

1 AN ACT concerning public employee benefits.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Pension Code is amended by changing
5 Section 7-109 as follows:

6 (40 ILCS 5/7-109) (from Ch. 108 1/2, par. 7-109)

7 Sec. 7-109. Employee.

8 (1) "Employee" means any person who:

9 (a) 1. Receives earnings as payment for the performance
10 of personal services or official duties out of the general
11 fund of a municipality, or out of any special fund or funds
12 controlled by a municipality, or by an instrumentality
13 thereof, or a participating instrumentality, including, in
14 counties, the fees or earnings of any county fee office;
15 and

16 2. Under the usual common law rules applicable in
17 determining the employer-employee relationship, has the
18 status of an employee with a municipality, or any
19 instrumentality thereof, or a participating
20 instrumentality, including aldermen, county supervisors
21 and other persons (excepting those employed as independent
22 contractors) who are paid compensation, fees, allowances
23 or other emolument for official duties, and, in counties,

1 the several county fee offices.

2 (b) Serves as a township treasurer appointed under the
3 School Code, as heretofore or hereafter amended, and who
4 receives for such services regular compensation as
5 distinguished from per diem compensation, and any regular
6 employee in the office of any township treasurer whether or
7 not his earnings are paid from the income of the permanent
8 township fund or from funds subject to distribution to the
9 several school districts and parts of school districts as
10 provided in the School Code, or from both such sources; or
11 is the chief executive officer, chief educational officer,
12 chief fiscal officer, or other employee of a Financial
13 Oversight Panel established pursuant to Article 1H of the
14 School Code, other than a superintendent or certified
15 school business official, except that such person shall not
16 be treated as an employee under this Section if that person
17 has negotiated with the Financial Oversight Panel, in
18 conjunction with the school district, a contractual
19 agreement for exclusion from this Section.

20 (c) Holds an elective office in a municipality,
21 instrumentality thereof or participating instrumentality.

22 (2) "Employee" does not include persons who:

23 (a) Are eligible for inclusion under any of the
24 following laws:

25 1. "An Act in relation to an Illinois State
26 Teachers' Pension and Retirement Fund", approved May

1 27, 1915, as amended;

2 2. Articles 15 and 16 of this Code.

3 However, such persons shall be included as employees to
4 the extent of earnings that are not eligible for inclusion
5 under the foregoing laws for services not of an
6 instructional nature of any kind.

7 However, any member of the armed forces who is employed
8 as a teacher of subjects in the Reserve Officers Training
9 Corps of any school and who is not certified under the law
10 governing the certification of teachers shall be included
11 as an employee.

12 (b) Are designated by the governing body of a
13 municipality in which a pension fund is required by law to
14 be established for policemen or firemen, respectively, as
15 performing police or fire protection duties, except that
16 when such persons are the heads of the police or fire
17 department and are not eligible to be included within any
18 such pension fund, they shall be included within this
19 Article; provided, that such persons shall not be excluded
20 to the extent of concurrent service and earnings not
21 designated as being for police or fire protection duties.
22 However, (i) any head of a police department who was a
23 participant under this Article immediately before October
24 1, 1977 and did not elect, under Section 3-109 of this Act,
25 to participate in a police pension fund shall be an
26 "employee", and (ii) any chief of police who became a

1 participating employee under this Article before January
2 1, 2019 and who elects to participate in this Fund under
3 Section 3-109.1 of this Code, regardless of whether such
4 person continues to be employed as chief of police or is
5 employed in some other rank or capacity within the police
6 department, shall be an employee under this Article for so
7 long as such person is employed to perform police duties by
8 a participating municipality and has not lawfully
9 rescinded that election.

10 (b-5) Were not participating employees under this
11 Article before the effective date of this amendatory Act of
12 the 100th General Assembly and participated as a chief of
13 police in a fund under Article 3 and return to work in any
14 capacity with the police department, with any oversight of
15 the police department, or in an advisory capacity for the
16 police department with the same municipality with which
17 that pension was earned, regardless of whether they are
18 considered an employee of the police department or are
19 eligible for inclusion in the municipality's Article 3
20 fund.

21 (c) Are contributors to or eligible to contribute to a
22 Taft-Hartley pension plan to which the participating
23 municipality is required to contribute as the person's
24 employer based on earnings from the municipality. Nothing
25 in this paragraph shall affect service credit or creditable
26 service for any period of service prior to the effective

1 date of this amendatory Act of the 98th General Assembly,
2 and this paragraph shall not apply to individuals who are
3 participating in the Fund prior to the effective date of
4 this amendatory Act of the 98th General Assembly.

5 (d) Become an employee of any of the following
6 participating instrumentalities on or after the effective
7 date of this amendatory Act of the 99th General Assembly:
8 the Illinois Municipal League; the Illinois Association of
9 Park Districts; the Illinois Supervisors, County
10 Commissioners and Superintendents of Highways Association;
11 an association, or not-for-profit corporation, membership
12 in which is authorized under Section 85-15 of the Township
13 Code; the United Counties Council; or the Will County
14 Governmental League.

15 (3) All persons, including, without limitation, public
16 defenders and probation officers, who receive earnings from
17 general or special funds of a county for performance of
18 personal services or official duties within the territorial
19 limits of the county, are employees of the county (unless
20 excluded by subsection (2) of this Section) notwithstanding
21 that they may be appointed by and are subject to the direction
22 of a person or persons other than a county board or a county
23 officer. It is hereby established that an employer-employee
24 relationship under the usual common law rules exists between
25 such employees and the county paying their salaries by reason
26 of the fact that the county boards fix their rates of

1 compensation, appropriate funds for payment of their earnings
2 and otherwise exercise control over them. This finding and this
3 amendatory Act shall apply to all such employees from the date
4 of appointment whether such date is prior to or after the
5 effective date of this amendatory Act and is intended to
6 clarify existing law pertaining to their status as
7 participating employees in the Fund.

8 (Source: P.A. 99-830, eff. 1-1-17; 100-281, eff. 8-24-17.)

9 Section 99. Effective date. This Act takes effect January
10 1, 2019.