

Tier 3 Disability Legislation

AN ACT to amend the retirement and social security law, in relation to disability benefits for certain members of the New York city fire department pension fund; and to amend the administrative code of the city of New York, in relation to the powers, duties and responsibilities of the board of trustees of the New York city fire department pension fund and in relation to authorizing such board of trustees to draw upon the assets of such fund to pay expenses

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section one. Subdivision 24 of section 501 of the retirement and social security law, as amended by chapter 18 of the laws of 2012, is amended to read as follows:

24. "Wages" shall mean regular compensation earned by and paid to a member by a public employer, except that for members who first join the state and local employees' retirement system on or after January first, two thousand ten, overtime compensation paid in any year in excess of the overtime ceiling, as defined by this subdivision, shall not be included in the definition of wages. "Overtime compensation" shall mean, for purposes of this section, compensation paid under any law or policy under which employees are paid at a rate greater than their standard rate for additional hours worked beyond those required, including compensation paid under section one hundred thirty-four of the civil service law and section ninety of the general municipal law. The "overtime ceiling" shall mean fifteen thousand dollars per annum on January first, two thousand ten, and shall be increased by three percent each year thereafter, provided, however, that for members who first become members of the New York state and local employees' retirement system on or after April first, two thousand twelve, "overtime ceiling" shall mean fifteen thousand dollars per annum on April first, two thousand twelve, and shall be increased each year thereafter by a percentage to be determined annually by reference to the consumer price index (all urban consumers, CPI-U, U.S. city average, all items, 1982-84=100), published by the United States bureau of labor statistics, for each applicable calendar year. Said percentage shall equal the annual inflation as determined from the increase in the consumer price index in the one year period ending on the December thirty-first prior to the cost-of-living adjustment effective on the ensuing April first. For the purpose of calculation a member's primary federal social security retirement or disability benefit, wages shall, in any calendar year, be limited to the portion of the member's wages which would be subject to tax under section three thousand one hundred twenty-one of the internal revenue code of nineteen hundred fifty-four, or any predecessor or successor provision relating thereto, if such member was employed by a private employer. For members who first become members of the New York state and local employees' retirement system on or after the effective date of the chapter of the laws of two thousand twelve which amended this subdivision, the following items shall not be included in the definition of wages: (a) wages in excess of the annual salary paid to the governor pursuant to section three of article four of the state constitution, (b) lump sum payments for deferred compensation, sick leave, accumulated vacation or other credits for time not worked, (c) any form of termination pay, (d) any additional compensation paid in anticipation of retirement, and (e) in the case of employees who receive wages from three or more employers in a twelve month period, the wages paid by the third and each successive employer. For New York city enhanced plan members who receive the ordinary disability benefit provided for in subdivision c-1 of section five hundred six of this article or the accidental disability benefit provided for in paragraph three of subdivision c of section five hundred seven of this article, the following items shall not be included in the definition of wages: (a) lump sum payments for deferred compensation, sick leave, accumulated vacation or other credits for time not worked, (b) any form of termination pay, (c) any additional compensation paid in anticipation of retirement, and (d) in the case of employees who receive wages from three or more employers in a twelve month period, the wages paid by the third and each successive employer.

§ 2. Section 501 of the retirement and social security law is amended by adding a new subdivision 28 to read as follows:

28. "New York city enhanced plan member" shall mean (a) a New York city police/fire revised plan member who becomes subject to the provisions of this article on or after June fifteenth, two thousand sixteen and who is a member of the New York city fire department pension fund, (b) a police/fire member who is a member of the New York city fire department pension fund and who makes an election, which shall be irrevocable and shall be duly executed and filed with the administrative head of such pension fund no later than one hundred twenty days after the effective date of the chapter of the laws of two thousand sixteen which added this subdivision, to be subject to the provisions of this article related to New York city enhanced plan members, or (c) a New York city police/fire revised plan member who became subject to the provisions of this

article before June fifteenth, two thousand sixteen, who is a member of the New York city fire department pension fund, and who makes an election, which shall be irrevocable and shall be duly executed and filed with the administrative head of such pension fund no later than one hundred twenty days after the effective date of the chapter of the laws of two thousand sixteen which added this subdivision, to be subject to the provisions of this article related to New York city enhanced plan members.

§ 3. Section 506 of the retirement and social security law is amended by adding a new subdivision c-1 to read as follows:

c-1. Notwithstanding any inconsistent provision of subdivision a or b of this section, the ordinary disability benefit for a New York city enhanced plan member in active service who is not eligible for a normal retirement benefit, has completed five years or more of service, and has been determined to be eligible for primary social security disability benefits shall be a pension equal to the greater of (i) thirty-three and one-third percent of final average salary, or (ii) two percent of final average salary times years of credited service not in excess of the maximum years of service for computing service retirement, such benefit in each case to be reduced by one hundred percent of any workers' compensation benefits payable.

§ 4. Subdivisions c and e of section 507 of the retirement and social security law, subdivision c as amended by chapter 18 of the laws of 2012, and subdivision e as added by chapter 890 of the laws of 1976, are amended to read as follows:

c. 1. In the case of a member of a retirement system other than the New York state and local employees' retirement system, the New York state teachers' retirement system, the New York city employees' retirement system, the New York city board of education retirement system or the New York city teachers' retirement system, or in the case of a member of the New York city employees' retirement system who is a New York city uniformed correction/sanitation revised plan member or an investigator revised plan member, the accidental disability benefit hereunder shall be a pension equal to two percent of final average salary times years of credited service which such member would have attained if employment had continued until such member's full escalation date, not in excess of the maximum years of service creditable for the normal service retirement benefit, less (i) fifty percent of the primary social security disability benefit, if any, as provided in section five hundred eleven of this article, and (ii) one hundred percent of any workers' compensation benefits payable. The provisions of this paragraph shall not apply to New York city enhanced plan members.

2. In the case of a member of the New York state and local employees' retirement system, the New York state teachers' retirement system, the New York city employees' retirement system (other than a New York city uniformed correction/sanitation revised plan member or an investigator revised plan member), the New York city board of education retirement system or the New York city teachers' retirement system, the accidental disability benefit hereunder shall be a pension equal to sixty percent of final average salary, less (i) fifty percent of the primary social security disability benefit, if any, as provided in section five hundred eleven of this article, and (ii) one hundred percent of any workers' compensation benefits payable. In the event a disability retiree from any retirement system is not eligible for the primary social security disability benefit and continues to be eligible for disability benefits hereunder, such disability benefit shall be reduced by one-half of such retiree's primary social security retirement benefit, commencing at age sixty-two, in the same manner as provided for service retirement benefits under section five hundred eleven of this article.

3. In the case of a New York city enhanced plan member, the accidental disability benefit hereunder shall be a pension equal to seventy-five percent of final average salary, less one hundred percent of any workers' compensation benefits payable.

e. A member, except a New York city enhanced plan member, shall not be eligible to apply for disability benefits under section five hundred six or this section unless such member shall, at the time of application, sign a waiver prepared by the retirement system and approved by the administrative head of such system pursuant to which such member agrees to waive the benefits of any statutory presumption relating to the cause of disability or eligibility for disability benefits, and a determination of eligibility for benefits hereunder shall be made without regard to any such statutory provision.

§ 5. Section 507 of the retirement and social security law is amended by adding a new subdivision j to read as follows:

j. Notwithstanding any inconsistent provision of this chapter or any law, any condition of impairment of health caused by diseases of the lung, resulting in disability or death to a member of the New York city fire department pension fund who is a New York city enhanced plan member, who successfully passed a physical examination on entry into service as a firefighter, which examination failed to disclose evidence of any disease or other impairment of the lung, shall be presumptive evidence that it was incurred in the performance and discharge of duty,

unless the contrary be proved by competent evidence.

§ 6. Section 510 of the retirement and social security law is amended by adding a new subdivision i to read as follows:

i. Notwithstanding any other provision of this article, the annual escalation provided in this section shall not apply to the ordinary disability benefit for New York city enhanced plan members provided for in subdivision c-1 of section five hundred six of this article or the accidental disability benefit for New York city enhanced plan members provided for in paragraph three of subdivision c of section five hundred seven of this article. Such members who receive such ordinary disability benefit or accidental disability benefit shall have a cost-of-living adjustment for such benefit, which shall be computed in the same manner as provided for by section 13-696 of the administrative code of the city of New York.

§ 7. Section 511 of the retirement and social security law is amended by adding a new subdivision g to read as follows:

g. This section shall not apply to a New York city enhanced plan member who receives the ordinary disability benefit provided for in subdivision c-1 of section five hundred six of this article or the accidental disability benefit provided for in paragraph three of subdivision c of section five hundred seven of this article.

§ 8. Subdivision a of section 512 of the retirement and social security law, as amended by chapter 18 of the laws of 2012, is amended to read as follows:

a. A member's final average salary shall be the average wages earned by such a member during any three consecutive years which provide the highest average wage; provided, however, if the wages earned during any year included in the period used to determine final average salary exceeds that of the average of the previous two years by more than ten percent, the amount in excess of ten percent shall be excluded from the computation of final average salary.

Notwithstanding the preceding provisions of this subdivision to the contrary, for a member who first becomes a member of the New York state and local employees' retirement system on or after April first, two thousand twelve, or for a New York city police/fire revised plan member, a New York city enhanced plan member who receives the ordinary disability benefit provided for in subdivision c-1 of section five hundred six of this article or the accidental disability benefit provided for in paragraph three of subdivision c of section five hundred seven of this article, a New York city uniformed correction/sanitation revised plan member or an investigator revised plan member, a member's final average salary shall be the average wages earned by such a member during any five consecutive years which provide the highest average wage; provided, however, if the wages earned during any year included in the period used to determine final average salary exceeds that of the average of the previous four years by more than ten percent, the amount in excess of ten percent shall be excluded from the computation of final average salary. In determining final average salary pursuant to any provision of this subdivision, where the period used to determine final average salary is the period which immediately precedes the date of retirement, any month or months (not in excess of twelve) which would otherwise be included in computing final average salary but during which the member was on authorized leave of absence at partial pay or without pay shall be excluded from the computation of final average salary and the month or an equal number of months immediately preceding such period shall be substituted in lieu thereof.

§ 9. Section 517 of the retirement and social security law is amended by adding a new subdivision h to read as follows:

h. Notwithstanding any inconsistent provision of subdivision a of this section, New York city enhanced plan members shall, as of the effective date of the chapter of the laws of two thousand sixteen which added this subdivision, contribute three percent of annual wages to the pension fund in which they have membership, plus an additional percentage of annual wages as set forth in such chapter.

§ 10. The opening paragraph of subdivision a of section 13-316 of the administrative code of the city of New York is amended to read as follows:

A board of trustees shall be the head of the New York fire department pension fund subchapter two, and, subject to the provisions of law [and to the prior approval of the board of estimate,] from time to time shall establish rules and regulations for the administration and transaction of the business of such fund and for the control and disposition thereof. The provisions of sections one thousand forty-two, one thousand forty-three, one thousand forty-four and one thousand forty-five of the charter shall not be construed to apply to the adoption of such rules and regulations. Such board shall consist of:

§ 11. Paragraph 11 of subdivision a of section 13-316 of the administrative code of the city of New York, as added by chapter 583 of the laws of 1989, is amended to read as follows:

11. (i) Where, during any six-month period during a fiscal year, as defined in subdivision three of section 13-382 of the code, the equity portion of the assets of the pension fund is less than forty-

five percent, subparagraph (ii) of this paragraph [eleven] shall be effective during the succeeding fiscal year.

(ii) Two investment representatives, one of whom shall be appointed by the mayor and one of whom shall be appointed by the comptroller upon the occurrence of the condition specified in subparagraph (i) of this paragraph [eleven]. Each such representative shall be entitled to cast two votes only in relation to determinations of the board:

(A) as to whether the assets of the pension fund shall be invested in equities or fixed income securities and the proportion of the assets of the pension fund to be invested in equities and fixed income securities; and

(B) as to the identity, nature, character and amounts of the equities (within the proportion as determined under item (A) of this subparagraph) to be acquired, held, sold, disposed of or otherwise dealt with by the pension fund; and

(C) as to any steps necessary to effectuate any of the functions set forth in items (A) and (B) of this subparagraph; and

(D) as to delegation by the board, pursuant to law, of the functions described in items (A), (B) and (C) of this subparagraph.

§ 12. Subdivision b of section 13-316 of the administrative code of the city of New York, as amended by chapter 583 of the laws of 1989, is amended to read as follows:

b. Subject to the provisions of subdivision b-1 and subdivision f of this section, every act of the board of trustees shall be by resolution which shall be adopted only by a vote of at least seven-twelfths of the whole number of votes authorized to be cast by all of the members of such board.

§ 13. Subdivision c of section 13-316 of the administrative code of the city of New York is amended to read as follows:

c. The fire commissioner shall [assign to the board of trustees a sufficient number of clerical and other assistants to permit the board efficiently to exercise their powers and to perform their duties] appoint an executive director of the pension fund, provided, however, that if such designee of the fire commissioner is not a member of the uniformed force of the fire department, the board of trustees shall approve such appointment. The executive director of the pension fund shall perform such duties as may be conferred upon such executive director by the chairperson of the board, by resolution passed by the board, or by law.

§ 14. Section 13-316 of the administrative code of the city of New York is amended by adding new subdivisions e, f, g, h and i to read as follows:

e. 1. In addition to the powers conferred upon it by any other provision of law, the board of trustees shall, on or before April first of each year, establish a budget, sufficient to fulfill the powers, duties and responsibilities set forth in this chapter and any other provision of law which sets forth the benefits of members of the pension fund and may draw upon the assets of the pension fund to fund such budget, subject to the provisions of paragraphs two, three, four, five and six of this subdivision and subdivisions f, g, h and i of this section. The provisions of this section shall not be applicable to the payment of investment expenses pursuant to section 13-705 of this title and nothing contained herein shall be construed as abolishing, limiting, or modifying any power of the board of trustees to provide for the payment of investment expenses pursuant to section 13-705 of this title.

2. If a budget has not been adopted by the commencement of the new fiscal year, the budget for the preceding fiscal year shall be deemed to have been extended for the new fiscal year until such time as a new budget is adopted.

3. Any budget in effect pursuant to paragraph one or two of this subdivision may be modified during such succeeding fiscal year.

4. Notwithstanding any other provision of law, the board of trustees shall have the power either directly or by delegation to the executive director, to obtain by employment or by contract the goods, property and services necessary to fulfill its powers, duties and responsibilities within the appropriation authorized by the board of trustees pursuant to paragraph one of this subdivision.

5. (i) The pension fund shall be considered an entity separate from the city of New York fire department. The board of trustees of the pension fund shall work closely with the city of New York fire department.

(ii) The provisions of chapter seventeen of the New York city charter shall continue to apply to the fire department pension fund and such fund shall constitute an agency for the purposes of such chapter. The board of trustees shall not obtain any legal services by the retention of employees or by contract unless the corporation counsel shall consent thereto.

6. All contracts for goods or services entered into by the pension fund shall be procured as prescribed in chapter thirteen of the New York city charter; provided, however, that where the provisions of such chapter thirteen require action by the mayor in regard to a particular procurement (except for mayoral action pursuant to subdivision c of section three hundred thirty-four of the New York city charter) such action shall not be taken by the mayor or such appointee

of the mayor but shall be taken by the board of trustees or the executive director pursuant to a resolution adopted by the board of trustees delegating such authority to the executive director.

f. Notwithstanding any other provisions of this section, any resolution of the board of trustees which establishes a budget or modifies a budget pursuant to the provisions of paragraph one or three of subdivision e of this section shall require the concurrence of the comptroller and the representative of the mayor. This provision shall only apply to this subdivision and nothing contained herein shall be construed to apply to any other vote of the board. No assets of the pension fund shall be drawn upon pursuant to the provisions of paragraph one of subdivision e of this section unless authorized by a budget or budget modification established by such resolution of the board of trustees.

g. Employment by the pension fund shall constitute city-service for the purposes of this subchapter for those employees that are members of the fund pursuant to section 13-314 of this subchapter; for all other employees, employment by the pension fund shall constitute city service for the purposes of chapter one of title thirteen of this code; provided, however, that nothing contained herein shall be construed as granting membership rights in the pension fund or any retirement system to a contractor of such fund or such contractor's employees. Employees of the pension fund shall be deemed to be employees of the city of New York for the purposes of chapter thirty-five of the charter and title twelve of this code.

h. Whenever the assets of the pension fund are drawn upon pursuant to the provisions of paragraph one of subdivision e of this section all monies so withdrawn shall be made a charge to be paid by the employer otherwise required to make contributions to the pension fund no later than the end of the second fiscal year succeeding the time period during which such assets are drawn upon. The actuary shall calculate such charge to be paid by the employer. All charges to be paid pursuant to this subdivision shall be paid at the regular rate of interest utilized by the actuary in determining employer contributions to the pension fund pursuant to the provisions of paragraph two of subdivision b of section 13-638.2 of this title.

i. The funds withdrawn from the pension fund shall not be utilized for any purpose other than the budget established by the board of trustees. All expenditures of the pension fund shall be subject to audit by the comptroller, who may make recommendations, including but not limited to, procedures designed to improve accounting and expenditure control. All expenditures of the pension fund shall be reported to the mayor's office of management and budget and the budgetary office of the city of New York fire department.

§ 15. Notwithstanding any other law to the contrary, any condition of impairment of health caused by diseases of the lung, diseases of the heart, or by a stroke, resulting in disability or death to a medical officer of the fire department of the city of New York who is a member of the New York city fire department pension fund, who is presently employed, and who shall have sustained such disability while so employed, shall be presumptive evidence that it was incurred in the performance and discharge of duty, unless the contrary be proved by competent evidence, provided that (i) such officer successfully passed a physical examination for entry into public service, or authorized release of all relevant medical records, if such officer did not undergo a physical examination for entry into public service, and (ii) there is no evidence of the qualifying condition or impairment of health that formed the basis for the disability in such physical examination for entry into public service or in the relevant medical records, prior to such officer's entry into public service.

§ 16. Notwithstanding any other law to the contrary, any medical officer of the fire department of the city of New York who is a member of the New York city fire department pension fund, who is presently employed, and who contracts HIV (where the officer may have been exposed to a bodily fluid of a person under his or her care or treatment, or while the officer examined, transported, rescued or otherwise had contact with such person, in the performance of his or her duties), tuberculosis or hepatitis, who shall have contracted such disease while so employed, will be presumed to have contracted such disease as a natural or proximate result of an accidental injury received in the performance and discharge of his or her duties and not as a result of his or her willful negligence, unless the contrary be proved by competent evidence, provided that (i) such officer successfully passed a physical examination for entry into public service, or authorized release of all relevant medical records, if such officer did not undergo a physical examination for entry into public service, and (ii) there is no evidence of the qualifying disease that formed the basis for the disability in such physical examination for entry into public service or in the relevant medical records, prior to such officer's entry into public service.

§ 17. Notwithstanding any other law to the contrary, any condition of impairment of health caused by (a) any condition of cancer affecting the lymphatic, digestive, hematological, urinary, neurological, breast, reproductive, or prostate systems or (b) melanoma resulting in total or partial disability or death, resulting in disability or death to a medical officer of the fire department of the city of New York who is a member of the New York city fire department

pension fund, who is presently employed, and who shall have sustained such disability while so employed, shall be presumptive evidence that it was incurred in the performance and discharge of duty, unless the contrary be proved by competent evidence, provided that (i) such officer successfully passed a physical examination for entry into public service, or authorized release of all relevant medical records, if such officer did not undergo a physical examination for entry into public service, and (ii) there is no evidence of the qualifying condition or impairment of health that formed the basis for the disability in such physical examination for entry into public service or in the relevant medical records, prior to such officer's entry into public service.

§ 18. New York city enhanced plan members, as defined in section 501 of the retirement and social security law as amended by section two of this act, shall contribute, pursuant to subdivision h of section 517 of the retirement and social security law as added by section nine of this act, an additional two percent of annual wages to the pension fund in which they have membership. Every three years from the effective date of the chapter of the laws of two thousand sixteen which added this subdivision, the actuary of such pension fund shall prepare an analysis, using current actuarial methods and assumptions in effect as of the date of such analysis, assessing the total cost of providing the benefits established by this act expressed as an employee contribution of a percentage of annual wages of New York City enhanced plan members which would require no additional employer contribution. On the basis of such analysis, the additional percentage of annual wages provided for herein shall be adjusted to equal two percent of annual wages plus any amount by which the employee contribution calculated in such analysis exceeds 4.3 percent of annual wages, provided, however, that in no event shall the additional percentage of annual wages exceed three percent.

§ 19. Except as specified herein, nothing contained in this act shall affect or impair the rights or privileges of officers or employees of the New York city fire department pension fund in relation to the personnel, appointment, ranks, grades, length of service, promotion, removal, pension and retirement rights, civil rights, or any other rights or privileges of officers or employees of the city of New York generally or officers or employees of such fund.

§ 20. Section 81 of chapter 18 of the laws of 2012 shall not apply to this act.

§ 21. This act shall take effect immediately; provided, however, that the provisions of this act authorizing the adoption of a budget and the use of the assets of the New York city fire department pension fund to pay expenses may be utilized during the fiscal year commencing on July 1, 2016 and provided further, that in such event, such budget shall be deemed to have been established on April 1, 2016.