

RCW 41.40.010 Definitions. As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality and other tables as may be adopted by the director.

(3) "Adjustment ratio" means the value of index A divided by index B.

(4) "Annual increase" means, initially, 59 cents per month per year of service which amount shall be increased each July 1st by three percent, rounded to the nearest cent.

(5) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(6)(a) "Average final compensation" for plan 1 members, means the annual average of the greatest compensation earnable by a member during any consecutive two year period of service credit months for which service credit is allowed; or if the member has less than two years of service credit months then the annual average compensation earnable during the total years of service for which service credit is allowed.

(b) "Average final compensation" for plan 2 and plan 3 members, means the member's average compensation earnable of the highest consecutive sixty months of service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.40.710(2) or (c) of this subsection.

(c) In calculating average final compensation under this subsection for a member of plan 1, 2, or 3, the department of retirement systems shall include:

(i) Any compensation forgone by the member during the 2009-2011 fiscal biennium as a result of reduced work hours, voluntary leave without pay, temporary reduction in pay implemented prior to December 11, 2010, or temporary furloughs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer;

(ii) Any compensation forgone by a member employed by the state or a local government during the 2011-2013 fiscal biennium as a result of reduced work hours, mandatory leave without pay, temporary layoffs, or reductions to current pay if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer. Reductions to current pay shall not include elimination of previously agreed upon future salary increases; and

(iii) Any compensation forgone by a member during the 2019-2021 and 2021-2023 fiscal biennia as a result of reduced work hours, mandatory leave without pay, temporary layoffs, furloughs, reductions to current pay, or other similar measures resulting from the COVID-19 budgetary crisis, if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer. Reductions to current pay shall not include elimination of previously agreed upon future salary increases.

(7) (a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance, pension or other benefit provided by this chapter.

(b) "Beneficiary" for plan 2 and plan 3 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(8) (a) "Compensation earnable" for plan 1 members, means salaries or wages earned during a payroll period for personal services and where the compensation is not all paid in money, maintenance compensation shall be included upon the basis of the schedules established by the member's employer.

(i) "Compensation earnable" for plan 1 members also includes the following actual or imputed payments, which are not paid for personal services:

(A) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable and the individual shall receive the equivalent service credit;

(B) If a leave of absence is taken by an individual for the purpose of serving in the state legislature, the salary which would have been received for the position from which the leave of absence was taken, shall be considered as compensation earnable if the employee's contribution is paid by the employee and the employer's contribution is paid by the employer or employee;

(C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(D) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038;

(E) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(F) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(ii) "Compensation earnable" does not include:

(A) Remuneration for unused sick leave authorized under RCW 41.04.340, 28A.400.210, or 28A.310.490;

(B) Remuneration for unused annual leave in excess of 240 hours.

(b) "Compensation earnable" for plan 2 and plan 3 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude nonmoney maintenance compensation and lump sum or other payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

"Compensation earnable" for plan 2 and plan 3 members also includes the following actual or imputed payments, which are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable to the extent provided above, and the individual shall receive the equivalent service credit;

(ii) In any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

(A) The compensation earnable the member would have received had such member not served in the legislature; or

(B) Such member's actual compensation earnable received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b) (ii) (A) of this subsection is greater than compensation earnable under (b) (ii) (B) of this subsection shall be paid by the member for both member and employer contributions;

(iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(iv) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038;

(v) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(vi) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(9) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(10) "Director" means the director of the department.

(11) "Eligible position" means:

(a) Any position that, as defined by the employer, normally requires five or more months of service a year for which regular compensation for at least seventy hours is earned by the occupant thereof. For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position;

(b) Any position occupied by an elected official or person appointed directly by the governor, or appointed by the chief justice of the supreme court under RCW 2.04.240(2) or 2.06.150(2), for which compensation is paid.

(12) "Employee" or "employed" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

(13)(a) "Employer" for plan 1 members, means every branch, department, agency, commission, board, and office of the state, any political subdivision or association of political subdivisions of the state admitted into the retirement system, and legal entities authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW; and the term shall also include any labor guild, association, or organization the membership of a local lodge or division of which is

comprised of at least forty percent employees of an employer (other than such labor guild, association, or organization) within this chapter. The term may also include any city of the first class that has its own retirement system.

(b) "Employer" for plan 2 and plan 3 members, means every branch, department, agency, commission, board, and office of the state, and any political subdivision and municipal corporation of the state admitted into the retirement system, including public agencies created pursuant to RCW 35.63.070, 36.70.060, and 39.34.030; except that after August 31, 2000, school districts and educational service districts will no longer be employers for the public employees' retirement system plan 2.

(c) Except as otherwise specifically provided in this chapter, "employer" does not include a government contractor. For purposes of this subsection, a "government contractor" is any entity, including a partnership, limited liability company, for-profit or nonprofit corporation, or person, that provides services pursuant to a contract with an "employer." The determination whether an employer-employee relationship has been established is not based on the relationship between a government contractor and an "employer," but is based solely on the relationship between a government contractor's employee and an "employer" under this chapter.

(d) "Employer" does not include a comprehensive cancer center participating in a collaborative arrangement as defined in RCW 28B.10.930 that is operated in conformance with RCW 28B.10.930.

(14) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(15) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

(16) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(17) "Index B" means the index for the year prior to index A.

(18) "Index year" means the earliest calendar year in which the index is more than 60 percent of index A.

(19) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (11) of this section.

(20) "Leave of absence" means the period of time a member is authorized by the employer to be absent from service without being separated from membership.

(21) "Member" means any employee included in the membership of the retirement system, as provided for in RCW 41.40.023. RCW 41.26.045 does not prohibit a person otherwise eligible for membership in the retirement system from establishing such membership effective when he or she first entered an eligible position.

(22) "Member account" or "member's account" for purposes of plan 3 means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan 3.

(23) "Membership service" means:

(a) All service rendered, as a member, after October 1, 1947;

(b) All service after October 1, 1947, to any employer prior to the time of its admission into the retirement system for which member and employer contributions, plus interest as required by RCW 41.50.125, have been paid under RCW 41.40.056 or 41.40.057;

(c) Service not to exceed six consecutive months of probationary service rendered after April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of the total amount of the employer's contribution to the retirement fund which would have been required under the law in effect when such probationary service was rendered if the member had been a member during such period, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member;

(d) Service not to exceed six consecutive months of probationary service, rendered after October 1, 1947, and before April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of five percent of such member's salary during said period of probationary service, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member.

(24) "New member" means a person who becomes a member on or after April 1, 1949, except as otherwise provided in this section.

(25) "Original member" of this retirement system means:

(a) Any person who became a member of the system prior to April 1, 1949;

(b) Any person who becomes a member through the admission of an employer into the retirement system on and after April 1, 1949, and prior to April 1, 1951;

(c) Any person who first becomes a member by securing employment with an employer prior to April 1, 1951, provided the member has rendered at least one or more years of service to any employer prior to October 1, 1947;

(d) Any person who first becomes a member through the admission of an employer into the retirement system on or after April 1, 1951, provided, such person has been in the regular employ of the employer for at least six months of the 12-month period preceding the said admission date;

(e) Any member who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement becomes entitled to be credited with 10 years or more of membership service except that the provisions relating to the minimum amount of retirement allowance for the member upon retirement at age 70 as found in RCW 41.40.190(4) shall not apply to the member;

(f) Any member who has been a contributor under the system for two or more years and who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement has rendered five or more years of service for the state or any political subdivision prior to the time of the admission of the employer into the system; except that the provisions relating to the minimum amount of retirement allowance for the member upon retirement at age 70 as found in RCW 41.40.190(4) shall not apply to the member.

(26) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(27) "Plan 1" means the public employees' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(28) "Plan 2" means the public employees' retirement system, plan 2 providing the benefits and funding provisions covering persons who

first became members of the system on and after October 1, 1977, and are not included in plan 3.

(29) "Plan 3" means the public employees' retirement system, plan 3 providing the benefits and funding provisions covering persons who:

(a) First become a member on or after:

(i) March 1, 2002, and are employed by a state agency or institute of higher education and who did not choose to enter plan 2; or

(ii) September 1, 2002, and are employed by other than a state agency or institute of higher education and who did not choose to enter plan 2; or

(b) Transferred to plan 3 under RCW 41.40.795.

(30) "Prior service" means all service of an original member rendered to any employer prior to October 1, 1947.

(31) "Regular interest" means such rate as the director may determine.

(32) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(33) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(34) "Retirement allowance" means the sum of the annuity and the pension.

(35) "Retirement system" means the public employees' retirement system provided for in this chapter.

(36) "Separation from service" occurs when a person has terminated all employment with an employer. Separation from service or employment does not occur, and if claimed by an employer or employee may be a violation of RCW 41.40.055, when an employee and employer have a written or oral agreement to resume employment with the same employer following termination. Mere expressions or inquiries about postretirement employment by an employer or employee that do not constitute a commitment to reemploy the employee after retirement are not an agreement under this subsection.

(37)(a) "Service" for plan 1 members, except as provided in RCW 41.40.088, means periods of employment in an eligible position or positions for one or more employers rendered to any employer for which compensation is paid, and includes time spent in office as an elected or appointed official of an employer. Compensation earnable earned in full time work for 70 hours or more in any given calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for less than 70 hours in any calendar month shall constitute one-quarter service credit month of service except as provided in RCW 41.40.088. Only service credit months and one-quarter service credit months shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter. Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits. Time spent in standby status, whether compensated or not, is not service.

(i) Service by a state employee officially assigned by the state on a temporary basis to assist another public agency, shall be considered as service as a state employee: PROVIDED, That service to any other public agency shall not be considered service as a state employee if such service has been used to establish benefits in any other public retirement system.

(ii) An individual shall receive no more than a total of 12 service credit months of service during any calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for seventy or more hours is rendered.

(iii) A school district employee may count up to 45 days of sick leave as creditable service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of plan 1 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than 45 days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than 22 days equals one-quarter service credit month;

(B) 22 days equals one service credit month;

(C) More than 22 days but less than 45 days equals one and one-quarter service credit month.

(iv) Reduction efforts such as furloughs, reduced work hours, mandatory leave without pay, temporary layoffs, or other similar situations as contemplated by subsection (6)(c)(iii) of this section do not result in a reduction in service credit that otherwise would have been earned for that month of work, and the member shall receive the full service credit for the hours that were scheduled to be worked before the reduction.

(b) "Service" for plan 2 and plan 3 members, means periods of employment by a member in an eligible position or positions for one or more employers for which compensation earnable is paid. Compensation earnable earned for 90 or more hours in any calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for at least 70 hours but less than 90 hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than 70 hours in any calendar month shall constitute one-quarter service credit month of service. Time spent in standby status, whether compensated or not, is not service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

(i) Service in any state elective position shall be deemed to be full time service, except that persons serving in state elective positions who are members of the Washington school employees' retirement system, teachers' retirement system, public safety employees' retirement system, or law enforcement officers' and firefighters' retirement system at the time of election or appointment to such position may elect to continue membership in the Washington school employees' retirement system, teachers' retirement system, public safety employees' retirement system, or law enforcement officers' and firefighters' retirement system.

(ii) A member shall receive a total of not more than 12 service credit months of service for such calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.

(iii) Up to 45 days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal to two

service credit months. Use of less than 45 days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than 11 days equals one-quarter service credit month;

(B) 11 or more days but less than 22 days equals one-half service credit month;

(C) 22 days equals one service credit month;

(D) More than 22 days but less than 33 days equals one and one-quarter service credit month;

(E) 33 or more days but less than 45 days equals one and one-half service credit month.

(iv) Reduction efforts such as furloughs, reduced work hours, mandatory leave without pay, temporary layoffs, or other similar situations as contemplated by subsection (6)(c)(iii) of this section do not result in a reduction in service credit that otherwise would have been earned for that month of work, and the member shall receive the full service credit for the hours that were scheduled to be worked before the reduction.

(38) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(39) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(40) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(41) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(42) "State treasurer" means the treasurer of the state of Washington.

(43) "Totally incapacitated for duty" means total inability to perform the duties of a member's employment or office or any other work for which the member is qualified by training or experience.

[2024 c 151 s 3; 2022 c 71 s 8; 2021 c 12 s 7; 2012 c 236 s 6; 2011 1st sp.s. c 5 s 5. Prior: 2010 2nd sp.s. c 1 s 906; 2009 c 430 s 1; 2007 c 50 s 4; 2004 c 242 s 53; 2003 c 412 s 4; 2000 c 247 s 102; 1998 c 341 s 601; prior: 1997 c 254 s 10; 1997 c 88 s 6; prior: 1995 c 345 s 10; 1995 c 286 s 1; 1995 c 244 s 3; prior: 1994 c 298 s 2; 1994 c 247 s 5; 1994 c 197 s 23; 1994 c 177 s 8; 1993 c 95 s 8; prior: 1991 c 343 s 6; 1991 c 35 s 70; 1990 c 274 s 3; prior: 1989 c 309 s 1; 1989 c 289 s 1; 1985 c 13 s 7; 1983 c 69 s 1; 1981 c 256 s 6; 1979 ex.s. c 249 s 7; 1977 ex.s. c 295 s 16; 1973 1st ex.s. c 190 s 2; 1972 ex.s. c 151 s 1; 1971 ex.s. c 271 s 2; 1969 c 128 s 1; 1965 c 155 s 1; 1963 c 225 s 1; 1963 c 174 s 1; 1961 c 291 s 1; 1957 c 231 s 1; 1955 c 277 s 1; 1953 c 200 s 1; 1951 c 50 s 1; 1949 c 240 s 1; 1947 c 274 s 1; Rem. Supp. 1949 s 11072-1.]

Findings—Intent—2022 c 71: See note following RCW 28B.10.930.

Retroactive application—2021 c 12: See note following RCW 41.26.030.

Purpose—Application—2012 c 236: See note following RCW 41.26.030.

Effective date—2011 1st sp.s. c 5: See note following RCW 41.26.030.

Effective date—2010 2nd sp.s. c 1: See note following RCW 38.52.105.

Effective date—2004 c 242: See RCW 41.37.901.

Effective date—1998 c 341: See RCW 41.35.901.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

Intent—1994 c 298: "(1) This act provides cross-references to existing statutes that affect calculation of pensions under the retirement systems authorized by chapters 41.40 and 41.32 RCW to the relevant definition sections of those chapters. Except as provided in subsection (2) of this section, this act is technical in nature and neither enhances nor diminishes existing pension rights. Except for the amendment to RCW 41.40.010(5), it is not the intent of the legislature to change the substance or effect of any statute previously enacted. Rather, this act provides cross-references to applicable statutes in order to aid with the administration of benefits authorized in chapters 41.40 and 41.32 RCW.

(2) The amendments to RCW 41.40.010 (5) and (29) contained in section 2, chapter 298, Laws of 1994, and to RCW 41.32.010(31) contained in section 3, chapter 298, Laws of 1994, clarify the status of certain persons as either members or retirees. RCW 41.04.275 and section 7, chapter 298, Laws of 1994, create the pension funding account in the state treasury and direct the transfer of moneys deposited in the budget stabilization account by the 1993-95 operating appropriations act, section 919, chapter 24, Laws of 1993 sp. sess., for the continuing costs of state retirement system benefits in effect on July 1, 1993, consistent with section 919, chapter 24, Laws of 1993 sp. sess. to the pension funding account." [1994 c 298 s 1.]

Effective date—1994 c 247: See note following RCW 41.32.4991.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—1994 c 177: See note following RCW 41.50.125.

Retroactive application—Effective date—1993 c 95: See notes following RCW 41.40.175.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—Effective date—Construction—1990 c 274: See notes following RCW 41.32.010.

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

Applicability—1983 c 69 s 1: "Section 1 of this 1983 act applies only to service credit accruing after July 24, 1983." [1983 c 69 s 3.]

Purpose—Severability—1981 c 256: See notes following RCW 41.26.030.

Severability—1973 1st ex.s. c 190: "If any provision of this 1973 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 190 s 16.]

Severability—1971 ex.s. c 271: See note following RCW 41.32.260.

Severability—1969 c 128: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 c 128 s 19.]

Severability—1965 c 155: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1965 c 155 s 10.]

Severability—1963 c 174: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1963 c 174 s 19.]

Severability—1961 c 291: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1961 c 291 s 18.]