NDPERS Technical Legislation
2015 Session
LC 15.0136.01000

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SECTION 1. AMENDMENT. Subsection 6 of section 39-03.1-01 of the North Dakota Century Code is amended and reenacted as follows: 6. "Salary" means the actual dollar compensation, excluding any bonus, ~~or~~ overtime, or expense allowance, paid to or for a contributor for the contributor's services.	Clarify the definition of Salary.
SECTION 2. AMENDMENT. Section 39-03.1-11.2 of the North Dakota Century Code is amended and reenacted as follows: **39-03.1-11.2. Internal Revenue Code compliance.** The board shall administer the plan in compliance with the following sections of the Internal Revenue Code in effect on August 1, ~~2013~~2015, as it applies for governmental plans. 1. Section 415, including the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code. a. The defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code, as approved by the legislative assembly, must be adjusted under section 415(d) of the Internal Revenue Code, effective January first of each year following a regular legislative session. The adjustment of the defined benefit dollar limitation under section 415(d) applies to participating members who have had a separation from employment, but that member's benefit payments may not reflect the adjusted limit prior to January first of the calendar year in which the	Each session we submit this to update the reference to the IRS code.

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adjustment applies. b. If a participating member's benefit is increased by plan amendment after the commencement of benefit payments, the member's annual benefit may not exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code, as adjusted under section 415(d) for the calendar year in which the increased benefit is payable. c. If a participating member is, or ever has been, a participant in another defined benefit plan maintained by the employer, the sum of the participant's annual benefits from all the plans may not exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code. If the participating member's employer-provided benefits under all such defined benefit plans would exceed the defined benefit dollar limitation, the benefit must be reduced to comply with section 415 of the Internal Revenue Code. This reduction must be made pro rata between the plans, in proportion to the participating member's service in each plan. 2. The minimum distribution rules under section 401(a)(9) of the Internal Revenue Code, including the incidental death benefit requirements under section 401(a)(9)(G), and the regulations issued under that provision to the extent applicable to governmental plans. Accordingly, benefits must be distributed or begin to be distributed no later than a member's required beginning date, and the required minimum distribution rules override any inconsistent provision of this chapter. A member's required beginning date is April first of the calendar year following the later of the calendar year in which the member attains age seventy and one-half or terminates employment.	

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3. The annual compensation limitation under section 401(a)(17) of the Internal Revenue Code, as adjusted for cost-of-living increases under section 401(a)(17)(B). 4. The rollover rules under section 401(a)(31) of the Internal Revenue Code. Accordingly, a distributee may elect to have an eligible rollover distribution, as defined in section 402(c)(4) of the Internal Revenue Code, paid in a direct rollover to an eligible retirement plan, as defined in section 402(c)(8)(B) of the Internal Revenue Code, specified by the distributee. 5. If the plan of retirement benefits set forth in this chapter is terminated or discontinued, the rights of all affected participating members to accrued retirement benefits under this chapter as of the date of termination or discontinuance is nonforfeitable, to the extent then funded.	
SECTION 3. AMENDMENT. Subsection 3 of section 39-03.1-14.1 of the North Dakota Century Code is amended and reenacted as follows: 3. Pursuant to rules adopted by the board, a member who has service credit in the system and in any of the alternate plans described in subdivision a or b of subsection 1 is entitled to benefits under this chapter. The employee may elect to have benefits calculated using the benefit formula in section 39-03.1-11 under either of the following calculation methods: a. By using the final average ~~of the highest~~ salary ~~received by the member for any thirty-six months employed during the last one hundred twenty months of employment in the highway patrolmen's retirement system~~as	This is a technical correction as this was previously overlooked when this change was originally implemented.

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calculated in 39-03.1-11. If the participating member has worked for less than thirty-six months at retirement, the final average salary is the average salary for the total months of employment. b. Using the final average ~~of the highest~~ salary ~~received by the member for any thirty-six months during the last one hundred twenty months of~~as calculated in 39-03.1-11 ~~employment~~, with service credit not to exceed one month in any month when combined with the service credit earned in the alternate retirement system. The board shall calculate benefits for an employee under this subsection by using only those years of service employment earned under this chapter.	

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SECTION 4. AMENDMENT. Subsection 1 of section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows: 1. Every eligible ~~governmental unit~~ participating political subdivision employee ~~concurring in~~ at the time the political subdivision joins the plan must so state in writing if the employee concurs in the plan and all future eligible employees of the participating political subdivision are participating members in the plan and must be enrolled in the plan within the first month of employment. Except as otherwise provided by law, every other eligible governmental unit employee of a participating governmental unit is a participating member in the plan and must be enrolled in the plan within the first month of employment. An employee who was not enrolled in the retirement system when eligible to participate must be enrolled immediately upon notice of the employee's eligibility, unless the employee waives in writing the employee's right to participate for the previous time of eligibility, to avoid contributing to the fund for past service. An employee who is eligible for normal retirement who accepts a retirement benefit under this chapter and who subsequently becomes employed with a participating employer other than the employer with which the employee was employed at the time the employee retired under this chapter may, before ~~reenrolling~~being reenrolled in the retirement plan within the first month of employment, elect to permanently waive future participation in the retirement plan and the retiree health program and maintain that employee's retirement status. An employee making this election is not required to make any future employee contributions to the public employees retirement system nor is the employee's employer required to make any further contributions on behalf of that employee.	Designates that a member becomes a participating member upon employment rather than receipt of an application

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SECTION 5. AMENDMENT. Subsection 1 of section 54-52-17.2 of the North Dakota Century Code is amended and reenacted as follows: 1. a. For the purpose of determining eligibility for benefits under this chapter, an employee's years of service credit is the total of the years of service credit earned in the public employees retirement system and the years of service credit earned in any number of the following: (1) The teachers' fund for retirement. (2) The highway patrolmen's retirement system. (3) The teachers' insurance and annuity association of America - college retirement equities fund (TIAA-CREF), for service credit earned while employed by North Dakota institutions of higher education. Service credit may not exceed twelve months of credit per year. b. Pursuant to rules adopted by the board, an employee who has service credit in the system and in any of the plans described in paragraphs 1 and 2 of subdivision a is entitled to benefits under this chapter. The benefits of a temporary employee employed after July 31, 2015, must be calculated using the benefit formula in section 54-52-17 under the method listed in paragraph 1. A permanent employee and a temporary employed prior to August 1, 2015, may elect to have benefits calculated using the benefit formula in section 54-52-17 under either of the following methods: (1) The final average ~~of the highest~~ salary ~~received by the member for any thirty-six months employed during the last one hundred twenty months of employment in the public employees retirement~~	Clarify that dual membership does not apply to temporary employees.

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~~system~~as calculated in 54-52-17. If the participating member has worked for less than thirty-six months at retirement, the final average salary is the average salary for the total months of employment. (2) The final average ~~of the highest~~ salary ~~received by the member for any thirty-six consecutive months during the last one hundred twenty months of~~as calculated in 54-52-17 for employment with any of the three eligible employers under this subdivision, with service credit not to exceed one month in any month when combined with the service credit earned in the alternate retirement system. The board shall calculate benefits for an employee under this subsection by using only those years of service credit earned under this chapter	
SECTION 6. AMENDMENT. Section 54-52-17.14 of the North Dakota Century Code is amended and reenacted as follows: **54-52-17.14. Military service under the Uniformed Services Employment and Reemployment Rights Act - Member retirement credit.** A member reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the period of qualified military service. The required contribution for the credit, including payment for retiree health benefits, must be made in the same manner and by the same party as would have been made had the employee been continuously employed. If the salary the member would have received during the period of service is not reasonably certain, the member's	Compliance with Federal Requirements. Incorporate the provisions of the Heroes Earnings Assistance and Relief Tax Act (HEART). *If a participating member dies on or after January 1, 2007 while performing qualified military service (as defined in section 414(u)(5) of the Internal Revenue Code), the deceased member's beneficiaries shall be entitled to any death benefits (other than credit for years of service for purposes of benefits) that would have been provided under the Plan if such participating member had resumed employment and then terminated*

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average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased must be used. Employees must be allowed up to three times the period of military service or five years, whichever is less, to make any required payments. This provision applies to all qualifying periods of military service since October 1, 1994. Any payments made by the member to receive qualifying credit inconsistent with this provision must be refunded. Employees shall make application to the employer for credit and provide a DD Form 214 to verify service. If a participating member dies on or after December 31, 2006, while performing qualified military service, as defined in section 414(u)(5) of the Internal Revenue Code, the deceased member's beneficiaries are entitled to any death benefits, other than credit for years of service for purposes of benefits, that would have been provided under the plan if the participating member had resumed employment and then terminated employment on account of death. The period of such member's qualified military service shall be treated as vesting service under the plan.	*employment on account of death. In addition, the period of such member's qualified military service shall be treated as vesting service under the Plan."*
SECTION 7. AMENDMENT. Section 54-52-28 of the North Dakota Century Code is amended and reenacted as follows: **54-52-28. Internal Revenue Code compliance.** The board shall administer the plan in compliance with the following sections of the Internal Revenue Code in effect on August 1, ~~2013~~2015, as it applies for governmental plans. 1. Section 415, including the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code. a. The defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code, as approved by the legislative assembly, must be	Each session we submit this to update the reference to the IRS code.

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adjusted under section 415(d) of the Internal Revenue Code, effective January first of each year following a regular legislative session. The adjustment of the defined benefit dollar limitation under section 415(d) applies to participating members who have had a separation from employment, but that member's benefit payments may not reflect the adjusted limit prior to January first of the calendar year in which the adjustment applies. b. If a participating member's benefit is increased by plan amendment after the commencement of benefit payments, the member's annual benefit may not exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code, as adjusted under section 415(d) for the calendar year in which the increased benefit is payable. c. If a participating member is, or ever has been, a participant in another defined benefit plan maintained by the employer, the sum of the participant's annual benefits from all the plans may not exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code. If the participating member's employer-provided benefits under all such defined benefit plans would exceed the defined benefit dollar limitation, the benefit must be reduced to comply with section 415 of the Internal Revenue Code. The reduction must be made pro rata between the plans, in proportion to the participating member's service in each plan. 2. The minimum distribution rules under section 401(a)(9) of the Internal Revenue Code, including the incidental death benefit requirements under section 401(a)(9)(G), and the regulations issued under that provision to the extent	

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applicable to governmental plans. Accordingly, benefits must be distributed or begin to be distributed no later than a member's required beginning date, and the required minimum distribution rules override any inconsistent provision of this chapter. A member's required beginning date is April first of the calendar year following the later of the calendar year in which the member attains age seventy and one-half or terminates employment. 3. The annual compensation limitation under section 401(a)(17) of the Internal Revenue Code, as adjusted for cost-of-living increases under section 401(a)(17)(B). 4. The rollover rules under section 401(a)(31) of the Internal Revenue Code. Accordingly, a distributee may elect to have an eligible rollover distribution, as defined in section 402(c)(4) of the Internal Revenue Code, paid in a direct rollover to an eligible retirement plan, as defined in section 402(c)(8)(B) of the Internal Revenue Code, specified by the distributee. 5. If the plan of retirement benefits set forth in this chapter is terminated or discontinued, the rights of all affected participating members to accrued retirement benefits under this chapter as of the date of termination or discontinuance is nonforfeitable, to the extent then funded	
SECTION 8. AMENDMENT. Subsection 1 of section 54-52.1-03 of the North Dakota Century Code is amended and reenacted as follows: 1. Any eligible employee may be enrolled in the uniform group insurance program created by this chapter by requesting enrollment with the employing department. If an eligible employee does not enroll in the uniform group insurance program at the time of beginning employment, <u>in order to enroll at a later time</u> the eligible	Designates that a member becomes a participating member upon employment for life and EAP rather than receipt of an application

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employee must meet minimum requirements established by the board ~~to enroll thereafter~~. An employing department may not require an active eligible employee to request coverage to receive the minimum employer-paid life insurance benefits coverage or employee assistance program benefits coverage.	
SECTION 9. AMENDMENT. Section 54-52.1-03.1 of the North Dakota Century Code is amended and reenacted as follows: **54-52.1-03.1. Certain political subdivisions authorized to join uniform group insurance program - Employer contribution.** A political subdivision, if eligible under federal law, may extend the benefits of the uniform group insurance program under this chapter to its permanent employees, subject to minimum requirements established by the board and a minimum period of participation of sixty months. If the political subdivision withdraws from participation in the uniform group insurance program, before completing sixty months of participation, unless federal or state laws or rules are modified or interpreted in a way that makes participation by the political subdivision in the uniform group insurance program no longer allowable or appropriate, the political subdivision shall make payment to the board in an amount equal to any expenses incurred in the uniform group insurance program that exceed income received on behalf of the political subdivision's employees as determined under rules adopted by the board. The Garrison Diversion Conservancy District, and district health units required to participate in the public employees retirement system under section 54-52-02, shall participate in the uniform group insurance program under the same terms and conditions as state agencies. A retiree who has accepted a retirement allowance from a participating political subdivision's retirement plan may elect to participate in the uniform group under this chapter without meeting minimum	Clarify that political subdivisions can only join the NDPERS insurance plan if permitted under federal law (ACA).

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requirements at age sixty-five, when the employee's spouse reaches age sixty-five, upon the receipt of a benefit, when the political subdivision joins the uniform group insurance plan if the retiree was a member of the former plan, or when the spouse terminates employment. If a retiree or surviving spouse does not elect to participate at the times specified in this section, the retiree or surviving spouse must meet the minimum requirements established by the board. Each retiree or surviving spouse shall pay directly to the board the premiums in effect for the coverage then being provided. The board may require documentation that the retiree has accepted a retirement allowance from an eligible retirement plan other than the public employees retirement system.	
SECTION 10. AMENDMENT. Section 54-52.1-03.4 of the North Dakota Century Code is amended and reenacted as follows: **54-52.1-03.4. Temporary employees and employees on unpaid leave of absence.** A temporary employee employed before August 1, 2007, may elect to participate in the uniform group insurance program by completing the necessary enrollment forms and qualifying under the medical underwriting requirements of the program if such election is made before January 1, 2015, and if the temporary employee is participating in the uniform group insurance program as of January 1, 2015. ~~A temporary employee employed on or after August 1, 2007, is only eligible~~ In order for a temporary employee employed after July 31, 2007, to quality to participate in the uniform group insurance program ~~if~~ , the employee ~~is~~ must be employed at least twenty hours per week ~~and~~ , must be employed at least twenty weeks each year of employment , must make the election to participate before January 1, 2015; and must be participating in the uniform group insurance program as of January 1, 2015. A To be eligible to participate in the uniform group insurance program, a temporary employee first employed after December 31, ~~2013~~ 2014, or any temporary employee not participating	Clarifies that temp employees before January 2015 must enroll before that date to be eligible if they do not meet the new ACA eligibility provisions

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in the uniform group insurance program as of January 1, 2015 ~~is eligible to participate in the uniform group insurance program only if the employee meets~~ must meet the definition of a full-time employee under section 4980H(c)(4) of the Internal Revenue Code [26 U.S.C. 4980H(c)(4)]. ~~The~~ Monthly, the temporary employee or the temporary employee's employer shall pay ~~monthly~~ to the board the premiums in effect for the coverage being provided. In the case of a temporary employee who is an applicable taxpayer as defined in section 36B(c)(1)(A) of the Internal Revenue Code [26 U.S.C. 36B(c)(1)(A)], the temporary employee's required contribution for medical and hospital benefits self-only coverage may not exceed the maximum employee required contribution specified under section 36B(c)(2)(C) of the Internal Revenue Code [26 U.S.C. 36B(c)(2)(C)], and the employer shall pay any difference between the maximum employee required contribution for medical and hospital benefits self-only coverage and the cost of the premiums in effect for this coverage. An employer may pay health or life insurance premiums for a permanent employee on an unpaid leave of absence. A political subdivision, department, board, or agency may make a contribution for coverage under this section.	
SECTION 11. AMENDMENT. Section 54-52.1-18 of the North Dakota Century Code is amended and reenacted as follows: **54-52.1-18. High-deductible health plan alternative with health savings account option.** 1. The board shall develop and implement a high-deductible health plan as an alternative to the plan under section ~~54-52.1-06~~ 54-52.1-02. The high-deductible health plan alternative with a health savings account must be made available to state employees by January 1, 2012. ~~The~~ After June 30, 2013, at the board's discretion, the high-deductible health plan alternative may be offered~~,~~	Based on current language, it appears that coverage can be made available to political subdivisions on an individual basis as an option to the PPO/Basic plan. The will make the HDHP available on a group basis.

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~~at the discretion of the board,~~ to political subdivisions ~~after June 30, 2013~~for coverage of political subdivision employees. If a political subdivision elects this high-deductible option the political subdivision may not offer the plan under section 54-52.1-02. 2. Health savings account fees for participating state employees must be paid by the employer. ~~Subject~~ a. Except as provided in subdivision b, subject to the limits of section 223(b) of the Internal Revenue Code [26 U.S.C. 233(b)], the difference between the cost of the single and family premium for eligible state employees under section 54-52.1-06 and the premium for those employees electing to participate under the high-deductible health plan under this section must be deposited in a health savings account for the benefit of each participating employee. b. If the public employees retirement system is unable to establish a health savings account due to the employee's ineligibility under federal or state law or due to failure of the employee to provide necessary information in order to establish the account, the system is not responsible for depositing the health savings account contribution. The member will remain a participant in the high-deductible health plan regardless of whether a health savings account is established. 3. Each new state employee ~~of a participating employer under this section~~ must be provided the opportunity to elect the high-deductible health plan alternative. At least once each biennium, the board shall ~~have~~ provide an open enrollment period allowing existing state employees ~~of a participating employer under this section~~or a political subdivision to change their coverage.	Clarifies what will happen when an HSA account cannot be established for a member.