

- 1491 -

83 WisACT 290

1983 Assembly Bill 794

Date of enactment: April 20, 1984

Date of publication: April 26, 1984

1983 Wisconsin Act 290

AN ACT to repeal 40.27 (2) (d) and 40.29 (3); to amend 15.165 (1) (b) and (3) (a) 1, 2 and 7, 40.05 (6) (d), 40.06 (1) (e) and (2) (c), 40.08 (7) and (10), 40.24 (intro.), 40.24 (6), 40.25 (5), 40.26 (4), 40.63 (8) (d), 40.73 (2) (a) and 40.81 (1); and to repeal and recreate 40.02 (23) (a), 40.05 (2) (g) and 40.81 (2) of the statutes, relating to technical changes in the Wisconsin retirement system.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 15.165 (1) (b) and (3) (a) 1, 2 and 7 of the statutes are amended to read:

15.165 (1) (b) For purposes of this ~~subsection~~ section, annuitants and ~~inactive participants~~ are deemed to be employees in the last position in which they were covered by the Wisconsin retirement system, except that annuitants may not be elected, appointed or vote under sub. (3) (a) 1, 2, ~~4~~ or 7.

(3) (a) 1. Six public school teachers who are ~~participants~~ participating employes in the Wisconsin retirement system and who are not eligible for election under any other subdivision of this paragraph, elected by ~~participants~~ participating employes meeting the same criteria.

2. One public school teacher from a vocational, technical and adult education district who is a ~~participant~~ participating employe in the Wisconsin retirement system, elected by ~~teacher participants~~ participating employes from vocational, technical and adult education districts.

7. One teacher in the city of Milwaukee, who is a ~~participant~~ participating employe in the Wisconsin retirement system, elected by the teachers of the public schools in that city who are participating employes.

SECTION 2. 40.02 (23) (a) of the statutes is repealed and recreated to read:

40.02 (23) (a) For the fixed annuity division, the rate, disregarding fractions of less than one-tenth of one percent, determined by dividing the remaining fixed annuity division investment earnings for the calendar year or part of the calendar year, after making provision for any necessary reserves and after deducting prorated interest and the administrative costs of the fixed annuity division for the year, by the fixed annuity division balance at the beginning of the calendar year as adjusted for benefit payments and refunds paid during the year excluding prorated interest.

SECTION 3. 40.05 (2) (g) of the statutes is repealed and recreated to read:

40.05 (2) (g) A participating employer may make contributions as provided in its compensation agreements for any participating employe in addition to the employer contributions required by this subsection. The additional employer contributions shall be available for all benefit purposes and shall be administered and invested on the same basis as employe additional contributions, except that ss. 40.24 (5) and 40.25 (4) do not apply to them.

SECTION 4. 40.05 (6) (d) of the statutes is amended to read:

40.05 (6) (d) Except as provided under par. (c), any insured employe under age 65 who is retired and who is otherwise eligible shall continue to be covered and the premium payment shall be deducted from the appropriate annuity payroll as authorized by s. 40.08 (2), if the annuity is sufficient, or such an employe shall continue to be covered if he

or she makes direct payments to continue insurance coverage or if the employe's employer pays, on behalf of the employe, the premium payment ~~directly to the department,~~ according to procedures established by the department.

SECTION 5. 40.06 (1) (e) and (2) (c) of the statutes are amended to read:

40.06 (1) (e) ~~A participant~~ An employe may appeal a determination under par. (d), including a determination that the employe is not a participating employe, to the department by filing written notice with the department. An appeal under this paragraph does not apply to any service rendered more than 2 7 years prior to the date the written notice of appeal is received by the department. The department shall investigate the appeal and mail a report of its determination to the participant employe and the participating employer or state agency. Appeals under this paragraph are subject to the following conditions:

1. The participant employe or the participating employer or state agency which gave the notice under par. (d) may appeal the department's determination to the board by filing written notice of appeal with the department not later than 30 days after the report is mailed to the person appealing. If written notice of appeal is not filed as required by this paragraph the determination from which an appeal is permitted is final.

2. A determination of an employe's status under par. (d) made after an appeal is filed under this paragraph shall remain in effect until receipt by the department of a notification indicating a classification for the participant employe different ~~than~~ from the determination. The participant employe may appeal ~~such a~~ that subsequent determination.

(2) (c) If the employer defaults on payment of the amount specified in the statement under par. (a), the amount shall become a special charge against the employer and shall be included in the next certification of state taxes and charges and shall be collected, with interest ~~at the rate of one percent per month compounded as provided in sub. (3)~~ from the date the statement was submitted to the employer, as other charges are certified and collected, or collected as provided under sub. (4). When the amount and the interest are collected, they shall be credited to the appropriation under s. 20.515 (1) (w).

SECTION 6. 40.08 (7) and (10) of the statutes are amended to read:

40.08 (7) OVERPAYMENTS AND UNDERPAYMENTS. (a) Any overpayment or underpayment of a ~~lump sum~~ lump-sum payment under s. 40.25 or a death benefit which does not exceed \$5, ~~\$10~~ and any annuity payment error which does not exceed \$1 ~~\$2~~ per month, ~~shall may~~ not be corrected but shall be credited or debited to the employer accumulation reserve or the appropriate insurance account. If the amount of unapplied additional contributions, which would increase an annuity payment by \$1 ~~\$2~~ or less, exceeds \$5 ~~\$10~~, the unapplied additional contributions shall be paid to the annuitant as a lump sum.

(b) Any overpayment exceeding the limits ~~set forth~~ in par. (a) to a person who cannot be located or which proves to be uncollectible and any underpayment exceeding the limits in par. (a) to a person who cannot be located may be written off 2 years after the underpayment or overpayment is discovered and credited or debited to the employer accumulation reserve or the appropriate insurance account.

(10) LIMITATIONS ON CORRECTIONS. Service credits granted and contribution, premium, and benefit payments made under this chapter ~~shall are not be~~ subject to correction unless correction is requested or made prior to the end of 7 full calendar years after the date of the alleged error or ~~3 full calendar years after~~ January 1, ~~1982~~ 1987, whichever is later, unless the alleged error is the result of fraud. ~~This subsection shall be in addition to and not in lieu of any other limitation on corrections or unless another limitation is specifically provided by statute. This subsection shall not be construed to~~ does not prohibit correction of purely clerical errors in reporting or recording contributions, service and earnings.

SECTION 7. 40.24 (intro.) of the statutes is amended to read:

40.24 Annuity options. (intro.) Any participant who is eligible to receive a retirement annuity in the normal form may elect to receive the actuarial equivalent of the normal form annuity in one of the optional annuity forms prescribed in subs. (1) to (5) modified by rule as necessary to conform to federal regulations, or in any one optional life annuity form provided by rule. The participant may also elect to receive the amount provided by accumulated additional contributions in a different optional form than the balance of the annuity. Any optional form shall be based on actuarial equivalent values with due regard to selection against the fund, shall not provide a greater monthly amount payable to others upon the death of the participant than the amount which would have been payable to the participant if the participant had continued to live and shall not be changed after the effective date of the annuity unless the participant's request for the change is received by the department within 30 days after the date the first annuity check is issued or funds are otherwise transferred.

SECTION 8. 40.24 (6) of the statutes, as affected by 1983 Wisconsin Act 141, is amended to read:

40.24 (6) If a participant's annuity is not effective until after the participant's normal retirement date under s. 40.02 (42) (a) to (e) and the participant elects an optional annuity form, the monthly amount of annuity provided by conversion of the benefit computed under s. 40.23 (2m) (e) to the optional form elected shall not be less than the monthly amount of annuity which would have been paid had the participant retired immediately upon attaining the participant's normal retirement date under s. 40.02 (42) (a) to (e) and elected the same optional form of annuity and the same beneficiary. It shall be assumed for purposes of calculating the amount of an annuity under this subsection that all of the participant's ~~creditable service and earnings were earned~~ annuity was earned prior to the participant's normal retirement date and that the beneficiary is the age that the beneficiary was when the participant attained the participant's normal retirement date under s. 40.02 (42) (a) to (e), but the department shall use the beneficiary's actual age on the effective date of the annuity.

SECTION 9. 40.25 (5) of the statutes is amended to read:

40.25 (5) (a) Rights and creditable service forfeited under sub. (3) ~~or s. 40.04 (4) (a) 3~~ shall be reestablished if the participant receives the benefit resulting in the forfeiture after being discharged and is subsequently reinstated to a position with the participating employer by court order, arbitration award or compromise settlement as a result of an appeal of the discharge.

(b) The full amount of the benefit paid ~~under sub. (1) or (2)~~, plus interest at the effective rate, shall be repaid to the Wisconsin retirement system by the employer of an employe whose rights and creditable service are reestablished under par. (a) within 60 days after the effective date of the employe's reinstatement. The amount repaid by the employer under this paragraph shall be deducted by the employer from any payment due the employe as a result of the resolution of the appeal or, if that amount is insufficient, the balance shall be deducted from the employe's earnings except the amount deducted from each earnings payment shall be not less than 10% nor more than 25% of the earnings payment. If the employe terminates employment the employer shall notify the department of the amount not yet repaid, including any interest due, at the same time it notifies the department of the termination of employment, and the department shall repay to the employer the balance of the amount due from retentions made under s. 40.08 (4). The employer may charge interest at a rate not in excess of the current year's assumed rate on any amount unpaid at the end of any calendar year after the year of reinstatement.

SECTION 10. 40.26 (4) of the statutes is amended to read:

40.26 (4) Upon subsequent termination of all participating employment of an annuitant who receives compensation subject to s. 40.05 (1), but whose compensation did not exceed the level specified in sub. (1) which would have required termination of the original annuity, any contributions made under s. 40.05 (1) or (2) (g) based on the additional employment shall upon application be paid the annuitant on the basis specified in s. 40.25 (2) and (3) without regard to the age ~~55~~ requirement and without any change in the original annuity.

SECTION 11. 40.27 (2) (d) of the statutes is repealed.

SECTION 12. 40.29 (3) of the statutes is repealed.

SECTION 13. 40.63 (8) (d) of the statutes is amended to read:

40.63 (8) (d) If an annuity option other than the normal form is elected, the amount of the normal form disability annuity which is greater than the normal form retirement annuity to which the participant would be entitled under s. 40.23, notwithstanding the minimum age 55 requirement for receiving an annuity, shall be a straight life annuity terminating at the death of the annuitant. The balance of the present value of the disability annuity, after providing for the straight life annuity, shall be applied to provide an annuity in the optional form elected.

SECTION 14. 40.73 (2) (a) of the statutes is amended to read:

40.73 (2) (a) Upon the death, prior to the expiration of the guarantee period, of an annuitant receiving an annuity which provides a guaranteed number of monthly payments, monthly payments shall be continued until payments have been made for the guaranteed number of months. Any beneficiary under this paragraph may elect at any time to receive the then present value of the annuity, including monthly interest at the assumed annuitant rate for each full month between the termination of annuity payments and the month in which the single sum payment is approved, in a single sum.

SECTION 15. 40.81 (1) of the statutes is amended to read:

40.81 (1) An employer other than the state may provide ~~a~~ for its employes the deferred compensation plan for its employes and may use the procedures and deferred compensation providers approved established by the board under s. 40.80. ~~An employer, or 2 or more employers acting jointly, may also elect under procedures established by the employer or employers to contract directly with a deferred compensation plan provider to administer a deferred compensation plan or to manage any compensation deferred under the plan. Any employer, including this state, who makes the plan under s. 40.80 available to any of its employes shall make it available to all of its employes under procedures established by the department under this subchapter.~~

SECTION 16. 40.81 (2) of the statutes is repealed and recreated to read:

40.81 (2) Any local government employer, or 2 or more employers acting jointly, may also elect under procedures established by the employer or employers to contract directly with a deferred compensation plan provider to administer a deferred compensation plan or to manage any compensation deferred under the plan and may also provide a plan under section 403 (b) of the internal revenue code under procedures established by the local government employer or employers.