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

21 (1) For:



1 (A) Service, the employee appeals an involuntary
2 termination or unpaid suspension, is
3 retroactively reinstated to employment or has the
4 suspension rescinded in whole or in part, and is
5 awarded back pay, pursuant to the final
6 adjudication of a court of competent
7 jurisdiction; provided further that:

8 (i) The days of retroactive employment for which
9 back pay is awarded pursuant to the final
10 adjudication of a court of competent
11 jurisdiction and paid by the State or county
12 shall be considered service;

13 (ii) The days of service shall not exceed the
14 number of days that the employee would have
15 provided service if the individual had not
16 been suspended or terminated; and

17 (iii) The service shall be credited to the extent
18 that it meets the requirements for credit as
19 provided in this chapter; or

20 (B) Compensation, the employee challenges
21 compensation and is subsequently awarded a



1 retroactive pay or back pay differential pursuant
2 to the final adjudication of a court of competent
3 jurisdiction; provided further that:

4 (i) The amount of a retroactive pay differential
5 awarded pursuant to the final adjudication
6 of a court of competent jurisdiction and
7 paid by the State or county shall be
8 considered a differential, not to exceed the
9 amount and type of differential available to
10 other similarly situated employees,
11 available by pay schedule, or comparable to
12 the employee's own history of pay
13 differential;

14 (ii) The amount of back pay awarded pursuant to
15 the final adjudication of a court of
16 competent jurisdiction and paid by the State
17 or county shall be considered pay, not to
18 exceed the amount and type of pay under
19 normal salary adjustments available to other
20 similarly situated employees, available by
21 pay schedule, or comparable to the



1 employee's own history of compensation, not
2 to exceed the pay attributable to the number
3 of workdays between the date that the
4 employees absence began until the employee's
5 date of reinstatement, and not to exceed the
6 pay that the employee would have received
7 had the employee not been suspended or
8 terminated; and

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

13 (2) The requirements of section 88-103.7 are met with
14 respect to any retroactive reinstatement, retroactive
15 recission of suspension, retroactive pay differential,
16 or back pay awarded pursuant to the final adjudication
17 of a court of competent jurisdiction and paid by the
18 State and county;

19 (3) The employee makes a lump sum payment to the system in
20 the amount of the actuarial present value, as
21 determined by the system, of contributions that the



1 employee would have contributed had the employee's
2 employment not been suspended or terminated, and
3 compound interest thereon at the assumed rate of
4 return; provided further that service shall be
5 credited at no cost for Class C service;

6 (4) The employer makes a lump sum payment to the system in
7 the amount of the actuarial present value, as
8 determined by the system, of contributions that the
9 employer would have contributed pursuant to sections
10 88-123 through 88-126 had the employee's employment
11 not been suspended or terminated, along with compound
12 interest thereon at the assumed rate of return; and

13 (5) If the employee was terminated, the employee repays:
14 (A) The actuarial present value, as determined by the
15 system, of any amount in employee contributions
16 that were refunded to the employee; and
17 (B) The actuarial present value, as determined by the
18 system, of any service or disability allowance
19 that was paid to the employee, at the time of the
20 employee's termination."



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

3 1. By adding a new definition to be appropriately inserted
4 and to read:

5 "Final adjudication of a court of competent jurisdiction"
6 means:

- 7 (1) The final decision of a court, an administrative
8 proceeding, or an arbitration proceeding from which no
9 appeal may be filed or which no appeal has been filed
10 within the time allowed;
- 11 (2) A stipulated judgment
- 12 (3) A court-approved settlement;
- 13 (4) A settlement adopted by court order or referenced in
14 an order of dismissal;
- 15 (5) A third-party arbitrator decision from which no appeal
16 may be filed or from which no appeal has been filed
17 within the time allowed; or
- 18 (6) Other final resolution of an appeal or challenge from
19 which no appeal may be filed or from which no appeal
20 has been filed within the time allowed."

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



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

3 (1) Service during the period of a leave of absence or
4 exchange if the individual is paid by the State or
5 county during the period of the leave of absence or
6 exchange; [~~and service~~]

7 (2) Service during the period of an unpaid leave of
8 absence or exchange if the individual is engaged in
9 the performance of a governmental function or if the
10 unpaid leave of absence is an approved leave of
11 absence for professional improvement; provided that,
12 for the period of the leave of absence or exchange
13 without pay, the individual makes the same
14 contribution to the system as the individual would
15 have made if the individual had not been on the leave
16 of absence[-]; and

17 (3) Service pursuant to section 88- .

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



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

3 "§88-21.5 Compensation. (a) For a member who became a
4 member before July 1, 2012 [~~unless~~]:

5 (1) Unless a different meaning is plainly required by
6 context, "compensation" as used in this part [~~7~~
7 "~~compensation~~"] means:

8 [~~1~~] (A) Normal periodic payments of money for
9 service the right to which accrues on a regular
10 basis in proportion to the service performed;

11 [~~2~~] (B) Overtime, differentials, and supplementary
12 payments;

13 [~~3~~] (C) Bonuses and lump sum salary supplements;
14 [and]

15 [~~4~~] (D) Elective salary reduction contributions
16 under sections 125, 403(b), and 457(b) of the
17 Internal Revenue Code of 1986, as amended [~~-~~]; and

18 (E) Back pay or retroactive pay differentials of
19 those payments authorized in subparagraphs (A)
20 through (D), and certified pursuant to section
21 88- ; and



1 (2) Bonuses and lump sum salary supplements shall be
2 deemed earned when payable; provided that bonuses or
3 lump sum salary supplements in excess of one-twelfth
4 of compensation for the twelve months prior to the
5 month in which the bonus or lump sum salary supplement
6 is payable, exclusive of overtime, bonuses, and lump
7 sum salary supplements, shall be deemed earned:

8 [~~1~~] (A) During the period agreed-upon by the
9 employer and employee, but in any event over a
10 period of not less than twelve months; or

11 [~~2~~] (B) In the absence of an agreement between the
12 employer and the employee, over the twelve months
13 prior to the date on which the bonus or lump sum
14 salary supplement is payable.

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

18 (1) Means:

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



- 1 (B) Shortage differentials;
- 2 (C) Elective salary reduction contributions under
3 sections 125, 403(b), and 457(b) of the Internal
4 Revenue Code of 1986, as amended; [and]
- 5 (D) Twelve-month differentials for employees of the
6 department of education; and
- 7 (E) Back pay or retroactive pay differentials of
8 those payments authorized in subparagraphs (A)
9 through (D), and certified as compensation
10 pursuant to section 88- ; and
- 11 (2) Shall not include any other additional or extra
12 payments to an employee or officer, including
13 overtime, supplementary payments, bonuses, lump sum
14 salary supplements, allowances, or differentials,
15 including differentials for stand-by duty, temporary
16 unusual work hazards, compression differentials, or
17 temporary differentials, except for those expressly
18 authorized pursuant to [~~subsection (b)~~] subparagraphs
19 (1) (B) [~~, (b) (1) (C), and (b) (1) (D)~~] through (1) (E)."

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 on January 1, 2050.

2



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. (SD1)

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