

Enrolled
House Bill 2704

Sponsored by COMMITTEE ON BUSINESS AND LABOR

CHAPTER

AN ACT

Relating to public employee retirement; creating new provisions; amending ORS 238.435 and 238A.235; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 238.435 is amended to read:

238.435. (1) Notwithstanding the definition of “salary” or “other advantages” provided by ORS 238.005, for the purpose of calculating the retirement allowance of a person who establishes membership in the system on or after January 1, 1996, as described in ORS 238.430, the Public Employees Retirement Board shall not include any lump sum payment for accrued vacation pay made to the member during the last 36 calendar months of membership before the effective date of retirement of the member, or during any period of time taken into account for purposes of determining the three years in which the member was paid the highest salary for the purposes of determining the member’s final average salary.

(2) Notwithstanding the definition of “final average salary” provided by ORS 238.005, for the purpose of calculating the retirement allowance of a person who establishes membership in the system on or after January 1, 1996, as described in ORS 238.430, and who is not employed by a local government as defined in ORS 174.116, the term “final average salary” means whichever of the following is greater:

(a) The average salary per calendar year paid to a public employee who is an active member of the system in three of the calendar years of membership before the effective date of retirement of the employee, in which three years the employee was paid the highest salary. The three calendar years in which the employee was paid the largest total salary may include calendar years in which the employee was employed for less than a full calendar year. If the number of calendar years of active membership before the effective date of retirement of the employee is three or less, the final average salary for the employee is the average salary per calendar year paid to the public employee in all of those years, without regard to whether the employee was employed for full calendar years.

(b) One-third of the total salary paid to a public employee who is an active member of the system in the last 36 calendar months of membership before the effective date of retirement of the employee.

(3) For the purposes of calculating the final average salary of a member under subsection (2) of this section, the Public Employees Retirement Board shall:

(a) Include any salary paid in or for the calendar month of separation from employment;

(b) Exclude any salary for any pay period before the first full pay period that is included in the three calendar years of membership under subsection (2)(a) of this section if the three calendar years were consecutive; and

(c) Exclude any salary for any pay period before the first full pay period that is included in the last 36 calendar months of membership under subsection (2)(b) of this section.

(4) Notwithstanding the definition of "final average salary" provided by ORS 238.005, for the purpose of calculating the retirement allowance of a person who establishes membership in the system on or after January 1, 1996, as described in ORS 238.430, and who is employed by a local government as defined in ORS 174.116, the term "final average salary" means whichever of the following is greater:

(a) The average salary per calendar year earned by a public employee who is an active member of the system in three of the calendar years of membership before the effective date of retirement of the employee, in which three years the employee earned the highest salary. The three calendar years in which the employee earned the largest total salary may include calendar years in which the employee was employed for less than a full calendar year. If the number of calendar years of active membership before the effective date of retirement of the employee is three or less, the final average salary for the employee is the average salary per calendar year earned by the public employee in all of those years, without regard to whether the employee was employed for full calendar years.

(b) One-third of the total salary earned by a public employee who is an active member of the system in the last 36 calendar months of membership before the effective date of retirement of the employee.

(5) The normal retirement age is 60 years of age for a member who establishes membership in the system on or after January 1, 1996, as described in ORS 238.430, and who retires as other than a police officer or firefighter.

(6) ORS 238.255 does not apply to any person who establishes membership in the Public Employees Retirement System on or after January 1, 1996, as described in ORS 238.430.

[(7) Notwithstanding any other provision of this chapter, for the purpose of calculating a monthly disability retirement allowance payable to a member who establishes membership in the system on or after January 1, 1996, as described in ORS 238.430, the sum of the monthly amount of the disability retirement allowance and of any monthly payment on account of temporary total disability or permanent total disability under the provisions of ORS chapter 656 may not exceed the member's monthly salary, determined as of the date the member becomes disabled. The board shall reduce any disability retirement allowance payable under this chapter in the amount determined to be necessary by the board to meet the limitation imposed by this subsection.]

[(8)] (7) Except as provided in this section, all provisions of this chapter are applicable to persons who establish membership in the system on or after January 1, 1996, as described in ORS 238.430.

SECTION 2. The amendments to ORS 238.435 by section 1 of this 2009 Act apply to all monthly disability retirement allowances paid on or after the operative date specified in section 5 of this 2009 Act. As soon as possible after the effective date of this 2009 Act, the Public Employees Retirement Board shall recalculate any disability retirement allowance being paid on the effective date of this 2009 Act, and the recalculated disability retirement allowance shall be effective for the month of December 2009 and payable January 1, 2010.

SECTION 3. ORS 238A.235 is amended to read:

238A.235. (1) *[Subject to subsection (3) of this section,]* An active member of the pension program described in subsection (2) of this section who becomes disabled shall receive a disability benefit in the amount of 45 percent of the salary of the member determined as of the last full month of employment before the disability commences.

(2) The provisions of this section apply only to:

(a) A member, other than a school employee as defined by ORS 238A.140, who has accrued 10 years or more of retirement credit before the member becomes disabled;

(b) A member who is a school employee as defined by ORS 238A.140 and who was an active member in 10 or more calendar years before the member becomes disabled; or

(c) A member who becomes disabled by reason of injury or disease sustained while in the actual performance of duty.

[(3)(a) Except as provided by paragraph (b) of this subsection, the sum of the monthly amount of the disability benefit under this section and of any monthly payment by reason of temporary total disability or permanent total disability under the provisions of ORS chapter 656 may not exceed 75 percent of the member's monthly salary, determined as of the date the member becomes disabled. The Public Employees Retirement Board shall reduce any disability benefit payable under this section in the amount determined to be necessary by the board to meet the limitation imposed by this subsection.]

[(b) This subsection does not affect cost-of-living adjustments under ORS 238A.210, and increases in the monthly amount of the disability benefit under this section due to those cost-of-living adjustments may not be considered by the Public Employees Retirement Board in determining whether the limitation imposed by this subsection has been exceeded.]

[(4)] (3) A *[disability retirement pension]* **disability benefit** under this section shall be paid until:

(a) The member is no longer disabled; or

(b) The member attains normal retirement age under ORS 238A.160.

[(5)] (4) A member is considered to be disabled for the purpose of this section if the member is found, after being examined by one or more physicians selected by the board, to be mentally or physically incapacitated for an extended duration and unable to perform any work for which qualified, by reason of injury or disease that was not intentionally self-inflicted.

SECTION 4. The amendments to ORS 238A.235 by section 3 of this 2009 Act apply to all disability benefits paid on or after the operative date specified in section 5 of this 2009 Act. As soon as possible after the effective date of this 2009 Act, the Public Employees Retirement Board shall recalculate any disability benefit being paid on the effective date of this 2009 Act, and the recalculated disability benefit shall be effective for the month of December 2009 and payable January 1, 2010.

SECTION 5. The amendments to ORS 238.435 and 238A.235 by sections 1 and 3 of this 2009 Act become operative on January 1, 2010.

SECTION 6. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by House April 15, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate May 7, 2009

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President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State