

**Session Laws of Hawaii
Passed By The
Twenty-Eighth State Legislature
Second Special Session
2016**

ACT 1

S.B. NO. 2077

A Bill for an Act Relating to Separation Benefits.

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

PART I

SECTION 1. The purpose of this part is to provide options to assist public employees who may be displaced through the privatization or closure of a Hawaii health systems corporation facility and reduce the need for layoffs. Specifically, this part authorizes the Hawaii health systems corporation to offer a severance or a special retirement benefit to an employee who elects to separate from service when the employee's position is identified for abolishment or when the employee is directly affected by a reduction-in-force or workforce restructuring plan, including privatization.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
SEPARATION BENEFITS**

§ -1 **Definitions.** For the purposes of this chapter:

“Actuarial present value” means the difference in value between a member's benefit reflecting termination of service without the special retirement provision and the value of the member's benefit reflecting the special retirement benefit.

“Agency” or “attached agency” means the Hawaii health systems corporation.

“Directly affected” refers to when an employee receives official reduction-in-force notification of displacement from the employee's position because of a senior employee exercising reduction-in-force rights, or because the employee's position is part of a workforce restructuring plan, including privatization.

“Employee” means an individual:

- (1) Employed by the state government or an attached agency in a position subject to chapters 88 and 89;

- (2) Whose position has been identified for abolishment or directly affected because of a reduction-in-force or workforce restructuring plan, including privatization; and
- (3) Whose employment is subject to Act 103, Session Laws of Hawaii 2015.

“Exclusive representative” has the same meaning as defined in section 89-2.

“Public employer” has the same meaning as defined in section 89-2.

“Reduction-in-force” includes layoffs under chapter 89.

§ -2 Voluntary severance benefit. (a) Any employee entitled to reduction-in-force rights under chapter 89 and who receives official notification that the employee’s position is being abolished or who is directly affected by a reduction-in-force or workforce restructuring plan, including privatization, may elect to receive a voluntary severance benefit provided under this section in lieu of exercising any reduction-in-force rights under chapter 89 and in lieu of receiving any special retirement benefit under section -3.

(b) A one-time lump sum cash bonus severance benefit shall be calculated at five per cent of the employee’s base salary for every year of service worked, not to exceed ten years, and shall not exceed fifty per cent of the employee’s annual base salary.

For the purposes of this section, “annual base salary” means an employee’s annual salary for the position from which the employee is to be separated, excluding all other forms of compensation paid or accrued, whether a bonus, allowance, differential, or value of leave or compensatory time off credits. Compensation excluded from base salary includes shortage category differential, night shift differential, overtime, compensatory time off credits, vacation or sick leave credits, and workers’ compensation benefits.

(c) A severance benefit shall be in addition to any payment owing to the employee upon separation from service, including accumulated unused vacation allowances or compensatory time credits.

(d) All severance benefits paid under this section shall be subject to applicable state income tax laws and rules.

(e) A severance benefit provided under this section shall not be considered as a part of a discharged employee’s salary, service credit, or a cost item as defined in section 89-2 when calculating retirement benefits or sick and vacation leave.

§ -3 Special retirement benefit. (a) Notwithstanding section 88-99 or any other law to the contrary, the employees’ retirement system may provide, regardless of whether the actuarial value of the system’s assets is one hundred per cent of the system’s actuarial accrued liability, the benefits authorized under this section. Any employee who receives official notification that the employee’s position is being abolished or who is directly affected by a reduction-in-force or workforce restructuring plan, including privatization, proposed by an agency may elect, if the employee is eligible to receive benefits from the employees’ retirement system and meets any of the criteria specified in subsection (c), the special retirement benefit provided by this section in lieu of exercising any reduction-in-force rights under chapter 89 and in lieu of receiving any severance benefits under section -2. To receive the special retirement benefit offered under this section, the employee shall comply with the application and time frame requirements specified in subsection (b).

(b) Any employee who elects to retire and receive the special retirement benefit under this section shall notify the employee’s employing agency and file

a formal application for retirement with the employees' retirement system not less than thirty days or more than one hundred fifty days prior to the date of retirement.

(c) Notwithstanding the age and length of service requirements of sections 88-73, 88-281, and 88-331, an employee shall qualify for the special retirement benefit if, on the employee's retirement date, the employee meets any one of the following criteria:

- (1) Has at least five years of credited service as a contributory class A or B member and is at least fifty years of age;
- (2) Has at least twenty years of credited service as a contributory class A or B member, irrespective of age;
- (3) Has at least ten years of credited service as a noncontributory class C member and is at least fifty-seven years of age;
- (4) Has at least twenty-five years of credited service as a noncontributory class C member, irrespective of age;
- (5) A class H member who became a member prior to July 1, 2012, has at least five years of credited service and is at least fifty-seven years of age;
- (6) A class H member who became a member prior to July 1, 2012, and has at least twenty-five years of credited service, irrespective of age;
- (7) A class H member who became a member after June 30, 2012, has at least ten years of credited service and is at least sixty years of age; or
- (8) A class H member who became a member after June 30, 2012, has at least twenty-five years of credited service and is at least fifty-five years of age.

(d) Any employee who exercises the option of the special retirement benefit under this section because the employee does not qualify with respect to the age and length of service requirements under section 88-73, 88-281, or 88-331, to receive a retirement benefit without penalty, shall not have the retirement benefit reduced in accordance with the actuarial formula normally used by the employees' retirement system for the calculation of early retirement benefits.

(e) The head of the agency shall transmit a list of employees who elected and received the special retirement benefit to the board of trustees of the employees' retirement system not less than thirty days but not more than one hundred fifty days prior to the employee's retirement date. The head of the agency shall certify that the employees on the list have in fact selected the special retirement benefit in lieu of receiving the severance benefit under section -2 and exercising any reduction-in-force rights under chapter 89.

(f) The board of trustees of the employees' retirement system shall make payments with respect to all eligible employees who retire pursuant to this section. The board shall determine the portion of the additional actuarial present value of benefits to be charged to the State based upon retirements authorized under this section. If necessary, the State shall make additional payments to the employees' retirement system in the amounts required to amortize the additional actuarial present value of benefits over a period of five years. The unfunded actuarial present values of benefits payable under this section shall be considered part of the unfunded accrued liability of the employees' retirement system under sections 88-122 and 88-123.

§ -4 Restrictions. No severance benefit or special retirement benefit under this chapter shall be payable to an employee discharged for lawful disciplinary reasons or for reasons other than a reduction-in-force or workforce restructuring plan.

§ -5 **Reemployment.** Any employee who has received either a severance benefit or a special retirement benefit under this chapter and returns to public service within two years as an employee or contractor shall repay the severance benefit or the special retirement benefit to the State or the employees' retirement system, as the case may be, within thirty days of reemployment with a public employer.

§ -6 **Payments; lapse of unexpended funds.** After payments of all costs associated with the severance benefits and special retirement benefits, the public employer's remaining payroll balances shall not be expended for any purpose and shall be lapsed into the appropriate fund.

§ -7 **Reporting requirements; reduction in personnel counts.** The head of the agency that provided benefits under this chapter shall:

- (1) Transmit a report of every position identified for abolishment and vacated under this chapter to the directors of finance and human resources development, who shall abolish these positions from the appropriate budget and personnel files. The governor shall report this information to the legislature no later than twenty days prior to the convening of each regular session beginning with the regular session of 2017;
- (2) Reduce its personnel count by every position identified for abolishment and vacated under this chapter, whether the former incumbent vacated the position as a result of accepting a severance benefit or special retirement benefit authorized under this chapter or of exercising reduction-in-force rights; and
- (3) Transmit a list that includes each employee who received benefits under this chapter and the benefit received by the employee to the directors of finance and human resources development.

§ -8 **Guidelines; development and administration.** The departments of human resources development and budget and finance shall develop and administer guidelines and time frames with the exclusive representatives of affected public employees to implement the voluntary severance benefits and special retirement benefits under this chapter. The department of human resources development, the department of labor and industrial relations, the employees' retirement system, and the Hawaii employer-union health benefits trust fund shall work cooperatively to ensure that briefings are provided prior to the implementation of any workforce restructuring plan to educate the employees whose positions are being abolished or who are directly affected by a reduction-in-force or workforce restructuring plan.

The department of human resources development and the department of budget and finance shall report to the legislature on any restructuring activities initiated as a consequence of this chapter no later than twenty days prior to the convening of each regular session beginning with the regular session of 2017.

The report shall include a description of the abolished positions, an explanation as to how the new workforce structure, including resulting service delivery changes, will more efficiently serve the needs of the agency's clients, the cost of the benefit per participant, and the total cost to the State.

§ -9 **Matching funds.** The governor may provide funds to obtain matching federal moneys to retrain employees in the state executive branch who separated from service under this chapter.

§ -10 **Review by employee.** Employees offered a severance benefit or a special retirement benefit shall be given sufficient time to make an informed decision from the date of receiving accurate and complete information about the offer.”

PART II

SECTION 3. State contributions; Hawaii health system corporation employees hired after June 30, 1996, and retired. (a) This section shall apply to state contributions to the Hawaii employer-union health benefits trust fund for Hawaii health systems corporation employees hired after June 30, 1996, and who were separated from service as a result of Act 103, Session Laws of Hawaii 2015.

(b) The State, through the department of budget and finance, shall pay to the Hawaii employer-union health benefits trust fund:

- (1) For retired employees based on the self plan with at least nine years but fewer than twelve years of service, a monthly contribution equal to one-half of the base medicare or non-medicare monthly contribution set forth under section 87A-33(b), Hawaii Revised Statutes; provided that retired employees who were hired after June 30, 1996, but before July 1, 2001, with dependent-beneficiaries, as that term is defined in section 87A-1, Hawaii Revised Statutes, shall be eligible for a monthly contribution equal to one-half of the base medicare or non-medicare monthly contribution for two-party or family plans, as applicable, set forth in section 87A-33(b), Hawaii Revised Statutes;
- (2) For retired employees based on the self plan with at least twelve years but fewer than twenty years of service, a monthly contribution equal to seventy-five per cent of the base medicare or non-medicare monthly contribution set forth under section 87A-33(b), Hawaii Revised Statutes; provided that retired employees who were hired after June 30, 1996, but before July 1, 2001, with dependent-beneficiaries, as that term is defined in section 87A-1, Hawaii Revised Statutes, shall be eligible for a monthly contribution equal to seventy-five per cent of the base medicare or non-medicare monthly contribution for two-party or family plans, as applicable, set forth in section 87A-33(b), Hawaii Revised Statutes;
- (3) For retired employees based on the self plan with twenty or more years of service, a monthly contribution equal to one hundred per cent of the base medicare or non-medicare monthly contribution set forth under section 87A-33(b), Hawaii Revised Statutes; provided that retired employees who were hired after June 30, 1996, but before July 1, 2001, with dependent-beneficiaries, as that term is defined in section 87A-1, Hawaii Revised Statutes, shall be eligible for a monthly contribution equal to one hundred per cent of the base medicare or non-medicare monthly contribution for two-party or family plans, as applicable, set forth in section 87A-33(b), Hawaii Revised Statutes; and
- (4) Upon the death of a retired employee hired after June 30, 1996, but before July 1, 2001, for the dependent-beneficiary who becomes eligible as an employee-beneficiary, a monthly contribution equal to paragraphs (1), (2), or (3), as applicable; and upon the death of a retired employee hired after June 30, 2001, for the dependent-beneficiary who becomes eligible as an employee-beneficiary, a

monthly contribution equal to one-half of paragraphs (1), (2), or (3), as applicable.

PART III

SECTION 4. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 5. This Act shall take effect upon its approval, and shall apply to employees of the Hawaii health systems corporation who are separated from service as a consequence of Act 103, Session Laws of Hawaii 2015.

(Vetoed by Governor and veto overridden by Legislature on July 20, 2016.)