

FIREFIGHTERS' DISABILITY RETIREMENT BENEFIT

AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending provisions relating to firefighter disability benefits.

Highlighted Provisions:

This bill:

- ▶ provides and amends definitions;
- ▶ modifies the standard for determining a disability for members of the Firefighter's Retirement System;
- ▶ modifies the disability payment period for certain Firefighter Retirement System disability payments; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

- 49-16-102**, as last amended by Laws of Utah 2016, Chapter 227
- 49-16-601**, as last amended by Laws of Utah 2005, Chapter 116
- 49-16-601.5**, as last amended by Laws of Utah 2013, Chapter 40

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **49-16-102** is amended to read:

49-16-102. Definitions.

As used in this chapter:

32 (1) (a) "Compensation" means the total amount of payments that are includable as
33 gross income which are received by a firefighter service employee as base income for the
34 regularly scheduled work period. The participating employer shall establish the regularly
35 scheduled work period. Base income shall be determined prior to the deduction of member
36 contributions or any amounts the firefighter service employee authorizes to be deducted for
37 salary deferral or other benefits authorized by federal law.

38 (b) "Compensation" includes performance-based bonuses and cost-of-living
39 adjustments.

40 (c) "Compensation" does not include:

41 (i) overtime;

42 (ii) sick pay incentives;

43 (iii) retirement pay incentives;

44 (iv) remuneration paid in kind such as a residence, use of equipment, uniforms, travel,
45 or similar payments;

46 (v) a lump-sum payment or special payments covering accumulated leave; and

47 (vi) all contributions made by a participating employer under this system or under any
48 other employee benefit system or plan maintained by a participating employer for the benefit of
49 a member or participant.

50 (d) "Compensation" for purposes of this chapter may not exceed the amount allowed
51 under Section 401(a)(17), Internal Revenue Code.

52 ~~[(2)(a) "Disability" means a physical or mental condition that, in the judgment of the
53 office, is total and presumably permanent, and prevents a member from performing firefighter
54 service.]~~

55 ~~[(b) The determination of disability is based upon medical and other evidence
56 satisfactory to the office.]~~

57 (2) (a) "Disability" means the complete inability, due to objective medical impairment,
58 whether physical or mental, to perform firefighter service.

59 (b) "Disability" does not include the inability to meet an employer's required standards
60 or test relating to fitness, physical ability, or agility that is not a result of a disability as defined
61 under Subsection (2)(a).

62 (3) "Final average salary" means the amount calculated by averaging the highest three

63 years of annual compensation preceding retirement subject to Subsections (3)(a), (b), and (c).

64 (a) Except as provided in Subsection (3)(b), the percentage increase in annual
65 compensation in any one of the years used may not exceed the previous year's compensation by
66 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
67 of the dollar during the previous year, as measured by a United States Bureau of Labor
68 Statistics Consumer Price Index average as determined by the board.

69 (b) In cases where the participating employer provides acceptable documentation to the
70 office the limitation in Subsection (3)(a) may be exceeded if:

71 (i) the member has transferred from another agency; or

72 (ii) the member has been promoted to a new position.

73 (c) The annual compensation used to calculate final average salary shall be based on:

74 (i) a calendar year for a member employed by a participating employer that is not an
75 educational institution; or

76 (ii) a contract year for a member employed by an educational institution.

77 (4) (a) "Firefighter service" means employment normally requiring an average of 2,080
78 hours of regularly scheduled employment per year rendered by a member who is:

79 (i) a firefighter service employee trained in firefighter techniques and assigned to a
80 position of hazardous duty with a regularly constituted fire department; or

81 (ii) the state fire marshal appointed under Section 53-7-103 or a deputy state fire
82 marshal.

83 (b) "Firefighter service" does not include secretarial staff or other similar employees.

84 (5) "Firefighter service employee" means an employee of a participating employer who
85 provides firefighter service under this chapter. An employee of a regularly constituted fire
86 department who does not perform firefighter service is not a firefighter service employee.

87 (6) (a) "Line-of-duty death or disability" means a death or [~~any physical or mental~~]
88 disability resulting from:

89 (i) external force, violence, or disease directly resulting from firefighter service; or

90 (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous
91 training or another strenuous activity required as an act of duty as a firefighter service
92 employee.

93 (b) "Line-of-duty death or disability" does not include a death or [~~any physical or~~

94 ~~mental~~] disability that:

95 (i) occurs during an activity that is required as an act of duty as a firefighter service
96 employee if the activity is not a strenuous activity, including an activity that is clerical,
97 administrative, or of a nonmanual nature;

98 (ii) occurs during the commission of a crime committed by the employee;

99 (iii) occurs when the employee's intoxication or use of alcohol or drugs, whether
100 prescribed or nonprescribed, contributes to the employee's death or disability; or

101 (iv) occurs in a manner other than as described in Subsection (6)(a).

102 (c) "Line-of-duty death or disability" includes the death or disability of a paid
103 firefighter resulting from heart disease, lung disease, or a respiratory tract condition if the paid
104 firefighter has five years of firefighter service credit.

105 (7) "Objective medical impairment" means an impairment resulting from an injury or
106 illness which is diagnosed by a physician and which is based on accepted objective medical
107 tests or findings rather than subjective complaints.

108 [~~(7)~~] (8) "Participating employer" means an employer which meets the participation
109 requirements of Section 49-16-201.

110 [~~(8)~~] (9) "Regularly constituted fire department" means a fire department that employs
111 a fire chief who performs firefighter service for at least 2,080 hours of regularly scheduled paid
112 employment per year.

113 [~~(9)~~] (10) (a) "Strenuous activity" means engagement involving a difficult, stressful, or
114 vigorous fire suppression, rescue, hazardous material response, emergency medical service,
115 physical law enforcement, prison security, disaster relief, or other emergency response activity.

116 (b) "Strenuous activity" includes participating in a participating employer sanctioned
117 and funded training exercise that involves difficult, stressful, or vigorous physical activity.

118 [~~(10)~~] (11) "System" means the Firefighters' Retirement System created under this
119 chapter.

120 [~~(11)~~] (12) (a) "Volunteer firefighter" means any individual that is not regularly
121 employed as a firefighter service employee, but who:

122 (i) has been trained in firefighter techniques and skills;

123 (ii) continues to receive regular firefighter training; and

124 (iii) is on the rolls of a legally organized volunteer fire department which provides

125 ongoing training and serves a political subdivision of the state.

126 (b) An individual that volunteers assistance but does not meet the requirements of
127 Subsection ~~[(11)]~~ (12)(a) is not a volunteer firefighter for purposes of this chapter.

128 ~~[(12)]~~ (13) "Years of service credit" means the number of periods, each to consist of 12
129 full months as determined by the board, whether consecutive or not, during which a firefighter
130 service employee was employed by a participating employer or received full-time pay while on
131 sick leave, including any time the firefighter service employee was absent in the service of the
132 United States on military duty.

133 Section 2. Section **49-16-601** is amended to read:

134 **49-16-601. Disability benefit -- Nonline-of-duty disability -- Benefits -- Monthly**
135 **allowance.**

136 (1) An active member of this system [~~who is unable to perform firefighter service due~~
137 ~~to a physical or mental condition~~] with a disability that was not incurred in the line-of-duty may
138 apply to the office for a disability retirement benefit subject to the following provisions:

139 (a) if the member has less than five years of service credit in this system, disability
140 benefits are not payable; and

141 (b) if the condition is classified by the office as a nonline-of-duty disability and if the
142 member has five or more years of service credit in this system, the member shall be granted a
143 disability retirement benefit subject to Section 49-16-602, that is payable for 24 months or until
144 the date the firefighter becomes eligible for a service retirement, whichever occurs first.

145 (2) The monthly disability retirement benefit is 50% of the member's final average
146 monthly salary.

147 Section 3. Section **49-16-601.5** is amended to read:

148 **49-16-601.5. Line-of-duty disability benefit -- Benefits -- Monthly allowance.**

149 (1) An active member of this system [~~who is unable to perform firefighter service due~~
150 ~~to a physical or mental condition~~] with a disability incurred in the line-of-duty may apply to the
151 office for a disability retirement benefit under this section.

152 (2) If the condition is classified by the office as a line-of-duty disability, the member
153 shall be granted a disability retirement benefit subject to Section 49-16-602.

154 (3) A paid firefighter who has five years of firefighter service credit is eligible for a
155 line-of-duty disability benefit resulting from heart disease, lung disease, or a respiratory tract

156 condition.

157 (4) A paid firefighter who receives a service connected disability benefit for more than
158 six months due to violence or illness other than heart disease, lung disease, or respiratory tract
159 condition, and then returns to paid firefighter service, may not be eligible for a line-of-duty
160 disability benefit due to heart disease, lung disease, or respiratory tract condition for two years
161 after the firefighter returned to work unless clear and convincing evidence is presented that the
162 heart disease, lung disease, or respiratory tract condition was directly a result of firefighter
163 service.

164 (5) The monthly disability retirement benefit is 50% of the member's final average
165 salary.

166 Section 4. **Effective date.**

167 This bill takes effect on July 1, 2017.