

# VIRGINIA ACTS OF ASSEMBLY -- 2021 SPECIAL SESSION I

## CHAPTER 54

*An Act to amend and reenact §§ 51.1-124.3, 51.1-157, 51.1-168, 51.1-301, and 51.1-308 of the Code of Virginia, relating to Virginia Retirement System; technical amendments.*

[S 1251]

Approved March 11, 2021

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 51.1-124.3, 51.1-157, 51.1-168, 51.1-301, and 51.1-308 of the Code of Virginia are amended and reenacted as follows:**

**§ 51.1-124.3. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Abolished system" means the Virginia Retirement Act, §§ 51-30 through 51-111, repealed by Chapter 1 of the Acts of Assembly of 1952.

"Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the member's contribution account, all amounts the member may contribute to purchase creditable service, all member contributions contributed by the employer on behalf of the employee, on or after July 1, 1980, except those amounts contributed on behalf of members of the General Assembly who are otherwise retired under the provisions of this chapter, and all interest accruing to these funds. If a member is retired for disability from a cause which is compensable under the Virginia Workers' Compensation Act (§ 65.2-100 et seq.), dies in service prior to retirement, or requests a refund of contributions in accordance with § 51.1-161, "accumulated contributions" shall include all member contributions paid by the employer on behalf of the member on and after July 1, 1980, and all interest which would have accrued to these funds.

"Actuarial equivalent" means a benefit of equal value when computed upon the basis of actuarial tables adopted by the Board.

"Average final compensation" means the average annual creditable compensation of a member during his 60 highest consecutive months of creditable service or during the entire period of his creditable service if less than 60 months. However, for any member who (i) is not a person who becomes a member on or after July 1, 2010, and (ii) as of January 1, 2013, has at least 60 months of creditable service, "average final compensation" means the average annual creditable compensation of a member during his 36 highest consecutive months of creditable service. A participant in the hybrid retirement program described in § 51.1-169 shall be considered to be a person who becomes a member on or after July 1, 2010, for the purposes of this definition.

If a member ceased employment prior to July 1, 1974, "average final compensation" means the average annual creditable compensation during the five highest consecutive years of creditable service.

"Beneficiary" means any person entitled to receive benefits under this chapter.

"Board" means the Board of Trustees of the Virginia Retirement System.

"Creditable compensation" means the full compensation payable annually to an employee working full time in his covered position. For any state employee of a public institution of higher education or a teaching hospital affiliated with a public institution of higher education who is (i) compensated on a salaried basis and (ii) working full time in a covered position pursuant to a contract of employment for a period of at least nine months, creditable compensation means the full compensation payable over the term of any contract entered into between the employee and the employer, without regard to whether or not the term of the contract coincides with the normal scholastic year. However, if the contract is for more than one year, creditable compensation means that compensation paid for the current year of the contract.

Remuneration received by members of the General Assembly not otherwise retired under the provisions of this chapter pursuant to §§ 30-19.11 and 30-19.12 shall be deemed creditable compensation. In addition, for any member of the General Assembly, creditable compensation shall include the full amount of salaries payable to such member for working in covered positions, regardless of whether a contractual salary is reduced and not paid to such member because of service in the General Assembly.

"Creditable service" means prior service as set forth in § 51.1-142.2 plus membership service for which credit is allowable.

"Employee" means any teacher, state employee, officer, or employee of a locality participating in the Retirement System.

"Employer" means the Commonwealth in the case of a state employee, the local public school board in the case of a teacher, or the political subdivision participating in the Retirement System.

"Joint Rules Committee" means those members of the House of Delegates and the Senate designated

by the Speaker of the House and the Chairman of the Senate Committee on Rules, respectively, to meet with each other and to act jointly on behalf of the Committee on Rules for each house.

"Local officer" means the treasurer, commissioner of the revenue, attorney for the Commonwealth, clerk of a circuit court, or sheriff of any county or city, or deputy or employee of any such officer.

"Medical Board" means the boards composed of physicians or other health care professionals as provided by this chapter.

"Member" means any person included in the membership of the Retirement System.

"Membership service" means service as an employee rendered while a contributing member of the Retirement System except as provided in this chapter.

"Normal retirement date" means a member's sixty-fifth birthday. However, for any (i) person who becomes a member on or after July 1, 2010, or (ii) member who does not have at least 60 months of creditable service as of January 1, 2013, under this chapter his normal retirement date shall be the date that the member attains his "retirement age" as defined under the Social Security Act (42 U.S.C. § 416 et seq., as now or hereafter amended).

"Person who becomes a member on or after July 1, 2010," means a person who is not a member of a retirement plan administered by the Virginia Retirement System the first time he is hired on or after July 1, 2010, in a covered position. Subsequent separation from such position and subsequent employment in a covered position shall not alter the status of a person who becomes a member on or after July 1, 2010.

"Political subdivision" means any county, city, or town, any political entity, subdivision, branch, or unit of the Commonwealth, or any commission, public authority, or body corporate created by or under an act of the General Assembly specifying the powers, privileges, or authority capable of exercise by the commission, public authority, or body corporate.

~~"Primary social security benefit" means, with respect to any member, the primary insurance amount to which the member is entitled, for old age or disability, as the case may be, pursuant to the provisions of the federal Social Security Act as in effect at his date of retirement, under the provisions of this chapter except as otherwise specifically provided.~~

"Prior service" means service rendered prior to becoming a member of the Retirement System.

"Purchase of service contract" means a contract entered into by the member and the Retirement System for the purchase of service credit by the member as provided in § 51.1-142.2.

"Retirement allowance" means the retirement payments to which a member is entitled.

"Retirement plan administered by the Virginia Retirement System" means a retirement plan established under this title administered by the Virginia Retirement System, or by an agency that has been delegated administrative responsibility by the Virginia Retirement System, but such term shall exclude any plan established under Chapter 6 (§ 51.1-600 et seq.) or Chapter 6.1 (§ 58.1-607 et seq.).

"Retirement System" means the Virginia Retirement System.

"Service" means service as an employee.

*"Social security disability benefit" means, with respect to any member, the social security disability benefits to which the member is entitled pursuant to the provisions of the federal Social Security Act as in effect at his date of retirement.*

"State employee" means any person who is regularly employed full time on a salaried basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, no more often than biweekly, in whole or in part, by the Commonwealth or any department, institution, or agency thereof. "State employee" shall include any faculty member, but not including adjunct faculty, of a public institution of higher education (a) who is compensated on a salary basis, (b) whose tenure is not restricted as to temporary or provisional appointment, and (c) who regularly works at least 20 hours but less than 40 hours per week (or works the equivalent of one-half of a full time equivalent position) engaged in the performance of teaching, administrative, or research duties at such institution; such faculty member shall be deemed an eligible employee for purposes of the retirement provisions under §§ 51.1-126, 51.1-126.1, and 51.1-126.3. "State employee" shall also include the Governor, Lieutenant Governor, Attorney General, and members of the General Assembly but shall not include (i) any local officer, (ii) any employee of a political subdivision of the Commonwealth, (iii) individuals employed by the Department for the Blind and Vision Impaired pursuant to § 51.5-72, (iv) any member of the State Police Officers' Retirement System, (v) any member of the Judicial Retirement System, or (vi) any member of the Virginia Law Officers' Retirement System.

"Teacher" means any person who is regularly employed full time on a salaried basis as a professional or clerical employee of a county, city, or other local public school board.

#### **§ 51.1-157. Disability retirement allowance.**

A. Allowance payable on retirement. — Upon retirement for disability, a member who has five or more years of creditable service shall receive an annual retirement allowance during his lifetime and continued disability equal to 1.70 percent of his average final compensation multiplied by the smaller of (i) twice the amount of his creditable service or (ii) the amount of creditable service he would have completed at age 60 if he had remained in service to that age. Notwithstanding the foregoing, for a member who (a) is a person who becomes a member on or after July 1, 2010, or (b) does not have at

least 60 months of creditable service as of January 1, 2013, the allowance shall equal 1.65 percent of his average final compensation multiplied by the smaller of (1) twice the amount of his creditable service or (2) the amount of creditable service he would have completed at age 60 if he had remained in service to that age. If a member has already attained age 60, the amount of creditable service at his date of retirement shall be used.

For retirements between October 1, 1994, and December 31, 1998, any employee or local officer who is a member or beneficiary of a retirement system administered by the Board shall receive an additional retirement allowance equal to three percent of the disability retirement allowance payable under this section; provided that, for purposes of this additional retirement allowance, the term employee shall include only those employees of political subdivisions that have adopted a resolution providing for such an allowance under subsection B of § 51.1-130. Average final compensation attributable to service as Governor, Lieutenant Governor, Attorney General, or member of the General Assembly shall not be included in computing this additional retirement allowance.

B. Workers' compensation guarantee. — If a member retires for disability from a cause which is compensable under the Virginia Workers' Compensation Act (§ 65.2-100 et seq.), the amount of the annual retirement allowance shall equal 66 and two-thirds percent of the member's average final compensation if the member does not qualify for ~~primary~~ social security *disability* benefits under the provisions of the Social Security Act in effect on the date of his retirement. If the member qualifies for ~~primary~~ social security *disability* benefits *or has attained his normal retirement age* under the provisions of the Social Security Act in effect on the date of his retirement, the allowance payable from the retirement system shall equal 50 percent of his average final compensation. A member shall be entitled to the larger of the retirement allowance as determined under the provisions of subsection A or under the provisions of this subsection.

C. Reduction of allowance. — Any allowance payable to a member who retires for disability from a cause compensable under the Virginia Workers' Compensation Act shall be reduced by the amount of any payments under the provisions of the Act in effect on the date of retirement of the member and the excess of the allowance shall be paid to the member. When the time for compensation payments under the Act has elapsed, the member shall receive the full amount of the allowance payable during his lifetime and continued disability. If the member's payments under the Virginia Workers' Compensation Act are adjusted or terminated for refusal to work or to comply with the requirements of § 65.2-603, his allowance shall be computed as if he were receiving the compensation to which he would otherwise be entitled.

D. Special retirement allowance guarantee. — Any member retired from a cause which is not compensable under the Virginia Workers' Compensation Act shall be guaranteed an annual retirement allowance during his lifetime and continued disability which equals 50 percent of the member's average final compensation if the member does not qualify for ~~primary~~ social security *disability* benefits under the provisions of the Social Security Act in effect on the date of his retirement. If the member qualifies for ~~primary~~ social security *disability* benefits *or has attained his normal retirement age* under the provisions of the Social Security Act in effect on the date of retirement, the allowance payable from the retirement system shall equal 33 and one-third percent of his average final compensation.

E. Determination of retirement allowance. — For the purposes of this section, the retirement allowance shall be determined on the assumption that the retirement allowance is payable to the member alone and that no optional retirement allowance is elected.

**§ 51.1-168. Limits on creditable compensation; maximum benefits; mandatory payment of allowance.**

A. Notwithstanding any other provision of law, creditable compensation used for computing any benefit or employee contribution under or to the Retirement System shall not exceed \$200,000 (as adjusted in \$5,000 increments from time to time by the adjustment factor described in I.R.C. § 415 (d) on the basis of a base period of the calendar quarter beginning July 1, 2001). In determining average final compensation for periods beginning on or after July 1, 2001, the limit on creditable compensation applied to compensation attributable to periods prior to July 1, 2001, shall be \$200,000. Notwithstanding the foregoing, compensation for any employee who became a member of the Retirement System (i) prior to the ninetieth day after the opening date of the 1996 Session of the General Assembly, on whose behalf employee or employer contributions are made into the Retirement System, and for whom annual compensation is used for computing any benefit, shall not exceed the limit on compensation as adjusted by the Commissioner of the Internal Revenue Service pursuant to the transition provisions applicable to eligible participants under state and local governmental plans under I.R.C. § 401 (a)(17) as amended in 1993 and as contained in § 13212 (d)(3) of the Omnibus Budget Reconciliation Act of 1993 (P. L. 103-66).

B. Notwithstanding any other provision of law, the annual benefit under the Retirement System of a member and any related death or other benefit shall, if necessary, be reduced to the extent required by § 415 (b) of the Internal Revenue Code, as adjusted by the Secretary of the Treasury pursuant to § 415 (d) of the Internal Revenue Code. Any adjustment pursuant to § 415 (d) of the Internal Revenue Code shall apply to all members including those who have died, retired, or otherwise terminated service with

a nonforfeitable right to a retirement allowance before the effective date of such adjustment. If an employee participating in the Retirement System is also a participant in another defined benefit plan sponsored or maintained by an employer participating in the Retirement System and subject to the limitations under § 415 of the Internal Revenue Code, such employer shall apply the combined limit test required by § 415 (b) of the Internal Revenue Code to all such plans, to the extent required by § 415 of the Internal Revenue Code. Whenever a reduction in annual benefits is required to meet the annual benefit limit required by § 415 (b) of the Internal Revenue Code, the annual benefits under such employer's other plan or plans will be reduced before benefits under the Retirement System.

C. Any vendor for a defined benefit plan sponsored or maintained by an employer that participates in the Retirement System shall (i) request and maintain the records needed, (ii) perform the testing services required to assure compliance with the limitations described in § 415 (b) of the Internal Revenue Code, including testing required where the employer maintains or sponsors another plan that must be tested together with the Retirement System, and (iii) advise the employer of any annual benefit that exceeds the applicable limitation. If there is no vendor for these services, the employer shall (a) request and maintain the records needed, (b) perform the testing services required to assure compliance with the limitations described in § 415 (b) of the Internal Revenue Code, including testing required where the employer maintains or sponsors another plan that must be tested together with the Retirement System, and (c) reduce any annual benefit that exceeds the applicable limitation.

D. On and after January 1, 1989, the retirement allowance of a member who has terminated employment shall begin no later than the later of (i) April 1 of the calendar year following the calendar year that the member attains ~~seventy and one-half years of age~~ *the required age as provided in the Internal Revenue Code of 1986, as amended*, or (ii) April 1 of the calendar year following the calendar year in which the member terminates employment. If the member fails, following reasonable notification, to elect a form of payment by such required beginning date, the retirement allowance shall be paid as a single life annuity and the spousal acknowledgement otherwise required by § 51.1-165.1 shall not be required. Notwithstanding any other provisions of law, § 401(a)(9) of the Internal Revenue Code, as amended or renumbered, and the regulations thereunder applicable to governmental plans are incorporated by reference.

#### **§ 51.1-301. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Appointing authority" means the General Assembly or the Governor.

"Creditable service" means prior service plus membership service, as further defined in and modified by § 51.1-303, for which credit is allowable under this chapter.

"Judge" means any justice or judge of a court of record of the Commonwealth, any member of the State Corporation Commission or Virginia Workers' Compensation Commission, any judge of a district court of the Commonwealth other than a substitute judge of such district court, and any executive secretary of the Supreme Court assuming such position between December 1, 1975, and January 31, 1976.

"Normal retirement date" means a member's sixty-fifth birthday.

"Previous systems" means the systems established under the provisions of Chapters 2 (§ 51-3 et seq.) and 2.2 (§ 51-29.8 et seq.) of Title 51, and, in the case of judges of regional juvenile and domestic relations courts, the Virginia Retirement System.

~~"Primary social security benefit" means, with respect to any member, the primary insurance amount to which the member is entitled, for old age or disability, as the case may be, pursuant to the federal Social Security Act as in effect at his date of retirement, under the provisions of this chapter except as otherwise specifically provided.~~

"Retirement system" means the Judicial Retirement System.

"Service" means service as a judge.

~~"Social security disability benefit" means, with respect to any member, the social security disability benefits to which the member is entitled pursuant to the provisions of the federal Social Security Act as in effect at his date of retirement.~~

#### **§ 51.1-308. Disability retirement allowance.**

A. Allowance payable on retirement. — Upon retirement for disability, a member who has five or more years of creditable service shall receive an annual retirement allowance payable during his lifetime and continued disability equal to 1.70 percent of average final compensation when multiplied by the smaller of (i) twice the amount of creditable service or (ii) the amount of creditable service he would have completed at age 60 if he had remained in service to that age. However, for a member appointed or elected to an original term commencing on or after January 1, 2013, the applicable percentage shall be 1.65 percent, and for a member participating in the hybrid retirement program described in § 51.1-169, the applicable percentage shall be one percent. If a member has already attained age 60, the amount of creditable service at his date of retirement shall be used.

In no case shall the annual retirement allowance exceed 78 percent of the average final compensation of the member.

B. Workers' compensation guarantee. — If a member retires for disability from a cause which is

compensable under the Virginia Workers' Compensation Act (§ 65.2-100 et seq.), the amount of the annual retirement allowance shall, subject to the provisions of subsection D, equal 66 and two-thirds percent of the member's average final compensation if the member does not qualify for ~~primary~~ social security *disability* benefits under the provisions of the Social Security Act in effect on the date of his retirement. If the member qualifies for ~~primary~~ social security *disability* benefits *or has attained his normal retirement age* under the provisions of the Social Security Act in effect on the date of his retirement, the allowance payable from the retirement system shall equal 50 percent of his average final compensation. A member shall be entitled to the larger of the retirement allowance as determined under the provisions of subsection A ~~of this section~~ or under the provisions of this subsection.

C. General disability retirement guarantee. — The disability retirement allowance payable to a member who immediately prior to July 1, 1970, was a member of one of the previous systems shall be at least an amount equal to the disability retirement allowance to which he would have been entitled under the provisions of the previous system.

D. Determination of retirement allowance. — For the purposes of this section, the retirement allowance shall be determined on the assumption that the retirement allowance is payable to the member alone and that no optional retirement allowance is elected.

E. Reduction of allowance. — Any allowance payable to a member who retires for disability from a cause compensable under the Virginia Workers' Compensation Act shall be reduced by the amount of any payments under the provisions of the Act in effect on the date of retirement of the member and the excess of the allowance shall be paid to such member. When the time for compensation payments under the Act has elapsed, the member shall receive the full amount of the allowance payable during his lifetime and continued disability. If the member's payments under the Virginia Workers' Compensation Act are adjusted or terminated for refusal to work or to comply with the requirements of § 65.2-603, his allowance shall be computed as if he were receiving the compensation to which he would otherwise be entitled.

F. Special retirement allowance guarantee. — Any member retired from a cause which is not compensable under the Virginia Workers' Compensation Act shall be guaranteed an annual retirement allowance during his lifetime and continued disability which equals 50 percent of the member's average final compensation if the member does not qualify for ~~primary~~ social security *disability* benefits under the provisions of the Social Security Act in effect on the date of his retirement. If the member qualifies for ~~primary~~ social security *disability* benefits *or has attained his normal retirement age* under the provisions of the Social Security Act in effect on the date of retirement, the allowance payable from the retirement system shall equal 33 and one-third percent of his average final compensation.