

ACT 179

H.B. NO. 2533

A Bill for an Act Relating to the Employment of Employees' Retirement System Retirants.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The employees' retirement system of the State of Hawaii is intended to be a qualified retirement plan under Section 401(a) (with respect to qualified pension, profit-sharing, and stock bonus plans) of the Internal Revenue Code (Code). Generally, the Code prohibits distribution of retirement

benefits prior to an employee's "retirement." If a retiree is reemployed, without a bona fide separation from service, the retiree may not be considered to be retired for purposes of the Code. The legislature finds that chapter 88, Hawaii Revised Statutes, should be amended to clarify the circumstances under which an employees' retirement system retirant may be reemployed without the suspension of the retirant's benefits and to provide remedies for the employees' retirement system if a retirant is reemployed in violation of chapter 88 and the Code.

SECTION 2. Chapter 88, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§88- Employment of retirants. (a) A retirant may not be employed by the State or by any county unless the retirant is reenrolled in the system pursuant to this chapter, or unless the employment, without reenrollment, is authorized by this section. A retirant whose employment without reenrollment in the system is authorized by this section shall acquire no service credit or retirement rights under this chapter with respect to the employment and shall not be considered to be in service for purposes of this chapter.

(b) Any retirant employed in violation of this section shall:

- (1) Reimburse the system for any retirement allowance or other benefit received from the system during the period or periods of employment in violation of this section, plus interest thereon at the rate of eight per cent per annum;
- (2) Pay the system an amount of money equal to the employee contributions that would otherwise have been paid during the period or periods of employment in violation of this section, plus interest thereon at the rate of eight per cent per annum; and
- (3) Contribute toward reimbursement of the system for administrative expenses incurred in responding to the situation, to the extent that the retirant is determined by the administrator to be at fault.

(c) Any employer that employs a retirant in violation of this section shall:

- (1) Pay to the system an amount of money equal to the employer contributions that would otherwise have been paid for the period or periods of employment in violation of this section, plus interest thereon at the rate of eight per cent per annum; and
- (2) Contribute toward reimbursement of the system for administrative expenses incurred in responding to the situation, to the extent that the employer is determined by the administrator to be at fault.

(d) A retirant may be employed without reenrollment in the system and suffer no loss or interruption of benefits provided by the system or under chapter 87A if the retirant is employed:

- (1) As an elective officer pursuant to section 88-42.6(c) or as a member of the legislature pursuant to section 88-73(d);
- (2) As a juror or precinct official;
- (3) As a part-time or temporary employee excluded from membership in the system pursuant to section 88-43, as a session employee excluded from membership in the system pursuant to section 88-54.2, as the president and chief executive officer of the Hawaii tourism authority excluded from membership in the system pursuant to section 201B-2, or as any other employee expressly excluded by law from membership in the system; provided that:

- (A) The retirant was not employed by the State or a county during the six calendar months prior to the first day of reemployment; and
- (B) No agreement was entered into between the State or a county and the retirant, prior to the retirement of the retirant, for the return to work by the retirant after retirement;
- (4) In a position identified by the appropriate jurisdiction as a labor shortage or difficult-to-fill position; provided that:
 - (A) The retirant was not employed by the State or a county during the twelve calendar months prior to the first day of reemployment;
 - (B) No agreement was entered into between the State or a county and the retirant, prior to the retirement of the retirant, for the return to work by the retirant after retirement; and
 - (C) Each employer shall contribute to the pension accumulation fund the required percentage of the rehired retirant's compensation to amortize the system's unfunded actuarial accrued liability; or
- (5) As a teacher or an administrator in a teacher shortage area identified by the department of education or in a charter school or as a mentor for new classroom teachers; provided that:
 - (A) The retirant was not employed by the State or a county during the twelve calendar months prior to the first day of reemployment;
 - (B) No agreement was entered into between the State or a county and the retirant prior to the retirement of the retirant, for the return to work by the retirant after retirement; and
 - (C) The department of education or charter school shall contribute to the pension accumulation fund the required percentage of the rehired retirant's compensation to amortize the system's unfunded actuarial accrued liability.
- (e) This section does not waive any provision of chapter 76 or 89 that may be applicable to a position for which a retirant is employed pursuant to this section.

(f) No later than twenty days prior to the convening of each regular legislative session, the director of human resources of the appropriate state jurisdiction or the human resources management chief executive of each county shall submit an annual report to the legislature detailing the employment of retirants under paragraphs (4) and (5) of subsection (d), including the number and positions of retirants.”

SECTION 3. Act 286, Session Laws of Hawaii 2006, and Act 156, Session Laws of Hawaii 2008, are repealed.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on January 1, 2011.

(Approved June 28, 2010.)

Note

1. Edited pursuant to HRS §23G-16.5.