



**TO:** Members of the Legislative Commission on Pensions and Retirement  
**FROM:** Susan Lenczewski, Executive Director  
**RE:** S.F. 1864 (Simonson); H.F. 2390 (Murphy, M.): Service credit purchase for periods during which the member receives workers' compensation  
**DATE:** March 20, 2017

## **Introduction**

S.F. 1864 (Simonson); H.F. 2390 (Murphy, M.) amends statutes governing the purchase of service credit for leaves of absence. The change will impact the pension plans governed by the Minnesota State Retirement System (MSRS), Public Employees Retirement Association (PERA), Teachers Retirement Association (TRA) and St. Paul Teachers Retirement Fund Association (SPTRFA). The affected statutes are the following:

- Minn. Stat. § 352.017 (MSRS)
- Minn. Stat. § 353.0162 (PERA)
- Minn. Stat. § 354.72 (TRA)
- Minn. Stat. § 354A.096 (SPTRFA)

Specifically, the bill amends the provisions permitting a member to purchase up to a year of service credit by requiring the employer to pay the missed employer contributions, rather than leave it to the employer's discretion, in one particular circumstance: when a member is on a leave of absence during which the member is receiving workers' compensation and the member, after the end of the leave, pays the employee contributions missed during the leave. In this circumstance, under current law, the employer has the option of paying the missed employer contributions, but is not required to do so. The proposed legislation would require the employer to pay the missed employer contribution, if the member pays the missed employee contributions. With some variation among the plans, the plans require interest (at an annual rate of 8% or, for TRA, 8.5%) to be paid on the make-up contributions, except where the member does not return to employment and has a shorter period to make the payment.

All sections in the bill would take effect the day following final enactment.

## **Rationale**

The bill is narrowly focused on a change to the provisions that permit the purchase of service credit by an employee who has an injury on the job for which he or she will receive workers' compensation while on a leave of absence to recover from the injury. While the employee will receive workers' compensation during the leave, the employee will receive no regular pay or reduced regular pay during the leave. No pay or reduced pay will result in less than full credit for the employee under the pension plan because employee and employer contributions will not have been made to the pension plan or will be less than the full amount that would have been contributed in the absence of the leave.

When the leave of absence ends, the employee has the right to receive full service or salary credit for pension purposes for the period of the leave by paying the missed employee and employer contributions, with interest. Currently, the statutes *permit* the employer to pay the employer contribution portion, but do not require the employer to make that payment.

The proposed legislation distinguishes a leave of absence caused by an injury on the job from other types of leave, requiring the employer to pay the missed employer contributions only in the former case. Workers' compensation is intended to provide an employee with wages and medical benefits, so the employee can afford to take a leave of absence to recover from the injury. Employers pay premiums to provide workers' compensation, based on the premise that an employer should assist an employee who is injured while performing services for the employer.

The proposed changes to the pension plan statutes are based on the same premise: when the employee loses service or salary credit under the pension plan due to a leave of absence to recover from a work-related injury, the cost of buying back that service credit should be borne by both the employee and the employer. Accordingly, the proposed legislation changes a discretionary employer contribution to a mandatory employer contribution, which arises only if the employee elects to pay the missed employee contributions. From a financial or budgeting point of view, the employer's obligation is no greater than it would have been had the employee not sustained the work-related injury.

The proposed legislation would treat leaves of absence due to an injury on the job for which workers' compensation will be paid similar to leaves of absence for military service, with respect to the purchase of service credit for the period of the leave.

### **Data from PERA on Workers' Compensation Leaves**

According to PERA, during the five year period of 2012 through 2016, employers reported approximately 1,100 leaves of absence due to injuries for which workers' compensation was paid. Of that total, service credit was purchased for 38 leaves, or just under 4 percent. Of the 38 leaves for which service credit was purchased, the employee paid both employer and employee contributions in 32 cases, while the employer elected to pay the employer contribution portion in the remaining 6 cases.

Taking the average annual amount attributable to employer contributions and interest, minus what employers elected to pay annually, results in an estimated annual cost to all PERA employers of just over \$8,000.

### **Section-by-Section Summary of the Bill**

#### **Section 1: Service credit purchase for leave of absence under MSRS (*Minn. Stat. § 352.017*).**

Currently, section 352.017 sets forth the requirements for purchasing service credit for a period of leave of absence. This section permits a member to purchase up to a year of service after a leave of absence, by making a payment equal to the missed employee and employer contributions plus interest at a monthly rate of .667% (8% annually). The statute permits, but does not require, the employer to pay the missed employer contributions, rather than the member. The statute does not distinguish among types of leaves of absence or reasons for the leave, except in the case of military leave, which is governed by a different statute, Minn. Stat. § 352.017.

Also, currently, subdivision 13a of Minn. Stat. § 352.01, which is the definitions section governing the MSRS statutes, is not a definition for a defined term, but is a substantive provision governing the purchase of service credit for periods during which a member receives workers' compensation.

Section 1 amends Minn. Stat. § 352.017 by incorporating the misplaced provision regarding service credit purchase for periods during which the member received workers' compensation, currently in the definitions section, into this section 352.017 and makes the following changes:

- Clarifying changes are made to Subdivision 2, which distinguishes between the treatment of a member who returns to employment after the leave and is given a year to make the payment of employer and employee contributions plus interest (paragraph (b)) and the treatment of a member who does not return to employment and is given 30 days to make the payment of employer and employee contributions (paragraph (c)).
- New subdivisions 3 and 4 address the right to purchase service credit for periods of leave during which the member received workers' compensation. Subdivision 3 applies to members who return to employment and subdivision 4 applies to members who do not return to employment.
- New subdivision 5 states that if a member wishes to purchase service credit after the due dates set forth in subdivisions 2, 3 or 4, as applicable, the service credit purchase provisions in Minn. Stat. § 356.551 applies. This is not a new requirement but is included as a separate subdivision so it will apply to both the general leave of absence service credit purchases and the service credit purchases for periods of workers' compensation leave. Minn. Stat. § 356.551 generally applies to all the plans and permits the purchase of past service credit only if the member pays the actuarial equivalent value of the additional pension benefit obtained by including the service credit to be purchased in calculating the pension benefit. The actuarial equivalent value is typically more than the value of the missed employee and employer contributions plus interest, but if it is not, the member is required to pay the latter amount.

**Section 2: Service credit purchase for leave of absence under PERA (Minn. Stat. § 353.0162).**

This section makes changes similar to those made to the MSRS statute, as described above with regard to Section 1 of the bill, to the PERA statute governing service credit purchases for leaves of absence. The PERA statute is organized differently than the MSRS statute and does not have a misplaced "definition," but the changes made are generally the same as those made to the MSRS statute.

**Section 3: Service credit purchase for leave of absence under TRA (Minn. Stat. § 354.72).**

This section inserts a sentence into the statute that governs service credit purchases by teachers for leaves of absence. The new sentence imposes a new requirement in the case of a leave of absence during which the member receives workers' compensation, which is that the employer is required to pay the employer contribution portion of the required make-up payment, if the teacher makes the employee contribution portion of the required make-up payment.

**Section 4: Service credit purchase for leave of absence under SPTRFA (*Minn. Stat. § 354A.096*).**

Similar to the change made to TRA's statute, this section inserts a sentence into the SPTRFA statute that governs service credit purchases by teachers for leaves of absence. The new sentence imposes a new requirement in the case of a leave of absence during which the member receives workers' compensation, which is that the employer is required to pay the employer contribution portion of the required make-up payment, if the teacher makes the employee contribution portion of the required make-up payment.

**Section 5: Repeal of Minn. Stat. § 352.01, subdivision 13a**

This is the provision that permits a member to purchase service credit for a leave of absence during which the member receives workers' compensation, which is currently in the definitional section of the MSRS statutes, even though it is not a definition. The substance of this subdivision is being incorporated into the changes to Minn. Stat. § 352.017, which permits service credit purchases for leaves of absence, generally, as described above regarding Section 1 of the bill.