

Tier V for Fire Fighters

Overview

On December 10, 2009 Governor Paterson signed into law S66026 / A40026 "Tier V" which passed the Senate and Assembly during Extraordinary Session held on December 2 & 3, 2009. This bill creates a new Article 22 to the Retirement and Social Security Law ("RSSL") to establish a new Tier V in the New York State Police and Fire Retirement System (PFRS). Other provisions of Tier V apply to non-uniform public employees.

Tier V

Applicability

Pursuant to the bill, the new Tier V will apply to all police and firemen who join the Retirement System on or after the thirtieth day after the bill is signed into law. Therefore, notwithstanding the enumerated January 1, 2010 effective date contained in Section 1, Tier V will apply to all members who join the retirement system on or after January 9, 2010.

Vesting

Members of Tier V will need a minimum of 10 years of credible service in order to qualify for service retirement. However, credit will be given for military service as currently defined under the RSSL.

Overtime

Under the new Tier V, a member's final average salary, used to calculate the member's retirement benefit, will not include overtime pay in excess of 15% of the member's annual wages unless such pay is classified as "overtime compensation." Overtime compensation is defined as compensation paid under any law or policy which requires compensation at a rate greater than a member's standard rate including compensation required by the Civil Service Law and General Municipal Law. However, the actual formula for calculating retirement benefits remains intact. In other words, the 20% formula can still be met with a limit of 15% on overtime because you still can include pay raises, longevity and holiday pay to reach the 20% limit.

Member Contributions

Tier V members are required to contribute 3% of their annual wages to the Retirement System. Members who enroll in a retirement plan that limits the amount of credible service he or she can accrue would not be required to make the 3% contribution after he or she has accrued the maximum amount of service allowed by the specific plan.

Recalculation of Benefits

Any member currently enrolled who joined the Retirement System pursuant to Tier III on or after July 1, 2009 may opt into Tier V by filing a request with the Comptroller 150 days after the bill is signed into law.

Conflicting Provisions

The Tier V proposal clearly states that the new Tier V language will prevail should any article of the RSSL conflict with the proposal regarding any applicable members.

Additional Provisions

Collective Bargaining Provisions

Although we are awaiting confirmation from the Retirement System, we anticipate that any existing contract that specifically provides for a special benefit plan, such as a Section 384(d) and/or Section 384(e) benefit plan, will be available to new members for the life of the contract notwithstanding the other provisions of Article 22.

Permanent Extensions

This bill extends permanently all temporary rights, privileges and benefits conferred by general and local laws, most notably the rights related to the heart, cancer and disease presumptions. In addition, the bill permanently extends the prohibition on negotiation of pension benefits, the right of public employers and employees to negotiate for retirement benefits, and the applicability of RSSL Articles 14 and 15 to new public Retirement System members.

PERB Extension

The bill extends PERB's authority to refer disputes to binding arbitration for 4 years.

Article 11 & 14 Calculation

The bill excludes members of the Retirement System who join after January 1, 2010 from the Comptroller's authority to determine whether the member's benefits are governed by Articles 11 and 14 of the RSSL.

Conclusion

We have come a long way since faced with the Governor's veto of Tier II on June 30, 2009. The veto caused all new fire members to opt into a Tier III plan or a basic Tier II plan, neither of which was as beneficial as Tier II. To compound problems, the Governor initially proposed changes to fire fighter pensioners that were contributory and based on twenty-five years and electable by the employer without collective bargaining.

Although the new Tier V plan is not ideal, it is far better for new members than the Tier III (or old Tier II) benefits available since July 1, 2009. It provides a twenty year benefit, makes all on temporary benefits permanent except binding arbitration and extends binding arbitration until 2113 (and shall be entered on a four year basis thereafter).