

Article 3.

Retirement System for Counties, Cities and Towns.

§ 128-21. Definitions.

The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meanings:

- (1) "Accumulated contribution" shall mean the sum of all amounts deducted from the compensation of a member and credited to his individual account in the annuity savings fund, together with regular interest thereon, as provided in G.S. 128-30, subsection (b).
- (2) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of actuarial assumptions as shall be adopted by the Board of Trustees.
- (3) "Annuity" shall mean payments for life derived from the accumulated contribution of a member. All annuities shall be payable in equal monthly installments.
- (4) "Annuity reserve" shall mean the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity computed at regular interest upon the basis of such mortality tables as shall be adopted by the Board of Trustees.
- (4a) "Authorized representatives who are assisting the Retirement Systems Division staff" means only other staff of the Department of State Treasurer, staff of the Department of Justice, or persons providing internal auditing assistance required under G.S. 143-746(b).
- (5) "Average final compensation" shall mean the average annual compensation, not including any terminal payments for unused sick leave, of a member during the four consecutive calendar years of creditable service producing the highest such average; but shall not include any compensation, as determined by the Board of Trustees, for the reimbursement of expenses or payments for housing or any other allowances whether or not classified as salary and wages. Payout of vacation leave shall be included in "average final compensation" only if the payout is received by the member during the four consecutive calendar years of membership service producing the highest average annual compensation of the member.
- (6) "Beneficiary" shall mean any person in receipt of a pension, an annuity, a retirement allowance or other benefit as provided by this Article.
- (7) "Board of Trustees" shall mean the Board provided for in G.S. 128-28 to administer the Retirement System.
- (7a) a. "Compensation" shall mean all salaries and wages prior to any reduction pursuant to sections 125, 401(k), 403(b), 414(h)(2), and 457 of the Internal Revenue Code, not including any terminal payments for unused sick leave, derived from public funds which are earned by a member of the Retirement System for service as an employee in the unit of the Retirement System for which he is performing full-time work. In addition to the foregoing, "compensation" shall include:
 1. Performance-based compensation (regardless of whether paid in a lump sum, periodic installments, or on a monthly basis);
 2. Conversion of additional benefits to salary (additional benefits such as health, life, or disability plans), so long as the benefits are other than mandated by State law or regulation;

3. Payment of tax consequences for benefits provided by the employer so long as they constitute an adjustment or increase in salary and not a "reimbursement of expenses";
 4. Payout of vacation leave so long as such payouts are permitted by applicable law and regulation;
 5. Employee contributions to eligible deferred compensation plans; and
 6. Effective July 1, 2009, payment of military differential wages.
- b. "Compensation" shall not include any payment, as determined by the Board of Trustees, for the reimbursement of expenses or payments for housing or any other allowances whether or not classified as salary and wages. Notwithstanding any other provision of this Chapter, "compensation" shall not include:
1. Supplement/allowance provided to employee to purchase additional benefits such as health, life, or disability plans;
 2. Travel supplement/allowance (nonaccountable allowance plans);
 3. Employer contributions to eligible deferred compensation plans;
 4. Employer-provided fringe benefits (additional benefits such as health, life, or disability plans);
 5. Reimbursement of uninsured medical expenses;
 6. Reimbursement of business expenses;
 7. Reimbursement of moving expenses;
 8. Reimbursement/payment of personal expenses;
 9. Incentive payments for early retirement;
 10. Bonuses paid incident to retirement;
 11. Contract buyout/severance payments; and
 12. Payouts for unused sick leave.
- c. In the event an employer reports as "compensation" payments not specifically included or excluded as "compensation", such payments shall be "compensation" for retirement purposes only if the employer pays the Retirement System the additional actuarial liability created by such payments.
- (7b) "Compliance investigation" means an independent review or examination by Retirement Systems Division staff or authorized representatives who are assisting the Retirement Systems Division staff of records, activities, actions, or decisions by employers or other affiliated or associated entities having an impact on a Retirement System or benefits administered by the Board of Trustees. The purpose of a compliance investigation is to help detect errors and ensure compliance and full accountability in the use of pension funds.
- (7c) "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, all items, not seasonally adjusted, standard reference base, as published by the Bureau of Labor Statistics of the U.S. Department of Labor.
- (8) "Creditable service" shall mean the total of "prior service" plus "membership service" plus service, both noncontributory and purchased, for which credit is allowable as provided in G.S. 128-26. In no event, however, shall "creditable service" be deemed "membership service" for the purpose of determining eligibility for benefits accruing under this Chapter.

- (8a) "Duly acknowledged" means notarized, including electronic notarization, or verified through an identity authentication service approved by the Department of State Treasurer.
- (9) "Earnable compensation" shall mean the full rate of the compensation that would be payable to an employee if he worked the full normal working time, including any allowance of maintenance or in lieu thereof received by the member.
- (10) "Employee" shall mean any person who is regularly employed in the service of and whose salary or compensation is paid by the employer as defined in subdivision (11) of this section, whether employed or appointed for stated terms or otherwise, except teachers in the public schools and except such employees who hold office by popular election as are not required to devote a major portion of their time to the duties of their office. "Employee" also means all full-time, paid firemen who are employed by any fire department that serves a city or county or any part of a city or county and that is supported in whole or in part by municipal or county funds. "Employee" also includes any participant whose employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, if that participant was an employee at the time of the interruption; if the participant does not return immediately after that service to employment with a covered employer in this System, then the participant shall be deemed "in service" until the date on which the participant was first eligible to be separated or released from his or her involuntary military service. In all cases of doubt the Board of Trustees shall decide who is an employee. On and after August 1, 2001, a person who is a nonimmigrant alien and who otherwise meets the requirements of this subdivision shall not be excluded from the definition of "employee" solely because the person holds a temporary or time-limited visa.
- (11) "Employer" shall mean any county, incorporated city or town, the board of alcoholic control of any county or incorporated city or town, the North Carolina League of Municipalities, and the State Association of County Commissioners. "Employer" shall also mean any separate, juristic political subdivision of the State as may be approved by the Board of Trustees upon the advice of the Attorney General.
- (11a) "Filing" when used in reference to an application for retirement shall mean the receipt of an acceptable application on a form provided by the Retirement System.
- (11b) "Firefighter" means a person (i) who is a full-time paid employee of an employer that participates in the Local Governmental Employees' Retirement System and maintains a fire department certified by the North Carolina Department of Insurance and (ii) who is actively serving in a position with assigned primary duties and responsibilities for the prevention, detection, and suppression of fire.
- (11c) "Fraud investigation" means an independent review or examination by Retirement Systems Division staff or authorized representatives who are assisting the Retirement Systems Division staff of records, activities, actions, or decisions by employers or other affiliated or associated entities having an impact on the Retirement System. The purpose of a fraud investigation is to

help detect and prevent fraud and to ensure full accountability in the use of pension funds.

- (11d) "Law Enforcement Officer" means a full-time paid employee of an employer, who possesses the power of arrest, who has taken the law enforcement oath administered under the authority of the State as prescribed by G.S. 11-11, and who is certified as a law enforcement officer under the provisions of Article 1 of Chapter 17C of the General Statutes or certified as a deputy sheriff under the provisions of Chapter 17E of the General Statutes. "Law enforcement officer" also means the sheriff of the county. The number of paid personnel employed as law enforcement officers by a law enforcement agency may not exceed the number of law enforcement positions approved by the applicable local governing board.
- (12) "Medical board" shall mean the board of physicians provided for in G.S. 128-28, subsection (I).
- (13) "Member" shall mean any person included in the membership of the Retirement System as provided in G.S. 128-24.
- (14) "Membership service" shall mean service as an employee rendered while a member of the Retirement System or membership service in a North Carolina Retirement System that has been transferred into this system.
- (15) "Pension" shall mean payments for life derived from money provided by the employer. All pensions shall be payable in equal monthly installments.
- (16) "Pension reserve" shall mean the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed at regular interest upon the basis of such mortality tables as shall be adopted by the Board of Trustees.
- (17) "Prior service" shall mean the service of a member rendered before the date he becomes a member of the System, certified on his prior service certificate and allowable as provided by G.S. 128-26. No prior service shall be allowed at any employer for which participation is adopted and approved by the Board of Trustees in this Retirement System on or after August 1, 2015.
- (18) "Regular interest" shall mean interest compounded annually at such rate as shall be determined by the Board of Trustees in accordance with G.S. 128-29, subsection (b).
- (18a) "Regularly employed" shall mean employment in a position for which the duties require not less than 1,000 hours of work in a calendar year, provided that the term shall not include any individuals whose employment is considered "temporary employment" as defined in subdivision (22b) of this section or "statutorily-required interim employment" as defined in subdivision (22a) of this section.
- (18b) "Rescue squad worker" means a person (i) who is a full-time paid employee of an employer that participates in the Local Governmental Employees' Retirement System and maintains a rescue squad or emergency medical services team certified by the North Carolina Department of Insurance or the Department of Health and Human Services and (ii) who is actively serving in a position with assigned primary duties and responsibilities for the alleviation of human suffering and assistance to persons who are in difficulty, who are injured, or who become suddenly ill, by providing proper and efficient care or emergency medical services.
- (19) "Retirement" under this Article shall mean the commencement of monthly retirement benefits, along with the termination of employment and the

complete separation from active service with no intent or agreement, expressed or implied, to return to service. A retirement allowance under the provisions of this Article may only be granted upon retirement of a member. In order for a member's retirement to become effective in any month, the member must perform no work for a participating employer, including part-time, temporary, substitute, or contractor work, at any time during the same month immediately following the effective first day of retirement.

- (20) "Retirement allowance" shall mean the sum of the annuity and the pension, or any optional benefit payable in lieu thereof.
- (21) "Retirement System" shall mean the North Carolina Local Governmental Employees' Retirement System as defined in this Article.
- (22) "Service" shall mean service as an employee as described in subdivision (10) of this section and paid for by the employer as described in subdivision (11) of this section.
- (22a) "Statutorily-required interim employment" shall mean individuals whose employment for an employer as defined in subdivision (11) of this section occurs as a result of the individual's designation by the city council as an interim city manager, as provided in G.S. 160A-150 for a period not to exceed 12 months on a nonrecurring basis, or as a result of the individual's designation by the board of commissioners as an interim county manager, as provided in G.S. 153A-84 for a period not to exceed 12 months on a nonrecurring basis.
- (22b) "Temporary employment" shall mean employment for a limited term, in no case to exceed 12 consecutive months on a nonrecurring basis, for an employer as defined in subdivision (11) of this section.
- (23) "Year" shall mean the regular fiscal year beginning July 1, and ending June 30; in the following calendar year unless otherwise defined by regulation of the Board of Trustees. (1939, c. 390, s. 1; 1941, c. 357, s. 1; 1943, c. 535; 1945, c. 526, s. 1; 1947, c. 833, ss. 1, 2; 1949, c. 231, ss. 1, 2; 1949, c. 1015; 1959, c. 491, ss. 1, 2; 1961, c. 515, s. 5; 1965, c. 781; 1971, c. 325, ss. 1-4; 1975, 2nd Sess., c. 983, s. 125; 1977, c. 316, ss. 1, 2; 1981, c. 557, ss. 1, 2; 1985, c. 479, s. 196(b); c. 649, s. 3; 1991, c. 51, s. 1; 1991 (Reg. Sess., 1992), c. 762, ss. 1, 2; 1997-144, s. 1; 1999-167, ss. 1, 2; 1999-456, s. 37; 2001-426, s. 1; 2003-359, ss. 13, 14; 2009-66, ss. 2(a), 6(f), (j); 2011-92, s. 1; 2011-294, s. 4; 2012-185, s. 2(a); 2013-288, ss. 3(b), 4(b); 2014-97, s. 4(b); 2015-164, s. 8; 2015-168, s. 5; 2017-125, s. 1(b); 2017-128, s. 1(e), (f), (g); 2020-48, s. 1.1(a); 2021-75, s. 3.1(a).)