

STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

SENATE BILL 1118

By: Mazzei

AS INTRODUCED

An Act relating to the Oklahoma Firefighters Pension and Retirement System; amending 11 O.S. 2011, Section 49-100.1, as amended by Section 1, Chapter 364, O.S.L. 2012 (11 O.S. Supp. 2012, Section 49-100.1), which relates to definitions; modifying definition; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 11 O.S. 2011, Section 49-100.1, as amended by Section 1, Chapter 364, O.S.L. 2012 (11 O.S. Supp. 2012, Section 49-100.1), is amended to read as follows:

Section 49-100.1. As used in this article:

1. "System" means the Oklahoma Firefighters Pension and Retirement System and all predecessor municipal firefighters pension and retirement systems;

2. "Article" means Article 49 of this title;

3. "State Board" means the Oklahoma Firefighters Pension and Retirement Board;

4. "Local board" means the local firefighters pension and retirement boards;

1 5. "Fund" means the Oklahoma Firefighters Pension and
2 Retirement Fund;

3 6. "Member" means all eligible firefighters of a participating
4 municipality or a fire protection district who perform the essential
5 functions of fire suppression, prevention, and life safety duties in
6 a fire department. The term "member" shall include but not be
7 limited to the person serving as fire chief of any participating
8 municipality, provided that a person serving as fire chief of a
9 participating municipality shall meet the age, agility, physical and
10 other eligibility requirements required by law at the time said
11 person becomes a member of the System. Effective July 1, 1987, a
12 member does not include a "leased employee". The term "leased
13 employee" means any person (other than an employee of the recipient)
14 who pursuant to an agreement between the recipient and any other
15 person ("leasing organization") has performed services for the
16 recipient (or for the recipient and related persons determined in
17 accordance with Section 414(n)(6) of the Internal Revenue Code of
18 1986, as amended) on a substantially full-time basis for a period of
19 at least one year, and such services are performed under primary
20 direction or control by the recipient. Contributions or benefits
21 provided a leased employee by the leasing organization which are
22 attributable to services performed for the recipient employer shall
23 be treated as provided by the recipient employer. A leased employee
24 shall not be considered an employee of the recipient if the

1 requirements of the safe harbor provisions of Section 414(n) (5) of
2 the Internal Revenue Code of 1986, as amended, are satisfied.
3 Effective July 1, 1999, any individual who agrees with the
4 participating municipality that the individual's services are to be
5 performed as a leased employee or an independent contractor shall
6 not be a member regardless of any classification as a common law
7 employee by the Internal Revenue Service or any other governmental
8 agency, or any court of competent jurisdiction;

9 7. "Normal retirement date" means the date at which the member
10 is eligible to receive the unreduced payments of the member's
11 accrued retirement benefit. Such date shall be the first day
12 following the date the member completes ~~twenty (20)~~ twenty-five (25)
13 years of credited service. If the member's employment continues
14 past the normal retirement date of the member, the actual retirement
15 date of the member shall be the first day following the date the
16 member terminates employment with more than ~~twenty (20)~~ twenty-five
17 (25) years of credited service;

18 8. "Credited service" means the period of service used to
19 determine the eligibility for and the amount of benefits payable to
20 a member. Credited service shall consist of the period during which
21 the member participated in the System or the predecessor municipal
22 systems as an active employee in an eligible membership
23 classification, plus any service prior to the establishment of the
24 predecessor municipal systems which was credited under the

1 predecessor municipal systems; provided, however, "credited service"
2 for members from a fire protection district shall not begin accruing
3 before July 1, 1982;

4 9. "Participating municipality" means a municipality, county
5 fire department organized pursuant to subsection D of Section 351 of
6 Title 19 of the Oklahoma Statutes, or fire protection district which
7 is making contributions to the System on behalf of its firefighters.
8 All participating municipalities shall appoint a fire chief who
9 shall supervise and administer the fire department;

10 10. "Disability" means the complete inability of the
11 firefighter to perform any and every duty of the firefighter's
12 regular occupation; provided further, that once benefits have been
13 paid for twenty-four (24) months the provisions of Section 49-110 of
14 this title shall apply to the firefighter;

15 11. "Executive Director" means the managing officer of the
16 System employed by the State Board;

17 12. "Eligible employer" means any municipality with a municipal
18 fire department or a fire protection district with an organized fire
19 department;

20 13. "Entry date" means the date as of which an eligible
21 employer joins the System. The first entry date pursuant to this
22 article shall be January 1, 1981;

23 14. "Final average salary" means the average paid gross salary
24 of the firefighter for normally scheduled hours over the highest

1 | salaried thirty (30) consecutive months of the last sixty (60)
2 | months of credited service. Gross salary shall not include payment
3 | for accumulated sick or annual leave upon termination of employment,
4 | any uniform allowances or any other compensation for reimbursement
5 | of out-of-pocket expenses. Only salary on which the required
6 | contributions have been made may be used in computing the final
7 | average salary. Effective January 1, 1988, gross salary shall
8 | include any amount of elective salary reduction under Section 125 of
9 | the Internal Revenue Code of 1986, as amended. Gross salary shall
10 | include any amount of elective salary reduction under Section 457 of
11 | the Internal Revenue Code of 1986, as amended, and any amount of
12 | nonelective salary reduction under Section 414(h) of the Internal
13 | Revenue Code of 1986, as amended. Effective July 1, 1998, for
14 | purposes of determining a member's compensation, any contribution by
15 | the member to reduce the member's regular cash remuneration under
16 | 132(f)(4) of the Internal Revenue Code of 1986, as amended, shall be
17 | treated as if the member did not make such an election. Only salary
18 | on which required contributions have been made may be used in
19 | computing final average salary.

20 | In addition to other applicable limitations, and notwithstanding
21 | any other provision to the contrary, for plan years beginning on or
22 | after July 1, 2002, the annual gross salary of each "Noneligible
23 | Member" taken into account under the System shall not exceed the
24 | Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA")

1 annual salary limit. The EGTRRA annual salary limit is Two Hundred
2 Thousand Dollars (\$200,000.00), as adjusted by the Commissioner for
3 increases in the cost of living in accordance with Section
4 401(a)(17)(B) of the Internal Revenue Code of 1986, as amended. The
5 annual salary limit in effect for a calendar year applies to any
6 period, not exceeding twelve (12) months, over which salary is
7 determined ("determination period") beginning in such calendar year.
8 If a determination period consists of fewer than twelve (12) months,
9 the EGTRRA salary limit will be multiplied by a fraction, the
10 numerator of which is the number of months in the determination
11 period, and the denominator of which is twelve (12). For purposes
12 of this subsection, a "Noneligible Member" is any member who first
13 became a member during a plan year commencing on or after July 1,
14 1996.

15 For plan years beginning on or after July 1, 2002, any reference
16 to the annual salary limit under Section 401(a)(17) of the Internal
17 Revenue Code of 1986, as amended, shall mean the EGTRRA salary limit
18 set forth in this subsection.

19 Effective June 9, 2010, gross salary shall also include gross
20 salary, as described above, for services, but paid by the later of
21 two and one-half (2 1/2) months after a firefighter's severance from
22 employment or the end of the calendar year that includes the date
23 the firefighter terminated employment, if it is a payment that,
24 absent a severance from employment, would have been paid to the

1 firefighter while the firefighter continued in employment with the
2 participating municipality.

3 Effective June 9, 2010, any payments not described above shall
4 not be considered gross salary if paid after severance from
5 employment, even if they are paid by the later of two and one-half
6 (2 1/2) months after the date of severance from employment or the
7 end of the calendar year that includes the date of severance from
8 employment, except payments to an individual who does not currently
9 perform services for the participating municipality by reason of
10 qualified military service within the meaning of Section 414(u) (5)
11 of the Internal Revenue Code of 1986, as amended, to the extent
12 these payments do not exceed the amounts the individual would have
13 received if the individual had continued to perform services for the
14 participating municipality rather than entering qualified military
15 service.

16 Effective June 9, 2010, back pay, within the meaning of Section
17 1.415(c)-2(g) (8) of the Income Tax Regulations, shall be treated as
18 gross salary for the year to which the back pay relates to the
19 extent the back pay represents wages and compensation that would
20 otherwise be included in this definition.

21 Effective for years beginning after December 31, 2008, gross
22 salary shall also include differential wage payments under Section
23 414(u) (12) of the Internal Revenue Code of 1986, as amended;

1 15. "Accrued retirement benefit" means two and one-half percent
2 (2 1/2%) of the firefighter's final average salary multiplied by the
3 member's years of credited service not to exceed thirty (30) years;

4 16. "Beneficiary" means a member's surviving spouse or any
5 surviving children, including biological and adopted children, at
6 the time of the member's death. The surviving spouse must have been
7 married to the firefighter for the thirty (30) continuous months
8 preceding the firefighter's death provided a surviving spouse of a
9 member who died while in, or as a consequence of, the performance of
10 the member's duty for a participating municipality, shall not be
11 subject to the marriage limitation for survivor benefits. A
12 surviving child of a member shall be a beneficiary until reaching
13 eighteen (18) years of age or twenty-two (22) years of age if the
14 child is enrolled full time and regularly attending a public or
15 private school or any institution of higher education. Any child
16 adopted by a member after the member's retirement shall be a
17 beneficiary only if the child is adopted by the member for the
18 thirty (30) continuous months preceding the member's death. Any
19 child who is adopted by a member after the member's retirement and
20 such member dies accidentally or as a consequence of the performance
21 of the member's duty as a firefighter shall not be subject to the
22 thirty-month adoption requirement. This definition of beneficiary
23 shall be in addition to any other requirement set forth in this
24 article;

1 17. "Accumulated contributions" means the sum of all
2 contributions made by a member to the System and includes both
3 contributions deducted from the compensation of a member and
4 contributions of a member picked up and paid by the participating
5 municipality of the member. Accumulated contributions shall not
6 include any interest on the contributions of the member, interest on
7 any amount contributed by the municipality or state and any amount
8 contributed by the municipality or state; and

9 18. "Limitation year" means the year used in applying the
10 limitations of Section 415 of the Internal Revenue Code of 1986,
11 which year shall be the calendar year.

12 SECTION 2. This act shall become effective November 1, 2013.

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