

§18530. Reduction in amount of benefit

1. Definition. As used in this section, unless the context otherwise indicates, "adjusted final compensation" means the rate of pay of the person immediately before termination and becoming the recipient of a disability retirement benefit adjusted by the same percentage adjustment as has been received under section 18407.

[PL 1989, c. 409, §§11, 12 (NEW).]

2. Compensation from employment not covered by this article. If any person who is the recipient of a disability retirement benefit receives compensation in any year from engaging in any gainful activity or from employment with an employer whose employees are not covered by this article or chapter 423, subchapter 5, article 3-A, which exceeds \$20,000, increased by the same percentage adjustments as are granted under section 18407, or the difference between the person's disability retirement benefit for that year and the person's average final compensation at the time that the person became a recipient of a disability retirement benefit, increased by the same percentage adjustments as have been granted by section 18407, whichever is greater:

A. The excess must be deducted from the disability or service retirement benefits during the next calendar year; the deductions to be prorated on a monthly basis in an equitable manner prescribed by the board over the year or part of the year for which the benefits are received; [PL 2001, c. 443, §4 (AMD); PL 2001, c. 443, §7 (AFF).]

B. The person shall reimburse the retirement system for any excess payments not deducted under paragraph A. If the retirement benefit payments are eliminated by this subsection, the disability is deemed to no longer exist, the payment of the disability retirement benefit must be discontinued and, except as provided in paragraph C, all of the person's rights to benefits under this article cease; [PL 2001, c. 443, §4 (AMD); PL 2001, c. 443, §7 (AFF).]

C. If, during the first 5 years of reemployment, the person again becomes disabled, terminates employment and is not covered by any other disability program, the retirement system shall resume paying the disability retirement benefit payable prior to the reemployment with all applicable cost-of-living adjustments and shall provide rehabilitation services in accordance with section 18527. If the benefit payable under the other disability program is not equal to or greater than the benefit under this article, the retirement system shall pay the difference between the amount of the benefit payable under the other disability program and the amount of the benefit payable under this article. The chief executive officer shall require examinations or tests to determine whether the person is disabled as described in section 18521; and [PL 2021, c. 277, §39 (AMD); PL 2021, c. 548, §45 (REV).]

D. At any time before the elimination of disability retirement benefit payments by this subsection, the person may request that benefit payments be terminated and the chief executive officer shall terminate benefit payments at the end of the month in which the request is received. [PL 1989, c. 409, §§11, 12 (NEW); PL 2021, c. 548, §45 (REV).]
[PL 2021, c. 277, §39 (AMD); PL 2021, c. 548, §45 (REV).]

3. Compensation from employment covered by this article. If any person who is the recipient of a disability retirement benefit is reemployed by that person's prior employer or any other employer whose employees are covered by this article or chapter 423, subchapter V, article 3-A, and if the total of the person's disability benefit for any year and the person's total earnable compensation for that year exceeds the adjusted final compensation:

A. The disability or service retirement benefits will be reduced during the next calendar year by the amount that the total compensation exceeds the adjusted final compensation; [PL 1989, c. 409, §§11, 12 (NEW).]

B. The deductions shall be prorated on a monthly basis in an equitable manner prescribed by the board over the year or part of the year during which the benefits are received; [PL 1989, c. 409, §§11, 12 (NEW).]

C. The person shall reimburse the retirement system for any excess payments not deducted under paragraph A; [PL 1989, c. 409, §§11, 12 (NEW).]

D. If the retirement benefit payments are eliminated by this subsection:

(1) The person again becomes a member of the Participating Local District Retirement Program and begins contributing at the current rate; and

(2) When the person again retires, the person must receive benefits computed on the basis of that person's entire creditable service and in accordance with the law in effect at that time; [PL 2007, c. 491, §247 (AMD).]

E. If, during the first 5 years of reemployment, the person again becomes disabled and terminates employment, the retirement system shall resume paying the disability retirement benefit payable prior to the reemployment with all applicable cost-of-living adjustments, or if greater, a disability retirement benefit based upon the person's current average final compensation and shall provide rehabilitation services in accordance with section 18527. The chief executive officer shall require examinations or tests to determine whether the person is disabled as defined in section 18521; and [PL 2021, c. 277, §40 (AMD); PL 2021, c. 548, §45 (REV).]

F. At any time before the elimination of disability retirement benefit payments by this subsection, the person may request that benefit payments be terminated and the chief executive officer shall terminate benefit payments at the end of the month in which the request is received. [PL 1989, c. 409, §§11, 12 (NEW); PL 2021, c. 548, §45 (REV).]

[PL 2021, c. 277, §40 (AMD); PL 2021, c. 548, §45 (REV).]

4. Disability payments under other laws. The reduction of disability retirement benefits because of disability benefits received under other laws is governed as follows.

A. The amount of any disability retirement benefit payable under this article must be reduced by any amount received by the person for the same disability under either or both of the following:

(1) The workers' compensation or similar laws, except amounts that may be paid or payable under former Title 39, section 56-B or Title 39-A, section 212, subsection 3; or

(2) The United States Social Security Act, if the employment for which creditable service with the employer is allowed was also covered under that Act at the date of disability retirement. [PL 1991, c. 885, Pt. E, §15 (AMD); PL 1991, c. 885, Pt. E, §47 (AFF).]

B. The reduction in the disability retirement benefit is governed as follows:

(1) The initial disability retirement benefit must be reduced if necessary so that the benefit plus any benefits under paragraph A do not exceed 80% of the person's average annual earnings. For the purposes of this subparagraph, "average annual earnings" means the total of the person's average final compensation plus other wages and earnings from employment for the calendar year in which the person has the highest total of other wages and earnings from employment during the 5 years immediately preceding the year in which the person became disabled;

(2) The amount determined by the calculation under subparagraph (1) shall not be adjusted when cost-of-living adjustments are applied to the benefits listed under paragraph A; and

(3) Adjustments under section 18407 shall be applied to the reduced disability retirement benefit calculated under subparagraph (1) or paragraph C. [PL 2003, c. 328, §1 (AMD).]

C. The disability retirement benefit may not be reduced below the amount of the retirement benefit which is the actuarial equivalent of the member's accumulated contributions at the time of retirement. [PL 1989, c. 409, §§11, 12 (NEW).]

D. Lump-sum settlements of benefits that reduce the disability retirement benefit under this subsection must be prorated on a monthly basis in an equitable manner prescribed by the board.

(1) These prorated lump-sum settlements may not include any part of the lump-sum settlement attributable to rehabilitation, attorneys', physicians', nurses', hospital, medical, surgical or related fees or charges or any amount paid or payable under former Title 39, section 56-B or Title 39-A, section 212, subsection 3.

(2) These prorated lump-sum settlements must reduce the disability retirement benefit in the same manner and amount as monthly benefits under this subsection. [PL 1991, c. 885, Pt. E, §15 (AMD); PL 1991, c. 885, Pt. E, §47 (AFF).]

E. Any dispute about amounts paid or payable under workers' compensation or the amount of the lump-sum settlement and its attributions must be determined on petition by a single member of the Workers' Compensation Board in accordance with Title 39-A. These determinations may be appealed under Title 39-A, section 322. [PL 1991, c. 885, Pt. E, §15 (AMD); PL 1991, c. 885, Pt. E, §47 (AFF).]

[PL 2003, c. 328, §1 (AMD).]

SECTION HISTORY

PL 1989, c. 409, §§11,12 (NEW). PL 1991, c. 885, §E15 (AMD). PL 1991, c. 885, §E47 (AFF). PL 2001, c. 443, §4 (AMD). PL 2001, c. 443, §7 (AFF). PL 2003, c. 328, §1 (AMD). PL 2007, c. 491, §247 (AMD). PL 2013, c. 391, §16 (AMD). PL 2021, c. 277, §§39, 40 (AMD). PL 2021, c. 548, §45 (REV).

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