

1987 Assembly Bill 619

Date of enactment: April 22, 1988

Date of publication: May 2, 1988

## 1987 Wisconsin Act 372

AN ACT to repeal 40.02 (17) (c), 40.02 (31) and 40.63 (8) (c); to consolidate, renumber and amend 40.41 (6) (b) and (c); to amend 40.02 (33) (a) 1, 40.02 (42) (c), 40.02 (42) (g), 40.23 (1) (a), 40.23 (2) (b) 2, 40.23 (2m) (b), 40.23 (2m) (e) 3 and 4 and 40.26 (1); to repeal and recreate 40.02 (30); and to create 40.02 (17) (e) and 40.26 (2) (d) of the statutes, relating to integrating recent changes in federal law concerning age requirements for annuity benefits for certain participants in the Wisconsin retirement system and recent changes in federal law concerning social security coverage for part-time employes and redetermining creditable service for executive participating employes.

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

SECTION 1. 40.02 (17) (c) of the statutes is repealed.

SECTION 1m. 40.02 (17) (e) of the statutes is created to read:

40.02 (17) (e) Each executive participating employe whose creditable service terminates on or after the effective date of this paragraph .... [revisor inserts date], who was previously in a position designated under s. 20.923 (4), (8) or (9), but did not receive creditable service because of age restrictions, may receive creditable service equal to the period of executive service not credited if the participant pays to the department a lump sum payment equal to 5.5% of one-twelfth of the employe's highest earnings in a single annual earnings period multiplied by the number of months of creditable service granted under this paragraph, except a participant who is a present or former elected official or an appointee of such an official may receive creditable service equal to the period of executive service not credited if the participant pays to the department a lump sum payment equal to the present value of the creditable service requested, in accordance with rates actuarially determined to be sufficient to fund the full cost of the increased benefits which will result from granting the creditable service. That amount shall be credited and treated as an employe required contribution for all purposes of the Wisconsin retirement system.

SECTION 2. 40.02 (30) of the statutes is repealed and recreated to read:

40.02 (30) "Executive participating employe" means a participating employe in a position designated under s. 20.923 (4), (8) or (9) during the time of employment. All service credited prior to the effective date of this subsection .... [revisor inserts date], as executive service as defined under sub. (31), 1985 stats., shall continue to be treated as executive service as defined under sub. (31), 1985 stats., but no other service rendered prior to the effective date of this subsection .... [revisor inserts date], may be changed to executive service as defined under sub. (31), 1985 stats.

SECTION 3. 40.02 (31) of the statutes is repealed.

SECTION 4. 40.02 (33) (a) 1 of the statutes is amended to read:

40.02 (33) (a) 1. The participant's total earnings received and for which contributions are made under s. 40.05 (1) and (2) during the 3 annual earnings periods (excluding any period more than 3 years prior to the effective date for any participating employer) in which the earnings ~~(other than earnings for executive service after December 31, 1973, or the date the participant attains the age of 62 years, whichever date is later)~~ were the highest; by

SECTION 5. 40.02 (42) (c) of the statutes is amended to read:

40.02 (42) (c) The date on which an executive participating employe attains the age of 62 years ~~except that for the purpose of calculating a disability benefit~~

~~under s. 40.63 (8) the normal retirement date of an executive participating employe is the date the employe attains the age of 65 years.~~

SECTION 6. 40.02 (42) (g) of the statutes is amended to read:

40.02 (42) (g) The date applicable to the participant under pars. (a) to (f) at the earlier of either the date it is necessary to make any determination or to take any action relative to the participant for purposes of the retirement system or the date of termination of employment of the participant, notwithstanding the fact that a participant may have been in one or more different employment categories at any previous time except for the purpose of calculating an annuity. For the purpose of calculating an annuity, the normal retirement date for each category provided by pars. (a) to (d) applies to service which is subject to that category unless an earlier normal retirement date applies to the creditable service under par. (f). For the purpose of calculating a retirement benefit for an executive participating employe qualifying only under sub. (30) (b), 1985 stats., a normal retirement date of the date the executive participating employe attains the age of 62 years shall be applied to creditable service of the executive participating employe for which par. (d) would otherwise apply except the number of creditable service years to which that normal retirement date shall be applied may not exceed the number of executive service years of the executive participating employe.

SECTION 7. 40.23 (1) (a) of the statutes is amended to read:

40.23 (1) (a) Except as provided in par. (am), any participant who has attained age 55 and any protective occupation participant who has attained age 50 on or before the annuity effective date and who, regardless of cause, is separated and continues to be separated either until the annuity effective date, or until 30 days after the application is received by the department, if later, from all employment meeting the qualifications specified in s. 40.22 (1) and (2) for any participating employer, or which would meet those qualifications except for the exclusions specified in ss. 40.02 (54) (a), 40.21 (3) and (4) and 40.22 (4), and who is not on authorized leave of absence from any participating employer, or who attains an age that is one year less than the age at which an excise tax would otherwise be levied under section 4974 of the internal revenue code, as defined for the current taxable year under s. 71.02 (2) (d), shall be entitled to a retirement annuity in accordance with the actuarial tables in effect on the effective date of the annuity after making application for a retirement annuity on a form furnished by the department.

SECTION 8. 40.23 (2) (b) 2 of the statutes is amended to read:

40.23 (2) (b) 2. For each participant for creditable service as an elected official and for executive service, as defined under s. 40.02 (31), 1985 stats., 1.8%.

SECTION 9. 40.23 (2m) (b) of the statutes is amended to read:

40.23 (2m) (b) Except as provided in s. 40.26, subject to the limitations under section 415 of the internal revenue code, as defined for the current taxable year under s. 71.02 (2) (d), the initial amount of the normal form annuity shall be an amount which equals 65%, or 85% for participants whose formula rate is determined under par. (e) 4, of the participant's final average earnings plus the amount which can be provided under pars. (c) and (d) or, if less, shall be in the monthly amount equal to the sum of the amounts determined under pars. (c), (d) and (e) as modified by par. (f) and in accordance with the actuarial tables in effect on the annuity effective date. If the participant has creditable service under both par. (e) 4 and another category, the percent applied under this paragraph shall be determined by multiplying the percent that each type of creditable service is of the participant's total creditable service times 85% and 65%, respectively, and adding the results.

SECTION 10. 40.23 (2m) (e) 3 and 4 of the statutes are amended to read:

40.23 (2m) (e) 3. For each participant subject to titles II and XVIII of the federal social security act, for service as a protective occupation participant, 2%, ~~except that the 2% factor shall be reduced for all years of creditable service by 0.0125 for each calendar quarter year that elapses after the calendar year in which the participant attains age 55, excluding all calendar years prior to 1985, and before the termination date of employment as a protective occupation participant, but the factor may not be reduced to less than 1.6% and the reduction may not reduce the retirement benefit to less than the benefit payable if the participant had retired 12 months earlier than the effective date of the annuity.~~

4. For each participant not subject to titles II and XVIII of the federal social security act, for service as a protective occupation participant, 2.5%, ~~except that the 2.5% factor shall be reduced for all years of creditable service by 0.0125 for each calendar quarter year that elapses after the calendar year in which the participant attains age 55, excluding all calendar years prior to 1985, and before the termination date of employment as a protective occupation participant, but the factor may not be reduced to less than 2.1% and the reduction may not reduce the retirement benefit to less than the benefit payable if the participant had retired 12 months earlier than the effective date of the annuity.~~

SECTION 11. 40.26 (1) of the statutes is amended to read:

40.26 (1) Except as provided in s. 40.23 (1) (am) and except for participants who have attained an age that is one year less than the age at which an excise tax would otherwise be levied under section 4974 of the internal revenue code, as defined for the current taxable year under s. 71.02 (2) (d), if a participant receiv-

ing a retirement annuity, or a disability annuitant who has attained his or her normal retirement date, receives earnings after January 1, 1982, subject to s. 40.05 (1), or which would be subject to s. 40.05 (1) except for the exclusions specified in ss. 40.02 (54) (a), 40.21 (3) and (4) and 40.22 (4), the annuity shall be terminated and no payment shall be payable after the month in which the total earnings subject to s. 40.05 (1) received in any annual earnings period exceeds an amount equal to 36 times the participant's final average earnings divided by 5, increased each January 1 after the annuity effective date by the prior year's salary index, ignoring fractions of a dollar.

SECTION 12. 40.26 (2) (d) of the statutes is created to read:

40.26 (2) (d) Notwithstanding sub. (1), a person who is an annuitant on the effective date of this paragraph .... [revisor inserts date], and who is also employed in an executive participating employe position on the effective date of this paragraph .... [revisor inserts date], shall continue to receive the annuity and shall not become a participating employe unless within 60 days after the effective date of this paragraph .... [revisor inserts date], the person elects, on a

form provided by and filed with the department, to become a participating employe and terminate his or her annuity as provided under sub. (1).

SECTION 13. 40.41 (6) (b) and (c) of the statutes are consolidated, renumbered 40.41 (6) (b) and amended to read:

40.41 (6) (b) Services of performed by a student for a school or other education system in which the student is regularly enrolled and attending classes if the services are incidental to the person's course of study at that education system. (c) Services as or a member of a board or commission, other than the governing body of an employer for which the service is performed, when the service except members of governing bodies, in a position or office which does not normally require actual performance of duty for more than at least 600 hours in each calendar year. For purposes of this paragraph, a "board" or "commission" is a body referred to in the statutes as a board or commission.

SECTION 14. 40.63 (8) (c) of the statutes is repealed.