period of an unpaid leave of  
15       absence or exchange if the individual is engaged in  
16       the performance of a governmental function or if the  
17       unpaid leave of absence is an approved leave of  
18       absence for professional improvement; provided that,  
19       for the period of the leave of absence or exchange  
20       without pay, the individual makes the same  
21       contribution to the system as the individual would



1 have made if the individual had not been on the leave  
2 of absence~~[ ]~~; and

3 (3) Service pursuant to section 88- .

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

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

9 "**§88-21.5 Compensation.** (a) For a member who became a  
10 member before July 1, 2012~~[ ]~~ unless:

11 (1) Unless a different meaning is plainly required by  
12 context, "compensation" as used in this part~~[ ]~~  
13 "~~compensation~~" means:

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

17 ~~[(2)]~~ (B) Overtime, differentials, and supplementary  
18 payments;

19 ~~[(3)]~~ (C) Bonuses and lump sum salary supplements;

20 [and]



1           ~~[(4)]~~ (D) Elective salary reduction contributions  
2                   under sections 125, 403(b), and 457(b) of the  
3                   Internal Revenue Code of 1986, as amended~~[-]~~; and  
4           (E) Retroactive pay differentials or back pay of  
5                   those payments authorized in subparagraphs (A)  
6                   through (D), and certified pursuant to section  
7                   88-       ; and

8           (2) Bonuses and lump sum salary supplements shall be  
9                   deemed earned when payable; provided that bonuses or  
10                  lump sum salary supplements in excess of one-twelfth  
11                  of compensation for the twelve months prior to the  
12                  month in which the bonus or lump sum salary supplement  
13                  is payable, exclusive of overtime, bonuses, and lump  
14                  sum salary supplements, shall be deemed earned:

15           ~~[(1)]~~ (A) During the period agreed-upon by the  
16                   employer and employee, but in any event over a  
17                   period of not less than twelve months; or

18           ~~[(2)]~~ (B) In the absence of an agreement between the  
19                   employer and the employee, over the twelve months  
20                   prior to the date on which the bonus or lump sum  
21                   salary supplement is payable.



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

4 (1) Means:

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

8 (B) Shortage differentials;

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

12 (D) Twelve-month differentials for employees of the  
13 department of education; and

14 (E) Retroactive pay differentials or back pay of  
15 those payments authorized in subparagraphs (A)  
16 through (D), and certified as compensation  
17 pursuant to section 88- ; and

18 (2) Shall not include any other additional or extra  
19 payments to an employee or officer, including  
20 overtime, supplementary payments, bonuses, lump sum  
21 salary supplements, allowances, or differentials,



1 including differentials for stand-by duty, temporary  
2 unusual work hazards, compression differentials, or  
3 temporary differentials, except for those expressly  
4 authorized pursuant to [~~subsection (b)~~] subparagraphs  
5 (1) (B) [~~, (b) (1) (C), and (b) (1) (D).~~] through (1) (E)."

6 SECTION 5. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 6. This Act shall take effect on January 1, 2050.



**Report Title:**

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

**Description:**

Ensures that employment, work, and pay eligible for the purpose of calculating retirement benefits includes retroactive reinstatement, retroactive rescission of suspension, retroactive pay differential, and back pay that are restored to an employee as part of an administrative, arbitral, or judicial proceeding. Effective 1/1/2050. (HD1)

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