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LEGISLATIVE BILL 417

Approved by the Governor February 25, 1993

Introduced by Nebraska Retirement Systems Committee:
Horgan, 4, Chairperson; Crosby, 29; Day, 19; Fisher, 35; Lynch, 13; Robak, 22; and Moore, 24

AN ACT relating to retirement; to amend sections 23-2301, 23-2319, 23-2320, and 84-1323.01, Reissue Revised Statutes of Nebraska, 1943, and sections 23-2308, 23-2317, 84-1301, and 84-1321, Revised Statutes Supplement, 1992; to redefine a term; to change provisions relating to membership and benefits of county and state employees; to authorize a late fee; to eliminate a provision relating to a lump-sum settlement option; to harmonize provisions; to repeal the original sections, and also section 84-1323.02, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 23-2301, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-2301. As used in the County Employees Retirement Act, unless the context otherwise requires:

(1) Employees shall mean all persons or officers who are employed by a county of the State of Nebraska devoting twenty or more hours per week to such employment, persons employed as provided in section 2-1608, all elected officers of a county, and such other persons or officers as are classified from time to time as permanent employees by the county board of the county by whom they are employed, except that the term shall not include judges, persons making contributions to the School Retirement System of the State of Nebraska, or nonelected employees and nonelected officials of any county having a population in excess of one hundred thousand inhabitants;

(2) Retirement shall mean qualifying for and terminating employment after becoming qualified to receive the retirement allowance granted under the County Employees Retirement Act;

(3) Retirement board or board shall mean the Public Employees Retirement Board;

(4) Retirement system shall mean the Retirement System for Nebraska Counties;

(5) Required contribution shall mean the deduction to be made from the compensation of employees as provided in the County Employees Retirement Act;

(6) Service shall mean the actual total length of employment as an employee and shall include leave of absence because of disability or military service when properly authorized by the retirement board, except that service shall not include any period of disability for which disability retirement benefits are received under section 23-2315;

(7) Straight life annuity shall mean an ordinary annuity, payable for the life of the primary annuitant only, and terminating at his or her death without refund or death benefit of any kind;

(8) Date of adoption of the retirement system by each county shall mean the first day of the month next following the date of approval of the retirement system by the county board or January 1, 1987, whichever is earlier;

(9) Prior service shall mean service prior to the date of adoption of the retirement system;

(10) Future service shall mean service following the date of adoption of the retirement system;

(11) Group annuity contract shall mean the contract issued by one or more life insurance companies to the board in order to provide the future service benefits described in the County Employees Retirement Act;

(12) Primary carrier shall mean the life insurance company or trust company designated by the retirement board as the administrator of the retirement system;

(13) Regular interest shall mean the rate of interest earned each calendar year ~~commencing January 1, 1975,~~ as determined by the retirement board in conformity with actual and expected earnings on its investments;

(14) Disability shall mean an inability to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or be of a long and indefinite duration;

(15) Date of disability shall mean the date on which a member is determined by the board to be disabled;

(16) Guaranteed investment contract shall mean an investment contract which guarantees that the account maintained for any participant will not decrease in value but will increase each year by the contribution allocated to the account and by investment earnings and will decrease by the amount of expenses reasonably determined to be allocated to the account; and

(17) Investment manager shall mean one or more insurance companies, bank trust departments, or independent investment advisors designated to invest any portion of the funds of the County Employees Retirement Act.

Sec. 2. That section 23-2308, Revised Statutes Supplement, 1992, be amended to read as follows:

23-2308. The county clerk shall pay to the primary carrier an amount equal to two hundred fifty percent of the amounts deducted from the compensation of employees in accordance with the provisions of section 23-2307, which two hundred fifty percent equals the employees' contributions plus the county's contributions of one hundred fifty percent of the employees' contributions.

The board may charge the county a late fee, not to exceed fifty dollars, for any amount required by this section to be paid which is not received and any report which is not properly completed by the tenth day of the month following the end of the month for which the report is submitted.

Sec. 3. That section 23-2317, Revised Statutes Supplement, 1992, be amended to read as follows:

23-2317. (1) The future service retirement benefit shall be an annuity, payable monthly with the first payment made as of the retirement date, which shall be the actuarial equivalent of the retirement value based on factors determined by the board, except that gender shall not be a factor when determining the amount of such payments pursuant to subsection (2) of this section. ~~A retiring employee may elect to receive, in lieu of an annuity, a lump sum settlement equal to the retirement value if the retirement value is less than eight thousand dollars. A copy of the contract shall be kept on file with the board.~~

At any time before the retirement date, the retiring employee may choose to receive his or her annuity either in the form of a straight life annuity or any optional form that is determined by the board.

In lieu of the future service retirement annuity, a retiring employee may, upon application to the board, receive a benefit not to exceed the amount in his or her employer and employee accounts payable in a lump sum and, if the employee chooses not to receive the entire amount in such accounts, an annuity equal to the actuarial equivalent of the remainder of the retirement value, and the employee may choose any form of such annuity as provided for by the board.

In any case, the amount of the monthly payment shall be such that the annuity chosen shall be the actuarial equivalent of the retirement value except as provided in this section.

The board shall provide to any county employee who is eligible for retirement, prior to his or her selecting any of the retirement options provided by this section, information on the federal and state income tax consequences of the various annuity or retirement benefit options.

(2) The monthly income payable to a member retiring on or after January 1, 1984, shall be as follows:

He or she shall receive at retirement the amount which may be purchased by the accumulated contributions based on annuity rates in effect on the date of purchase which do not utilize gender as a factor, except that such amounts shall not be less than the retirement income which can be provided by the sum of the amounts derived pursuant to subdivisions (a) and (b) of this subsection as follows:

(a) The income provided by the accumulated contributions made prior to January 1, 1984, based on male annuity purchase rates in effect on ~~January 1, 1984, or male annuity purchase rates on~~ the date of purchase; ~~, if greater than those in effect on January 1, 1984;~~ and

(b) The income provided by the accumulated contributions made on and after January 1, 1984, based on the annuity purchase rates in effect on the date of purchase which do not use gender as a factor.

(3) Any amount, in excess of contributions, which may be required in order to purchase the retirement income specified in subsection (2) of this section shall be withdrawn from the County Equal Retirement Benefit Fund.

(4) Retirement benefits for persons who retire prior to January 1, 1984, shall not be affected by changes to this section which become operative on or after January 1, 1984.

Sec. 4. That section 23-2319, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-2319. (1) Any member of the retirement system who ceases to be an employee before his or her fifty-fifth birthday may, upon application, receive from the primary carrier:

(a) If not vested, a termination benefit not to exceed the amount of his or her employee account (i) payable in a lump sum or (ii) payable in a lump sum deferred no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years;

(b) If vested, a termination benefit not to exceed (i) the amount of his or her employee account payable in a lump sum plus a paid-up deferred annuity provided by ~~the vested portion of the~~ his or her employer account under which the first annuity payment shall be made ~~as of the first of the month immediately following the sixty-fifth birthday or (b) a~~ no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years, (ii) the amount of the employee account payable in a lump sum plus a lump sum of the employer account deferred no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years, or (iii) the total amount of the employee account and the employer account payable in a lump sum deferred no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years; or

(c) A paid-up deferred annuity provided by the employee account and, if vested, ~~the vested portion of~~ the employer account under which the first annuity payment shall be made ~~as of the first of the month immediately following the sixty-fifth birthday~~ no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years.

If the terminating member does not make such application, he or she shall receive the benefits provided under subdivision ~~(1)(b)~~ (1)(c) of this section.

(2) At the option of the terminating member, any lump sum of the employer account or any paid-up deferred annuity provided under subsection (1) of this section may commence as of the first of the month at any time after such member attains the age of fifty-five ~~and before his or~~

~~her sixty-fifth birthday~~ years and no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years. Such election by the terminating member may be made at any time prior to the commencement of the annuity payments. Such paid-up deferred annuity shall be the actuarial equivalent, as determined by the group annuity contract, of the employee account together with the vested percentage of the employer account.

(3) The vesting percentage shall be one hundred after five years of participation. The vesting percentage shall equal one hundred for any disability retirement under section 23-2315.

(4) If the terminating member is not credited with one hundred percent of his or her employer account, the remainder shall first be used to meet the expense charges incurred by the board in connection with administering the system, and the remainder shall then be used to reduce the county contributions which would be otherwise required to fund future service retirement benefits.

Sec. 5. That section 23-2320, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-2320. A member of the system who ceases to be an employee shall, upon again becoming an employee~~, be considered a new employee with respect to the County Employees Retirement Act, except that any employee who ceases to be an employee of one county and commences immediately employment with a different county shall be treated for all purposes of the County Employees Retirement Act~~ of a county which is a part of the retirement system, contribute to the system as if he or she had maintained continuous employment with one county. For purposes of computing prior service benefits, an employee shall be treated the same as if the employee had maintained continuous service with the county employing such employee on his or her sixty-fifth birthday and any refund due from the primary carrier, as provided in section 23-2319, shall be paid to the last county of employment.

Sec. 6. That section 84-1301, Revised Statutes Supplement, 1992, be amended to read as follows:

84-1301. For purposes of the State Employees Retirement Act, unless the context otherwise requires:

(1) Employee shall mean any employee of the State Board of Agriculture who is a member of the state retirement plan on July 1, 1982, and any person or officer employed by the State of Nebraska whose compensation is paid out of state funds or funds controlled or administered by a state department through any of its executive or administrative officers when acting exclusively in their respective official, executive, or administrative capacities. Employees shall not include (a) judges as defined in section 24-701, (b) members of the Nebraska State Patrol, (c) employees of the University of Nebraska, (d) employees of the state colleges, (e) employees of community colleges, (f) employees of the Department of Labor employed prior to July 1, 1984, and paid from funds provided pursuant to Title III of the Social Security Act or funds from other federal sources, (g) the Commissioner of Labor employed prior

to July 1, 1984, (h) employees of the State Board of Agriculture who are not members of the state retirement plan on July 1, 1982, (i) the Nebraska National Guard air and army technicians, or (j) persons eligible for membership under the School Retirement System of the State of Nebraska who have not elected to become members of the retirement system pursuant to section 79-1565 or been made members of the system pursuant to such section, except that those persons so eligible and who as of September 2, 1973, are contributing to the State Employees Retirement System of the State of Nebraska shall continue as members of such system. Any individual appointed by the Governor may elect not to become a member of such retirement system;

(2) Part-time employee shall mean an employee who works less than one-half of the regularly scheduled hours;

(3) Retirement shall mean qualifying for and terminating employment after becoming qualified to receive the retirement allowance granted under the State Employees Retirement Act;

(4) Retirement board or board shall mean the Public Employees Retirement Board;

(5) Retirement system shall mean the State Employees Retirement System of the State of Nebraska;

(6) Required contribution shall mean the deduction to be made from the compensation of employees as provided in section 84-1308;

(7) Service shall mean the actual total length of employment as an employee and shall include leave of absence because of disability or military service when properly authorized by the retirement board but shall not include any period of disability for which disability retirement benefits are received under the provisions of section 84-1317;

(8) Straight life annuity shall mean an ordinary annuity payable for the life of the primary annuitant only and terminating at his or her death without refund or death benefit of any kind;

(9) Prior service shall mean service before January 1, 1964;

(10) Group annuity contract shall mean the contract or contracts issued by one or more life insurance companies to the board in order to provide the benefits described in sections 84-1319, 84-1320, 84-1321, ~~and~~ 84-1323, and ~~to 84-1323.02~~ 84-1323.01;

(11) Primary carrier shall mean the life insurance company or trust company designated as the administrator of the group annuity contract;

(12) State department shall mean any department, bureau, commission, or other division of state government not otherwise specifically defined or exempted in the State Employees Retirement Act, the employees and officers of which are not already covered by a retirement plan;

(13) Disability shall mean an inability to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration;

(14) Date of disability shall mean the date on which a

member is determined to be disabled by the board;

(15) Regular interest shall mean the rate of interest earned each calendar year commencing January 1, 1975, as determined by the retirement board in conformity with actual and expected earnings on its investments;

(16) Fund shall mean the State Employees Retirement Fund created by section 84-1309;

(17) Guaranteed investment contract shall mean an investment contract which guarantees that the account maintained for any participant will not decrease in value but will increase each year by the contribution allocated to the account and by investment earnings and will decrease by the amount of expenses reasonably determined to be allocated to the account; and

(18) Investment manager shall mean one or more insurance companies, bank trust departments, or independent investment advisors designated to invest any portion of the fund.

Sec. 7. That section 84-1321, Revised Statutes Supplement, 1992, be amended to read as follows:

84-1321. (1) Any member of the retirement system who ceases to be an employee before becoming eligible for retirement under section 84-1317 may, upon application to the board, receive:

(a) If not vested, a termination benefit not to exceed the amount in his or her employee account (i) payable in a lump sum or (ii) payable in a lump sum deferred no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years;

(b) If vested, a termination benefit not to exceed (i) the amount in his or her employee account payable in a lump sum plus a paid-up deferred annuity provided by ~~the vested portion of the~~ his or her employer account under which the first annuity payment shall be made ~~as of the first of the month immediately following the sixty-fifth birthday or (b) a~~ no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years, (ii) the amount of the employee account payable in a lump sum plus a lump sum of the employer account deferred no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years, or (iii) the total amount of the employee account and the employer account payable in a lump sum deferred no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years; or

(c) A paid-up deferred annuity provided by the employee account and, if vested, ~~the vested portion of~~ the employer account under which the first annuity payment shall be made ~~as of the first of the month immediately following the sixty-fifth birthday~~ no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years.

If the terminating member does not make application he or she shall receive the benefits provided under subdivision ~~(1)(b)~~ (1)(c) of this section. ~~, except that any person who has been a member of the retirement system and has terminated his or her employment prior to September 1, 1986, and has not withdrawn the amount in his or her employee account shall have the option upon application prior to March 1, 1987, to receive the benefit provided in subdivision (1)(a) of this section.~~

(2) At the option of the terminating member, any lump sum of the vested portion of the employer account or any paid-up deferred annuity provided under subsection (1) of this section may commence as of the first of the month at any time after such member attains the age of fifty-five or may be deferred, except that no benefit shall be deferred later than the sixtieth day after the end of the year in which the employee has both attained at least seventy and one-half years of age and has terminated his or her employment with the state. Such election by the terminating member may be made at any time prior to the commencement of the annuity payments. Such paid-up deferred annuity shall be the actuarial equivalent, based on factors designated by the board, of the employee account and the vested portion of the employer account.

(3) The vesting percentage shall be one hundred after five years of participation in the retirement plan. The vesting percentage shall equal one hundred for any disability retirement under section 84-1317.

(4) In the event that the terminating member ~~shall not be~~ is not credited with one hundred percent of his or her employer account, the remainder shall be credited to the State Employees Retirement Fund and shall be applied to reduction of the liability for prior service benefits until such time as such liability is completely funded, and thereafter the remainder shall first be used to meet the expense charges incurred by the Public Employees Retirement Board in connection with administering the system and the remainder shall then be used to reduce the state contribution which would otherwise be required to fund future service retirement benefits.

(5) If a member ceases to be an employee due to the termination of his or her employment by the state and a grievance or other appeal of the termination is filed, transactions involving forfeiture of his or her employer account shall be suspended pending the final outcome of the grievance or other appeal.

Sec. 8. That section 84-1323.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-1323.01. (1) Any member who ~~shall be a full-time~~ is an employee, disregarding the length of service, may be retired as a result of disability either upon ~~his~~ the member's own application or upon the application of ~~his~~ the member's employer or any person acting in ~~his~~ the member's behalf. Before any member may be so retired, a medical examination shall be made at the expense of the retirement system, which examination shall be conducted by a disinterested physician licensed to practice medicine in this state, such physician to be selected by the retirement board, and the physician shall certify to the board that the member is physically or mentally incapable of further performing his or her duties as a state employee and should be retired. The application for disability retirement shall be made within one year of termination of employment.

(2) The retirement board may require any disability beneficiary who has not attained the age of sixty-five to undergo a medical examination at the expense of the board once each year. ~~Should~~ If any disability beneficiary ~~refuse~~ refuses to undergo such an examination, ~~his~~ the disability retirement benefit may be discontinued by the board.

Sec. 9. That original sections 23-2301, 23-2319, 23-2320, and 84-1323.01, Reissue Revised Statutes of Nebraska, 1943, and sections 23-2308, 23-2317, 84-1301, and 84-1321, Revised Statutes Supplement, 1992, and also section 84-1323.02, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 10. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.