

Sub. S. B. No. 340

129th G.A.

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~~(C) of section 742.444 or to section 742.445 of the Revised Code.~~

~~(2) Increases paid in years subsequent to the year of the first increase paid under this section shall be paid to all eligible persons who, on the date that the increase is authorized by the board, have been receiving a pension or benefit for twelve months is effective prior to July 2, 2013, is eligible to receive an increase under this section while participating in the deferred retirement option plan on attaining the age of fifty-five and having participated in the plan twelve months. The pension amount used in the first calculation of an increase under this section shall be the amount calculated under section 742.442 of the Revised Code unless the member's participation has terminated pursuant to division (C) of section 742.444 or to section 742.445 of the Revised Code. A member whose election to participate in the deferred retirement option plan is effective on or after July 2, 2013, shall not receive an increase under this section while participating in the deferred retirement option plan.~~

~~(E)(F)~~ If payment of a portion of a benefit is made to an alternate payee under section 742.462 of the Revised Code, increases under this section granted while the order is in effect shall be apportioned between the alternate payee and the benefit recipient in the same proportion that the amount being paid to the alternate payee bears to the amount paid to the benefit recipient.

If payment of a portion of a retirement allowance is made to one or more beneficiaries under "option 4" under division (A)(4) of section 742.3711 of the Revised Code, each increase under this section granted while the plan of payment is in effect shall be divided among the designated beneficiaries in accordance with the portion each beneficiary has been allocated.

Sec. 742.38. (A)(1) The board of trustees of the Ohio police and fire pension fund shall adopt rules establishing minimum medical testing and diagnostic standards or procedures to be incorporated into physical examinations administered by physicians to prospective members of the fund. The standards or procedures shall include diagnosis and evaluation of the existence of any heart disease, cardiovascular disease, or respiratory disease. The rules shall specify the form of the physician's report and the information to be included in it.

The board shall notify all employers of the establishment of the minimum standards or procedures and shall include with the notice a copy of the standards or procedures. The board shall notify all employers of any changes made to the standards or procedures. Once the standards or procedures take effect, employers shall cause each prospective member of

the fund to submit to a physical examination that incorporates the standards or procedures.

(2) Division (A)(2) of this section applies to an employee who becomes a member of the fund on or after the date the minimum standards or procedures described in division (A)(1) of this section take effect. For each employee described in division (A)(2) of this section, the employer shall forward to the board a copy of the physician's report of a physical examination that incorporates the standards or procedures described in division (A)(1) of this section. If an employer fails to forward the report in the form required by the board on or before the date that is sixty days after the employee becomes a member of the fund, the board shall assess against the employer a penalty determined under section 742.353 of the Revised Code.

(B) Application for a disability benefit may be made by a member of the fund or, if the member is incapacitated as defined in rules adopted by the board, by a person acting on the member's behalf. Not later than fourteen days after receiving an application for a disability benefit from a member or a person acting on behalf of a member, the board shall notify the member's employer that an application has been filed. The notice shall state the member's position or rank. Not later than twenty-eight days after receiving the notice or filing an application on behalf of a member, the employer shall forward to the board a statement certifying the member's job description and any other information required by the board to process the application.

If the member applying for a disability benefit becomes a member of the fund prior to the date the minimum standards or procedures described in division (A)(1) of this section take effect, the board may request from the member's employer a copy of the physician's report of the member's physical examination taken on entry into the police or fire department or, if the employer does not have a copy of the report, a written statement certifying that the employer does not have a copy of the report. If an employer fails to forward the report or statement in the form required by the board on or before the date that is twenty-eight days after the date of the request, the board shall assess against the employer a penalty determined under section 742.353 of the Revised Code. The board shall maintain the information submitted under this division and division (A)(2) of this section in the member's file.

(C) For purposes of determining under division (D) of this section whether a member of the fund is disabled, the board shall adopt rules establishing objective criteria under which the board shall make the determination. The rules shall include standards that provide for all of the

following:

(1) Evaluating a member's illness or injury on which an application for disability benefits is based;

(2) Defining the occupational duties of a police officer or firefighter;

(3) Providing for the board to assign competent and disinterested physicians and vocational evaluators to conduct examinations of a member;

(4) Requiring a written report for each disability application that includes a summary of findings, medical opinions, including an opinion on whether the illness or injury upon which the member's application for disability benefits is based was caused or induced by the actual performance of the member's official duties, and any recommendations or comments based on the medical opinions;

(5) Providing for the board to consider the member's potential for retraining or reemployment.

(D) This division does not apply to members of the fund who have elected to receive benefits and pensions in accordance with division (A) or (B) of section 742.37 of the Revised Code or from a police relief and pension fund or a firemen's relief and pension fund in accordance with the rules of that fund in force on April 1, 1947.

~~(1)~~ As used in this division ~~(D)(1)~~ of this section:

~~(a)~~ "Totally disabled" means a member of the fund is unable to perform the duties of any gainful occupation for which the member is reasonably fitted by training, experience, and accomplishments. Absolute helplessness is not a prerequisite of being totally disabled.

~~(b)~~ "Permanently disabled" means a condition of disability from which there is no present indication of recovery.

(1) A member of the fund who is permanently and totally disabled as the result of the performance of the member's official duties as a member of a police or fire department shall be paid annual disability benefits in accordance with division (A) of section 742.39 of the Revised Code. In determining whether a member of the fund is permanently and totally disabled, the board shall consider standards adopted under division (C) of this section applicable to the determination.

(2) A member of the fund who is permanently and partially disabled as the result of the performance of the member's official duties as a member of a police or fire department shall, if the disability prevents the member from performing those duties and impairs the member's earning capacity, receive annual disability benefits in accordance with division (B) of section 742.39 of the Revised Code. In determining whether a member of the fund is permanently and partially disabled, the board shall consider standards

adopted under division (C) of this section applicable to the determination.

(3) A member of the fund who is permanently disabled as a result of heart disease or any cardiovascular or respiratory disease of a chronic nature, which disease or any evidence of which disease was not revealed by the physical examination passed by the member on entry into the department or another examination specified in rules the board adopts under section 742.10 of the Revised Code, is presumed to have incurred the disease while performing the member's official duties, unless the contrary is shown by competent evidence. The board may waive the requirement that the absence of disease be evidenced by a physical examination if competent medical evidence of a type specified in rules adopted under section 742.10 of the Revised Code is submitted documenting that the disease was not evident prior to or at the time of entry into the department.

(4) A member of the fund who has ~~completed~~ five or more years of ~~active service in a police or fire department~~ credit and has incurred a permanent disability not caused or induced by the actual performance of the member's official duties as a member of the department, or by the member's own negligence, shall if the disability prevents the member from performing those duties and impairs the member's earning capacity, receive annual disability benefits in accordance with division (C) of section 742.39 of the Revised Code. In determining whether a member of the fund is permanently disabled, the board shall consider standards adopted under division (C) of this section applicable to the determination.

(5) The board shall notify a member of its final action awarding a disability benefit to the member within thirty days of the final action. The notice shall be sent by certified mail, return receipt requested. Not later than ninety days after receipt of notice from the board, the member shall elect, on a form provided by the board, either to accept or waive the disability benefit award. If the member elects to waive the disability benefit award or fails to make an election within the time period, the award is rescinded. A member who later seeks a disability benefit award shall be required to make a new application, which shall be dealt with in accordance with the procedures used for original disability benefit applications.

A person is not eligible to apply for or receive disability benefits under this division, section 742.39 of the Revised Code, or division (C)(2), (3), (4), or (5) of former section 742.37 of the Revised Code unless the person is a member of the fund on the date on which the application for disability benefits is submitted to the fund.

With the exception of persons who may make application for increased benefits as provided in division (D)(2) or (4) of this section or division

(C)(3) or (5) of former section 742.37 of the Revised Code on or after July 24, 1986, or persons who may make application for benefits as provided in section 742.26 of the Revised Code, no person receiving a pension or benefit under this section or division (C) of former section 742.37 of the Revised Code may apply for any new, changed, or different benefit.

Sec. 742.39. (A) A member of the Ohio police and fire pension fund determined to be eligible for a disability benefit under division (D)(1) of section 742.38 of the Revised Code shall be paid annual disability benefits, payable in twelve monthly installments, in an amount equal to seventy-two per cent of the member's average annual salary. If, as of July 2, 2013, the member had fifteen or more years of service credit, the average annual salary shall be determined using three years of contributions. If, as of that date, the member had less than fifteen years of service credit, the average annual salary shall be determined using five years of contributions.

(B) A member of the fund determined to be eligible for a disability benefit under division (D)(2) of section 742.38 of the Revised Code shall be paid annual disability benefits, payable in twelve monthly installments. If the member has fewer than twenty-five years of ~~active service in a police or fire department credit~~, the benefit shall be in an amount fixed by the board of trustees of the Ohio police and fire pension fund. The board may increase or decrease the benefit whenever the board determines that the impairment of the member's earning capacity warrants an increase or decrease based on the standards adopted under division (C) of section 742.38 of the Revised Code applicable to the determination, but in no event shall the benefit exceed sixty per cent of the member's average annual salary.

A member who has ~~completed~~ twenty-five or more years of ~~active service in the department credit~~ shall receive annual disability benefits, payable in twelve monthly installments, in an amount equal to a percentage of the member's average annual salary. The percentage shall be the sum of two and one-half per cent for each of the first twenty years ~~the member was in the active of service of the department credit~~, plus two per cent for each of the twenty-first to twenty-fifth years ~~the member was in the active of service of the department credit~~, plus one and one-half per cent for each year in excess of twenty-five years ~~the member was in the active of service of the department credit~~. The annual disability benefit shall not exceed seventy-two per cent of the member's average annual salary.

In calculating a benefit under this division, a member's average annual salary shall be determined using three years of contributions if, as of July 2, 2013, the member had fifteen or more years of service credit. If, as of that date, the member had less than fifteen years of service credit, the average