
HOUSE BILL 1914

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63rd Legislature

2013 Regular Session

By Representatives Ormsby, Pollet, Moscoso, Appleton, Sullivan, and Reykdal

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1 AN ACT Relating to alternate early retirement for certain school
2 employee service workers; and amending RCW 41.35.010, 41.35.420, and
3 41.35.680.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 41.35.010 and 2012 c 236 s 4 are each amended to read
6 as follows:

7 The definitions in this section apply throughout this chapter,
8 unless the context clearly requires otherwise.

9 (1) "Accumulated contributions" means the sum of all contributions
10 standing to the credit of a member in the member's individual account,
11 including any amount paid under RCW 41.50.165(2), together with the
12 regular interest thereon.

13 (2) "Actuarial equivalent" means a benefit of equal value when
14 computed upon the basis of such mortality and other tables as may be
15 adopted by the director.

16 (3) "Adjustment ratio" means the value of index A divided by index
17 B.

18 (4) "Annuity" means payments for life derived from accumulated

1 contributions of a member. All annuities shall be paid in monthly
2 installments.

3 (5)(a) "Average final compensation" for plan 2 and plan 3 members
4 means the member's average compensation earnable of the highest
5 consecutive sixty months of service credit months prior to such
6 member's retirement, termination, or death. Periods constituting
7 authorized leaves of absence may not be used in the calculation of
8 average final compensation except under RCW 41.40.710(2).

9 (b) In calculating average final compensation under (a) of this
10 subsection, the department of retirement systems shall include any
11 compensation forgone by a member during the 2011-2013 fiscal biennium
12 as a result of reduced work hours, mandatory leave without pay,
13 temporary layoffs, or reductions to current pay if the reduced
14 compensation is an integral part of the employer's expenditure
15 reduction efforts, as certified by the employer. Reductions to current
16 pay shall not include elimination of previously agreed upon future
17 salary reductions.

18 (6) "Beneficiary" for plan 2 and plan 3 members means any person in
19 receipt of a retirement allowance or other benefit provided by this
20 chapter resulting from service rendered to an employer by another
21 person.

22 (7) "Classified employee" means an employee of a school district or
23 an educational service district who is not eligible for membership in
24 the teachers' retirement system established under chapter 41.32 RCW.

25 (8)(a) "Compensation earnable" for plan 2 and plan 3 members, means
26 salaries or wages earned by a member during a payroll period for
27 personal services, including overtime payments, and shall include wages
28 and salaries deferred under provisions established pursuant to sections
29 403(b), 414(h), and 457 of the United States internal revenue code, but
30 shall exclude nonmoney maintenance compensation and lump sum or other
31 payments for deferred annual sick leave, unused accumulated vacation,
32 unused accumulated annual leave, or any form of severance pay.

33 (b) "Compensation earnable" for plan 2 and plan 3 members also
34 includes the following actual or imputed payments, which are not paid
35 for personal services:

36 (i) Retroactive payments to an individual by an employer on
37 reinstatement of the employee in a position, or payments by an employer
38 to an individual in lieu of reinstatement, which are awarded or granted

1 as the equivalent of the salary or wage which the individual would have
2 earned during a payroll period shall be considered compensation
3 earnable to the extent provided in this subsection, and the individual
4 shall receive the equivalent service credit;

5 (ii) In any year in which a member serves in the legislature, the
6 member shall have the option of having such member's compensation
7 earnable be the greater of:

8 (A) The compensation earnable the member would have received had
9 such member not served in the legislature; or

10 (B) Such member's actual compensation earnable received for
11 nonlegislative public employment and legislative service combined. Any
12 additional contributions to the retirement system required because
13 compensation earnable under (b)(ii)(A) of this subsection is greater
14 than compensation earnable under this (b)(ii)(B) of this subsection
15 shall be paid by the member for both member and employer contributions;

16 (iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045,
17 and 72.09.240;

18 (iv) Compensation that a member would have received but for a
19 disability occurring in the line of duty only as authorized by RCW
20 41.40.038;

21 (v) Compensation that a member receives due to participation in the
22 leave sharing program only as authorized by RCW 41.04.650 through
23 41.04.670; and

24 (vi) Compensation that a member receives for being in standby
25 status. For the purposes of this section, a member is in standby
26 status when not being paid for time actually worked and the employer
27 requires the member to be prepared to report immediately for work, if
28 the need arises, although the need may not arise.

29 (9) "Department" means the department of retirement systems created
30 in chapter 41.50 RCW.

31 (10) "Director" means the director of the department.

32 (11) "Eligible position" means any position that, as defined by the
33 employer, normally requires five or more months of service a year for
34 which regular compensation for at least seventy hours is earned by the
35 occupant thereof. For purposes of this chapter an employer shall not
36 define "position" in such a manner that an employee's monthly work for
37 that employer is divided into more than one position.

1 (12) "Employee" or "employed" means a person who is providing
2 services for compensation to an employer, unless the person is free
3 from the employer's direction and control over the performance of work.
4 The department shall adopt rules and interpret this subsection
5 consistent with common law.

6 (13) "Employer," for plan 2 and plan 3 members, means a school
7 district or an educational service district. Except as otherwise
8 specifically provided in this chapter, "employer" does not include a
9 government contractor. For purposes of this subsection, a "government
10 contractor" is any entity, including a partnership, limited liability
11 company, for-profit or nonprofit corporation, or person, that provides
12 services pursuant to a contract with an employer. The determination
13 whether an employer-employee relationship has been established is not
14 based on the relationship between a government contractor and an
15 employer, but is based solely on the relationship between a government
16 contractor's employee and an employer under this chapter.

17 (14) "Final compensation" means the annual rate of compensation
18 earnable by a member at the time of termination of employment.

19 (15) "Index" means, for any calendar year, that year's annual
20 average consumer price index, Seattle, Washington area, for urban wage
21 earners and clerical workers, all items, compiled by the bureau of
22 labor statistics, United States department of labor.

23 (16) "Index A" means the index for the year prior to the
24 determination of a postretirement adjustment.

25 (17) "Index B" means the index for the year prior to index A.

26 (18) "Ineligible position" means any position which does not
27 conform with the requirements set forth in subsection (22) of this
28 section.

29 (19) "Leave of absence" means the period of time a member is
30 authorized by the employer to be absent from service without being
31 separated from membership.

32 (20) "Member" means any employee included in the membership of the
33 retirement system, as provided for in RCW 41.35.030.

34 (21) "Member account" or "member's account" for purposes of plan 3
35 means the sum of the contributions and earnings on behalf of the member
36 in the defined contribution portion of plan 3.

37 (22) "Membership service" means all service rendered as a member.

1 (23) "Pension" means payments for life derived from contributions
2 made by the employer. All pensions shall be paid in monthly
3 installments.

4 (24) "Plan 2" means the Washington school employees' retirement
5 system plan 2 providing the benefits and funding provisions covering
6 persons who first became members of the public employees' retirement
7 system on and after October 1, 1977, and transferred to the Washington
8 school employees' retirement system under RCW 41.40.750.

9 (25) "Plan 3" means the Washington school employees' retirement
10 system plan 3 providing the benefits and funding provisions covering
11 persons who first became members of the system on and after September
12 1, 2000, or who transfer from plan 2 under RCW 41.35.510.

13 (26) "Regular interest" means such rate as the director may
14 determine.

15 (27) "Retiree" means any person who has begun accruing a retirement
16 allowance or other benefit provided by this chapter resulting from
17 service rendered to an employer while a member.

18 (28) "Retirement" means withdrawal from active service with a
19 retirement allowance as provided by this chapter.

20 (29) "Retirement allowance" for plan 2 and plan 3 members means
21 monthly payments to a retiree or beneficiary as provided in this
22 chapter.

23 (30) "Retirement system" means the Washington school employees'
24 retirement system provided for in this chapter.

25 (31) "Separation from service" occurs when a person has terminated
26 all employment with an employer.

27 (32) "Service" for plan 2 and plan 3 members means periods of
28 employment by a member in an eligible position or positions for one or
29 more employers for which compensation earnable is paid. Compensation
30 earnable earned for ninety or more hours in any calendar month shall
31 constitute one service credit month except as provided in RCW
32 41.35.180. Compensation earnable earned for at least seventy hours but
33 less than ninety hours in any calendar month shall constitute one-half
34 service credit month of service. Compensation earnable earned for less
35 than seventy hours in any calendar month shall constitute one-quarter
36 service credit month of service. Time spent in standby status, whether
37 compensated or not, is not service.

1 Any fraction of a year of service shall be taken into account in
2 the computation of such retirement allowance or benefits.

3 (a) Service in any state elective position shall be deemed to be
4 full-time service.

5 (b) A member shall receive a total of not more than twelve service
6 credit months of service for such calendar year. If an individual is
7 employed in an eligible position by one or more employers the
8 individual shall receive no more than one service credit month during
9 any calendar month in which multiple service for ninety or more hours
10 is rendered.

11 (c) For purposes of plan 2 and 3 "forty-five days" as used in RCW
12 28A.400.300 is equal to two service credit months. Use of less than
13 forty-five days of sick leave is creditable as allowed under this
14 subsection as follows:

15 (i) Less than eleven days equals one-quarter service credit month;

16 (ii) Eleven or more days but less than twenty-two days equals one-
17 half service credit month;

18 (iii) Twenty-two days equals one service credit month;

19 (iv) More than twenty-two days but less than thirty-three days
20 equals one and one-quarter service credit month; and

21 (v) Thirty-three or more days but less than forty-five days equals
22 one and one-half service credit month.

23 (33) "Service credit month" means a month or an accumulation of
24 months of service credit which is equal to one.

25 (34) "Service credit year" means an accumulation of months of
26 service credit which is equal to one when divided by twelve.

27 (35) "Service worker" means a classified employee who performs a
28 service for which there are no formal qualifications including
29 paraprofessionals and nonsupervisory personnel. "Service worker"
30 includes, but is not limited to, custodians, food service workers,
31 security personnel, warehouse workers, and delivery personnel.

32 (36) "State actuary" or "actuary" means the person appointed
33 pursuant to RCW 44.44.010(2).

34 ((+36+)) (37) "State elective position" means any position held by
35 any person elected or appointed to statewide office or elected or
36 appointed as a member of the legislature.

37 ((+37+)) (38) "State treasurer" means the treasurer of the state of
38 Washington.

1 (~~(38)~~) (39) "Substitute employee" means a classified employee who
2 is employed by an employer exclusively as a substitute for an absent
3 employee.

4 **Sec. 2.** RCW 41.35.420 and 2012 1st sp.s. c 7 s 3 are each amended
5 to read as follows:

6 (1) NORMAL RETIREMENT. Any member with at least five service
7 credit years who has attained at least age sixty-five shall be eligible
8 to retire and to receive a retirement allowance computed according to
9 the provisions of RCW 41.35.400.

10 (2) EARLY RETIREMENT. Any member who has completed at least twenty
11 service credit years and has attained age fifty-five shall be eligible
12 to retire and to receive a retirement allowance computed according to
13 the provisions of RCW 41.35.400, except that a member retiring pursuant
14 to this subsection shall have the retirement allowance actuarially
15 reduced to reflect the difference in the number of years between age at
16 retirement and the attainment of age sixty-five.

17 (3) ALTERNATE EARLY RETIREMENT.

18 (a) Any member who has completed at least thirty service credit
19 years and has attained age fifty-five shall be eligible to retire and
20 to receive a retirement allowance computed according to the provisions
21 of RCW 41.35.400, except that a member retiring pursuant to this
22 subsection shall have the retirement allowance reduced by three percent
23 per year to reflect the difference in the number of years between age
24 at retirement and the attainment of age sixty-five.

25 (b) On or after September 1, 2008, any member who has completed at
26 least thirty service credit years and has attained age fifty-five shall
27 be eligible to retire and to receive a retirement allowance computed
28 according to the provisions of RCW 41.35.400, except that a member
29 retiring pursuant to this subsection shall have the retirement
30 allowance reduced as follows:

31	Retirement	Percent
32	Age	Reduction
33	55	20%
34	56	17%
35	57	14%

1	58	11%
2	59	8%
3	60	5%
4	61	2%
5	62	0%
6	63	0%
7	64	0%

8 Any member who retires under the provisions of this subsection is
9 ineligible for the postretirement employment provisions of RCW
10 41.35.060(2) until the retired member has reached sixty-five years of
11 age. For purposes of this subsection, employment with an employer also
12 includes any personal service contract, service by an employer as a
13 temporary or project employee, or any other similar compensated
14 relationship with any employer included under the provisions of RCW
15 41.35.230(1).

16 The subsidized reductions for alternate early retirement in this
17 subsection as set forth in section 6, chapter 491, Laws of 2007 were
18 intended by the legislature as replacement benefits for gain-sharing.
19 Until there is legal certainty with respect to the repeal of chapter
20 41.31A RCW, the right to retire under this subsection is
21 noncontractual, and the legislature reserves the right to amend or
22 repeal this subsection. Legal certainty includes, but is not limited
23 to, the expiration of any: Applicable limitations on actions; and
24 periods of time for seeking appellate review, up to and including
25 reconsideration by the Washington supreme court and the supreme court
26 of the United States. Until that time, eligible members may still
27 retire under this subsection, and upon receipt of the first installment
28 of a retirement allowance computed under this subsection, the resulting
29 benefit becomes contractual for the recipient. If the repeal of
30 chapter 41.31A RCW is held to be invalid in a final determination of a
31 court of law, and the court orders reinstatement of gain-sharing or
32 other alternate benefits as a remedy, then retirement benefits for any
33 member who has completed at least thirty service credit years and has
34 attained age fifty-five but has not yet received the first installment
35 of a retirement allowance under this subsection shall be computed using
36 the reductions in (a) of this subsection.

1 (c)(i) Except under (c)(ii) of this subsection (3), members who
2 first become employed by an employer in an eligible position on or
3 after May 1, 2013, are not eligible for the alternate early retirement
4 provisions of (a) or (b) of this subsection. Any member who first
5 becomes employed by an employer in an eligible position on or after May
6 1, 2013, and has completed at least thirty service credit years and has
7 attained age fifty-five shall be eligible to retire and to receive a
8 retirement allowance computed according to the provisions of RCW
9 41.35.400, except that a member retiring pursuant to this subsection
10 shall have the retirement allowance reduced by five percent per year to
11 reflect the difference in the number of years between age at retirement
12 and the attainment of age sixty-five.

13 (ii) This subsection (3)(c) does not apply to service workers,
14 regardless of when they became employed by an employer in an eligible
15 position.

16 **Sec. 3.** RCW 41.35.680 and 2012 1st sp.s. c 7 s 4 are each amended
17 to read as follows:

18 (1) NORMAL RETIREMENT. Any member who is at least age sixty-five
19 and who has:

20 (a) Completed ten service credit years; or

21 (b) Completed five service credit years, including twelve service
22 credit months after attaining age forty-four; or

23 (c) Completed five service credit years by September 1, 2000, under
24 the public employees' retirement system plan 2 and who transferred to
25 plan 3 under RCW 41.35.510;

26 shall be eligible to retire and to receive a retirement allowance
27 computed according to the provisions of RCW 41.35.620.

28 (2) EARLY RETIREMENT. Any member who has attained at least age
29 fifty-five and has completed at least ten years of service shall be
30 eligible to retire and to receive a retirement allowance computed
31 according to the provisions of RCW 41.35.620, except that a member
32 retiring pursuant to this subsection shall have the retirement
33 allowance actuarially reduced to reflect the difference in the number
34 of years between age at retirement and the attainment of age sixty-
35 five.

36 (3) ALTERNATE EARLY RETIREMENT.

1 (a) Any member who has completed at least thirty service credit
2 years and has attained age fifty-five shall be eligible to retire and
3 to receive a retirement allowance computed according to the provisions
4 of RCW 41.35.620, except that a member retiring pursuant to this
5 subsection shall have the retirement allowance reduced by three percent
6 per year to reflect the difference in the number of years between age
7 at retirement and the attainment of age sixty-five.

8 (b) On or after September 1, 2008, any member who has completed at
9 least thirty service credit years and has attained age fifty-five shall
10 be eligible to retire and to receive a retirement allowance computed
11 according to the provisions of RCW 41.35.620, except that a member
12 retiring pursuant to this subsection shall have the retirement
13 allowance reduced as follows:

14	Retirement	Percent
15	Age	Reduction
16	55	20%
17	56	17%
18	57	14%
19	58	11%
20	59	8%
21	60	5%
22	61	2%
23	62	0%
24	63	0%
25	64	0%

26 Any member who retires under the provisions of this subsection is
27 ineligible for the postretirement employment provisions of RCW
28 41.35.060(2) until the retired member has reached sixty-five years of
29 age. For purposes of this subsection, employment with an employer also
30 includes any personal service contract, service by an employer as a
31 temporary or project employee, or any other similar compensated
32 relationship with any employer included under the provisions of RCW
33 41.35.230(1).

34 The subsidized reductions for alternate early retirement in this
35 subsection as set forth in section 8, chapter 491, Laws of 2007 were

1 intended by the legislature as replacement benefits for gain-sharing.
2 Until there is legal certainty with respect to the repeal of chapter
3 41.31A RCW, the right to retire under this subsection is
4 noncontractual, and the legislature reserves the right to amend or
5 repeal this subsection. Legal certainty includes, but is not limited
6 to, the expiration of any: Applicable limitations on actions; and
7 periods of time for seeking appellate review, up to and including
8 reconsideration by the Washington supreme court and the supreme court
9 of the United States. Until that time, eligible members may still
10 retire under this subsection, and upon receipt of the first installment
11 of a retirement allowance computed under this subsection, the resulting
12 benefit becomes contractual for the recipient. If the repeal of
13 chapter 41.31A RCW is held to be invalid in a final determination of a
14 court of law, and the court orders reinstatement of gain-sharing or
15 other alternate benefits as a remedy, then retirement benefits for any
16 member who has completed at least thirty service credit years and has
17 attained age fifty-five but has not yet received the first installment
18 of a retirement allowance under this subsection shall be computed using
19 the reductions in (a) of this subsection.

20 (c)(i) Except under (c)(ii) of this subsection (3), members who
21 first become employed by an employer in an eligible position on or
22 after May 1, 2013, are not eligible for the alternate early retirement
23 provisions of (a) or (b) of this subsection. Any member who first
24 becomes employed by an employer in an eligible position on or after May
25 1, 2013, and has completed at least thirty service credit years and has
26 attained age fifty-five shall be eligible to retire and to receive a
27 retirement allowance computed according to the provisions of RCW
28 41.35.620, except that a member retiring pursuant to this subsection
29 shall have the retirement allowance reduced by five percent per year to
30 reflect the difference in the number of years between age at retirement
31 and the attainment of age sixty-five.

32 (ii) This subsection (3)(c) does not apply to service workers,
33 regardless of when they became employed by an employer in an eligible
34 position.

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