**Section 1540.90 Benefit Offset**

a) Occupational Disability, Occupational Death, and Survivor’s annuity

Any amounts received under the Workers' Compensation Act [820 ILCS 305] or the Workers' Occupational Diseases Act [820 ILCS 310] as compensation for the disability or death of a member shall be applied, for the period of time prescribed by those Acts for payments, as an offset against any occupational disability benefit, occupational death benefit, or survivor’s annuity provided under Article 14 of the Illinois Pension Code [40 ILCS 5] for that disability or death, as follows:

1) If the amount of compensation received under the Workers' Compensation Act or the Workers' Occupational Diseases Act for a month is less than the occupational disability, occupational death benefit, or survivor’s annuity provided under Article 14 of the Illinois Pension Code for that month , then only the amount of the monthly occupational disability, occupational death benefit, or survivor’s annuity that exceeds the monthly compensation received under the Workers' Compensation Act or the Workers' Occupational Diseases Act shall be payable by the Retirement System, subject, in the case of occupational death, to any minimum benefit provided by Sections 14-103.18 and 14-121(h) of the Pension Code. If the amount of compensation received under the Workers' Compensation Act or the Workers' Occupational Diseases Act for a month equals or exceeds the monthly occupational disability or death benefit provided under Article 14 of the Pension Code, then no benefit shall be payable by the Retirement System for that month.

2) If the compensation for disability or death is received in a lump sum, or partly in a lump sum and partly in monthly or weekly sums, and if a period of time is not prescribed for payment of that compensation by the Workers' Compensation Act or the Workers' Occupational Diseases Act, then the Retirement System shall, for offset purposes, consider the compensation as if it had been paid using the average weekly wage as prescribed under those Acts. Salary or wages paid on or after the date of the member's disability shall not be included in the amount to be offset under this subsection against benefits payable under Article 14 of the Illinois Pension Code on account of the member's service.

3) In the event the whole or any part of the benefits received under the Workers' Compensation Act or Workers' Occupational Diseases Act is commuted into one sum, the aggregate sum of the benefits so commuted and not the commuted value thereof shall be used for purposes of ascertaining the amount of the offset under this subsection.

4) No offset shall be applied under this subsection against the member's retirement annuity.

5) The offset described in this subsection shall be reduced by any legal expenses granted in the award.

6) The offset described in this subsection shall be reduced by amounts received or paid under the Workers' Compensation Act or Workers' Occupational Diseases Act for medical, hospital, or burial expenses, provided that, in the case of medical and hospital expenses, the expenses are incurred before either a final determination is made on the member's claim by the Illinois Workers' Compensation Commission or the member’s claim is otherwise settled.

7) That portion of the occupational death benefit consisting of accumulated contributions of a member shall not be subject to any offset mentioned in this Section.

8) The termination of death benefits under the Workers' Compensation Act or Workers' Occupational Diseases Act due to remarriage of the benefit recipient shall cause the offset to the Occupational Death Benefit applicable to the remarried benefit recipient to terminate effective with the last month of eligibility represented in the final benefit payment under the Workers' Compensation Act or Workers' Occupational Diseases Act.

9) In those cases in which the injury or death, for which an occupational disability, occupational death benefit, or survivor’s annuity is payable, creates a legal liability for damages on the part of some person other than the employer to pay damages, the Workers' Compensation offset shall be applied as follows:

A) Any amounts paid under the Workers' Compensation Act or Workers' Occupational Diseases Act are subject to the offset provisions of Article 14 of the Pension Code and this Part, even though those amounts are recoverable under Section 5(b) of the Workers' Compensation Act (subrogation).

B) In the event that benefits due under the Workers' Compensation Act or Workers' Occupational Diseases Act are commuted into one sum or waived in lieu of the member seeking recovery against a third party, the System shall use the amount of any judgment, settlement or payment for the injury by the third party as a credit against any benefits paid or payable by the System.

10) Any periods of disability for which payment under the Workers' Compensation Act is denied, due to the failure of the individual to comply with that Act, that result in a period of noncompensability under the Workers' Compensation Act will not be considered for Occupational Disability until the entire Workers' Compensation case has been finalized through the Illinois Workers' Compensation Commission.

b) Nonoccupational Disability and Temporary Disability

As used in this Section, "full retirement age" means the age at which an individual is eligible to receive full Social Security retirement benefits.

1) The nonoccupational and temporary disability benefit payable to a covered member shall be offset before the full retirement age by the amount of Social Security disability benefit payable prior to the member attaining the full retirement age and after the full retirement age by the amount of the Social Security retirement benefit for which the individual is first eligible on or after attaining the full retirement age less legal expenses paid by the member to obtain the award up to the maximum allowed by the Social Security Administration.

2) The Social Security retirement benefit offset will be applied as follows, at the full retirement age. For a disability benefit recipient who received Social Security disability benefits before attaining the full retirement age, the Social Security disability benefit payment applied as the offset prior to attaining the full retirement age will remain in effect as the Social Security retirement benefit offset on or after attaining the full retirement age.

3) Disability benefits payable from the System commencing after the full retirement age will be offset by Social Security retirement benefits for which the individual is eligible on the commencement of disability.

c) Social Security Benefit Offset to Widow's and Survivor's Annuities

1) Beginning July 1, 2009, the Social Security survivor benefit offset (offset) shall not apply to any widow's or survivor's annuity of any person who began receiving a retirement annuity or a survivor's or widow's annuity prior to January 1, 1998.

2) Beginning July 1, 2009, the offset shall not apply to the widow's or survivor's annuity of any person who began receiving a widow's or survivor's annuity on or after January 1, 1998 and prior to July 1, 2009.

3) If the widow's or survivor's annuity is payable based on a coordinated employee's death in service, the offset shall not be applied to the widow's or survivor's annuity.

4) Any person who began receiving a retirement annuity after January 1, 1998 and before July 1, 2009 may make a one-time election before July 1, 2009 to reduce the monthly retirement annuity payable by 3.825% in exchange for not having the offset applied to any survivor's annuity payable.

5) Any employee with a retirement annuity effective date on or later than July 1, 2009 may, at the time of retirement, elect to reduce the monthly retirement annuity payable by 3.825% in exchange for not having the offset applied to any survivor's annuity payable.

6) For a person on the level income option under Section 14-112 of the Illinois Pension Code who makes an election under subsection (c)(4) or (c)(5) of this Section, the reduction shall be computed based on the reduced amount of the retirement annuity to be paid after the person has become eligible for old age payments under the federal Social Security Act plus any automatic annual increases received as of the date of the election.

7) For a member whose accrued benefits are payable, in whole or in part, to an alternate payee pursuant to a QILDRO, as established by Section 1-119 of the Pension Code, any reduction due to an election made by the member under subsection (c)(4) or (c)(5) of this Section shall be computed based on the total amount of the member's retirement annuity prior to and without giving effect to any QILDRO reduction for amounts payable to an alternate payee. However, the actual reduction under subsection (c)(4) or (c)(5) shall be applied exclusively to the member's retirement annuity and not to any payment to an alternate payee.

8) If a coordinated employee does not elect to reduce the retirement annuity in exchange for not applying the offset to the SERS survivor's annuity, the survivor's annuity shall be reduced by one-half of any Social Security survivor's benefits for which all beneficiaries included in the widow's or survivor's annuity are eligible. The offset shall not reduce any survivor's or widow's benefit by more than 50%. If a coordinated employee does not elect to reduce the retirement annuity in exchange for not applying the offset to the SERS survivor's annuity, the offset will commence on the date the beneficiaries first become eligible to receive any portion of the Social Security benefit, regardless of whether the beneficiaries elect to accept the Social Security benefit on that date or if the beneficiaries' own earnings preclude payment of Social Security survivor's benefits.

9) If an annuitant who elected to have the retirement annuity reduced 3.825% to prevent an offset from taking place to any survivor benefits payable has a change in marital status due to death or divorce, that annuitant may make an irrevocable election to prospectively discontinue the reduction. However, no reimbursement of prior reductions will be made.

10) If, at the time the offset is to be commenced, the survivor is eligible to receive a monthly benefit amount from the Social Security Administration based on his/her own Primary Insurance Amount, that amount shall be deducted from the amount of survivor's benefit payable by Social Security and the offset computed on the difference. If the survivor is eligible to receive a monthly benefit amount based on his/her own Primary Insurance Amount and a governmental pension offset would have been applied to the Social Security survivor's benefit, that amount shall be deducted from the amount of the survivor's benefit payable by Social Security and the offset computed on the difference.

11) The Social Security reduction amount once established shall remain constant except for the following conditions:

A) If a survivor under age 50 previously receiving the survivor's benefit because of minor children becomes a deferred annuitant, the offset amount will be recomputed when he or she first becomes eligible for Social Security survivor's benefits. The offset amount will be based on the original widow's or widower's Social Security survivor's amount, ignoring subsequent increases to the deceased's Primary Insurance Amount. The recomputed offset amount shall be the balance of the Social Security survivor's benefit minus the governmental pension offset, if any.

B) The offset amount will be adjusted when a child is removed from consideration for the System's annuity.

C) The offset amount will be adjusted when any benefit recipients become ineligible for Social Security benefits.

D) Beginning July 1, 2009, if a survivor under age 62 receiving a survivor's benefit subject to the Social Security offset becomes eligible to receive a monthly benefit amount based on a Primary Insurance Amount on his or her own record, the offset will be recomputed when he or she first becomes eligible to receive his or her own Primary Insurance Amount. The offset amount will be based on the estimated widow's or widower's Social Security survivor's amount determined at the date of death of the member less the estimated monthly benefit amount based on the Primary Insurance Amount of the survivor determined at the date of death of member, and the government pension offset, if any, ignoring any subsequent increases to the deceased Primary Insurance Amount or the survivor's Primary Insurance Amount. The monthly benefit amount based on the primary insurance amount of the survivor shall be determined from the Social Security Administration's Personal Earnings and Benefit Estimate Statement, including any adjustment due to the application of the Windfall Elimination Provision.

d) Retirement Annuity

Pursuant to Section 14-108(f) of the Pension Code, for members under age 65, the primary insurance benefit payable to the member upon attainment of age 65 shall, at the date of acceptance of a retirement annuity, be determined from the Social Security Administration's Personal Earnings and Benefit Estimate Statement, including any adjustments due to the application of the Windfall Elimination Provision. For members over age 65, the primary insurance benefit shall be the amount of Social Security benefits payable at the date of retirement with the State Employees' Retirement System.

(Source: Amended at 46 Ill. Reg. 14779, effective August 22, 2022)