

AN ACT concerning public employee benefits.

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

Section 5. The Illinois Pension Code is amended by changing Sections 7-109, 15-106, 15-107, and 16-106 as follows:

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

(Text of Section WITHOUT the changes made by P.A. 98-599,
which has been held unconstitutional)

Sec. 7-109. Employee.

(1) "Employee" means any person who:

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

2. Under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee with a municipality, or any instrumentality thereof, or a participating instrumentality, including aldermen, county supervisors and other persons (excepting those

employed as independent contractors) who are paid compensation, fees, allowances or other emolument for official duties, and, in counties, the several county fee offices.

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

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

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

(a) Are eligible for inclusion under any of the

following laws:

1. "An Act in relation to an Illinois State Teachers' Pension and Retirement Fund", approved May 27, 1915, as amended;

2. Articles 15 and 16 of this Code.

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

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

(b) Are designated by the governing body of a municipality in which a pension fund is required by law to be established for policemen or firemen, respectively, as performing police or fire protection duties, except that when such persons are the heads of the police or fire department and are not eligible to be included within any such pension fund, they shall be included within this Article; provided, that such persons shall not be excluded to the extent of concurrent service and earnings not designated as being for police or fire protection duties. However, (i) any head of a police department who was a participant under this Article immediately before October

1, 1977 and did not elect, under Section 3-109 of this Act, to participate in a police pension fund shall be an "employee", and (ii) any chief of police who elects to participate in this Fund under Section 3-109.1 of this Code, regardless of whether such person continues to be employed as chief of police or is employed in some other rank or capacity within the police department, shall be an employee under this Article for so long as such person is employed to perform police duties by a participating municipality and has not lawfully rescinded that election.

(c) Are contributors to or eligible to contribute to a Taft-Hartley pension plan to which the participating municipality is required to contribute as the person's employer based on earnings from the municipality. Nothing in this paragraph shall affect service credit or creditable service for any period of service prior to the effective date of this amendatory Act of the 98th General Assembly, and this paragraph shall not apply to individuals who are participating in the Fund prior to the effective date of this amendatory Act of the 98th General Assembly.

(d) Become an employee of any of the following participating instrumentalities on or after the effective date of this amendatory Act of the 99th General Assembly: the Illinois Municipal League; the Illinois Association of Park Districts; the Illinois Supervisors, County Commissioners and Superintendents of Highways Association;

an association, or not-for-profit corporation, membership in which is authorized under Section 85-15 of the Township Code; the United Counties Council; or the Will County Governmental League.

(3) All persons, including, without limitation, public defenders and probation officers, who receive earnings from general or special funds of a county for performance of personal services or official duties within the territorial limits of the county, are employees of the county (unless excluded by subsection (2) of this Section) notwithstanding that they may be appointed by and are subject to the direction of a person or persons other than a county board or a county officer. It is hereby established that an employer-employee relationship under the usual common law rules exists between such employees and the county paying their salaries by reason of the fact that the county boards fix their rates of compensation, appropriate funds for payment of their earnings and otherwise exercise control over them. This finding and this amendatory Act shall apply to all such employees from the date of appointment whether such date is prior to or after the effective date of this amendatory Act and is intended to clarify existing law pertaining to their status as participating employees in the Fund.

(Source: P.A. 97-429, eff. 8-16-11; 97-609, eff. 8-26-11; 97-813, eff. 7-13-12; 98-712, eff. 7-16-14.)

(40 ILCS 5/15-106) (from Ch. 108 1/2, par. 15-106)

(Text of Section WITHOUT the changes made by P.A. 98-599, which has been held unconstitutional)

Sec. 15-106. Employer. "Employer": The University of Illinois, Southern Illinois University, Chicago State University, Eastern Illinois University, Governors State University, Illinois State University, Northeastern Illinois University, Northern Illinois University, Western Illinois University, the State Board of Higher Education, the Illinois Mathematics and Science Academy, the University Civil Service Merit Board, the Board of Trustees of the State Universities Retirement System, the Illinois Community College Board, community college boards, any association of community college boards organized under Section 3-55 of the Public Community College Act, the Board of Examiners established under the Illinois Public Accounting Act, and, only during the period for which employer contributions required under Section 15-155 are paid, the following organizations: the alumni associations, the foundations and the athletic associations which are affiliated with the universities and colleges included in this Section as employers. An individual who begins employment on or after the effective date of this amendatory Act of the 99th General Assembly with any association of community college boards organized under Section 3-55 of the Public Community College Act, the Association of Illinois Middle-Grade Schools, the Illinois Association of School Administrators, the

Illinois Association for Supervision and Curriculum Development, the Illinois Principals Association, the Illinois Association of School Business Officials, the Illinois Special Olympics, or an entity not defined as an employer in this Section shall not be deemed an employee for the purposes of this Article with respect to that employment and shall not be eligible to participate in the System with respect to that employment; provided, however, that those individuals who are both employed by such an entity and are participating in the System with respect to that employment on the effective date of this amendatory Act of the 99th General Assembly shall be allowed to continue as participants in the System for the duration of that employment.

A department as defined in Section 14-103.04 is an employer for any person appointed by the Governor under the Civil Administrative Code of Illinois who is a participating employee as defined in Section 15-109. The Department of Central Management Services is an employer with respect to persons employed by the State Board of Higher Education in positions with the Illinois Century Network as of June 30, 2004 who remain continuously employed after that date by the Department of Central Management Services in positions with the Illinois Century Network, the Bureau of Communication and Computer Services, or, if applicable, any successor bureau.

The cities of Champaign and Urbana shall be considered employers, but only during the period for which contributions

are required to be made under subsection (b-1) of Section 15-155 and only with respect to individuals described in subsection (h) of Section 15-107.

(Source: P.A. 95-369, eff. 8-23-07; 95-728, eff. 7-1-08 - See Sec. 999.)

(40 ILCS 5/15-107) (from Ch. 108 1/2, par. 15-107)

(Text of Section WITHOUT the changes made by P.A. 98-599, which has been held unconstitutional)

Sec. 15-107. Employee.

(a) "Employee" means any member of the educational, administrative, secretarial, clerical, mechanical, labor or other staff of an employer whose employment is permanent and continuous or who is employed in a position in which services are expected to be rendered on a continuous basis for at least 4 months or one academic term, whichever is less, who (A) receives payment for personal services on a warrant issued pursuant to a payroll voucher certified by an employer and drawn by the State Comptroller upon the State Treasurer or by an employer upon trust, federal or other funds, or (B) is on a leave of absence without pay. Employment which is irregular, intermittent or temporary shall not be considered continuous for purposes of this paragraph.

However, a person is not an "employee" if he or she:

(1) is a student enrolled in and regularly attending classes in a college or university which is an employer,

and is employed on a temporary basis at less than full time;

(2) is currently receiving a retirement annuity or a disability retirement annuity under Section 15-153.2 from this System;

(3) is on a military leave of absence;

(4) is eligible to participate in the Federal Civil Service Retirement System and is currently making contributions to that system based upon earnings paid by an employer;

(5) is on leave of absence without pay for more than 60 days immediately following termination of disability benefits under this Article;

(6) is hired after June 30, 1979 as a public service employment program participant under the Federal Comprehensive Employment and Training Act and receives earnings in whole or in part from funds provided under that Act; or

(7) is employed on or after July 1, 1991 to perform services that are excluded by subdivision (a)(7)(f) or (a)(19) of Section 210 of the federal Social Security Act from the definition of employment given in that Section (42 U.S.C. 410).

(b) Any employer may, by filing a written notice with the board, exclude from the definition of "employee" all persons employed pursuant to a federally funded contract entered into

after July 1, 1982 with a federal military department in a program providing training in military courses to federal military personnel on a military site owned by the United States Government, if this exclusion is not prohibited by the federally funded contract or federal laws or rules governing the administration of the contract.

(c) Any person appointed by the Governor under the Civil Administrative Code of the State is an employee, if he or she is a participant in this system on the effective date of the appointment.

(d) A participant on lay-off status under civil service rules is considered an employee for not more than 120 days from the date of the lay-off.

(e) A participant is considered an employee during (1) the first 60 days of disability leave, (2) the period, not to exceed one year, in which his or her eligibility for disability benefits is being considered by the board or reviewed by the courts, and (3) the period he or she receives disability benefits under the provisions of Section 15-152, workers' compensation or occupational disease benefits, or disability income under an insurance contract financed wholly or partially by the employer.

(f) Absences without pay, other than formal leaves of absence, of less than 30 calendar days, are not considered as an interruption of a person's status as an employee. If such absences during any period of 12 months exceed 30 work days,

the employee status of the person is considered as interrupted as of the 31st work day.

(g) A staff member whose employment contract requires services during an academic term is to be considered an employee during the summer and other vacation periods, unless he or she declines an employment contract for the succeeding academic term or his or her employment status is otherwise terminated, and he or she receives no earnings during these periods.

(h) An individual who was a participating employee employed in the fire department of the University of Illinois's Champaign-Urbana campus immediately prior to the elimination of that fire department and who immediately after the elimination of that fire department became employed by the fire department of the City of Urbana or the City of Champaign shall continue to be considered as an employee for purposes of this Article for so long as the individual remains employed as a firefighter by the City of Urbana or the City of Champaign. The individual shall cease to be considered an employee under this subsection (h) upon the first termination of the individual's employment as a firefighter by the City of Urbana or the City of Champaign.

(i) An individual who is employed on a full-time basis as an officer or employee of a statewide teacher organization that serves System participants or an officer of a national teacher organization that serves System participants may participate

in the System and shall be deemed an employee, provided that (1) the individual has previously earned creditable service under this Article, (2) the individual files with the System an irrevocable election to become a participant before the effective date of this amendatory Act of the 97th General Assembly, (3) the individual does not receive credit for that employment under any other Article of this Code, and (4) the individual first became a full-time employee of the teacher organization and becomes a participant before the effective date of this amendatory Act of the 97th General Assembly. An employee under this subsection (i) is responsible for paying to the System both (A) employee contributions based on the actual compensation received for service with the teacher organization and (B) employer contributions equal to the normal costs (as defined in Section 15-155) resulting from that service; all or any part of these contributions may be paid on the employee's behalf or picked up for tax purposes (if authorized under federal law) by the teacher organization.

A person who is an employee as defined in this subsection (i) may establish service credit for similar employment prior to becoming an employee under this subsection by paying to the System for that employment the contributions specified in this subsection, plus interest at the effective rate from the date of service to the date of payment. However, credit shall not be granted under this subsection for any such prior employment for which the applicant received credit under any other provision

of this Code, or during which the applicant was on a leave of absence under Section 15-113.2.

(j) A person employed by the State Board of Higher Education in a position with the Illinois Century Network as of June 30, 2004 shall be considered to be an employee for so long as he or she remains continuously employed after that date by the Department of Central Management Services in a position with the Illinois Century Network, the Bureau of Communication and Computer Services, or, if applicable, any successor bureau and meets the requirements of subsection (a).

(k) In the case of doubt as to whether any person is an employee within the meaning of this Section or any rule adopted by the Board, the decision of the Board shall be final.

(Source: P.A. 97-651, eff. 1-5-12.)

(40 ILCS 5/16-106) (from Ch. 108 1/2, par. 16-106)

(Text of Section WITHOUT the changes made by P.A. 98-599, which has been held unconstitutional)

Sec. 16-106. Teacher. "Teacher": The following individuals, provided that, for employment prior to July 1, 1990, they are employed on a full-time basis, or if not full-time, on a permanent and continuous basis in a position in which services are expected to be rendered for at least one school term:

(1) Any educational, administrative, professional or other staff employed in the public common schools included

within this system in a position requiring certification under the law governing the certification of teachers;

(2) Any educational, administrative, professional or other staff employed in any facility of the Department of Children and Family Services or the Department of Human Services, in a position requiring certification under the law governing the certification of teachers, and any person who (i) works in such a position for the Department of Corrections, (ii) was a member of this System on May 31, 1987, and (iii) did not elect to become a member of the State Employees' Retirement System pursuant to Section 14-108.2 of this Code; except that "teacher" does not include any person who (A) becomes a security employee of the Department of Human Services, as defined in Section 14-110, after June 28, 2001 (the effective date of Public Act 92-14), or (B) becomes a member of the State Employees' Retirement System pursuant to Section 14-108.2c of this Code;

(3) Any regional superintendent of schools, assistant regional superintendent of schools, State Superintendent of Education; any person employed by the State Board of Education as an executive; any executive of the boards engaged in the service of public common school education in school districts covered under this system of which the State Superintendent of Education is an ex-officio member;

(4) Any employee of a school board association

operating in compliance with Article 23 of the School Code who is certificated under the law governing the certification of teachers, provided that he or she becomes such an employee before the effective date of this amendatory Act of the 99th General Assembly;

(5) Any person employed by the retirement system who:

(i) was an employee of and a participant in the system on August 17, 2001 (the effective date of Public Act 92-416), or

(ii) becomes an employee of the system on or after August 17, 2001;

(6) Any educational, administrative, professional or other staff employed by and under the supervision and control of a regional superintendent of schools, provided such employment position requires the person to be certificated under the law governing the certification of teachers and is in an educational program serving 2 or more districts in accordance with a joint agreement authorized by the School Code or by federal legislation;

(7) Any educational, administrative, professional or other staff employed in an educational program serving 2 or more school districts in accordance with a joint agreement authorized by the School Code or by federal legislation and in a position requiring certification under the laws governing the certification of teachers;

(8) Any officer or employee of a statewide teacher

organization or officer of a national teacher organization who is certified under the law governing certification of teachers, provided: (i) the individual had previously established creditable service under this Article, (ii) the individual files with the system an irrevocable election to become a member before the effective date of this amendatory Act of the 97th General Assembly, (iii) the individual does not receive credit for such service under any other Article of this Code, and (iv) the individual first became an officer or employee of the teacher organization and becomes a member before the effective date of this amendatory Act of the 97th General Assembly;

(9) Any educational, administrative, professional, or other staff employed in a charter school operating in compliance with the Charter Schools Law who is certificated under the law governing the certification of teachers;

(10) Any person employed, on the effective date of this amendatory Act of the 94th General Assembly, by the Macon-Piatt Regional Office of Education in a birth-through-age-three pilot program receiving funds under Section 2-389 of the School Code who is required by the Macon-Piatt Regional Office of Education to hold a teaching certificate, provided that the Macon-Piatt Regional Office of Education makes an election, within 6 months after the effective date of this amendatory Act of the 94th General Assembly, to have the person participate

in the system. Any service established prior to the effective date of this amendatory Act of the 94th General Assembly for service as an employee of the Macon-Piatt Regional Office of Education in a birth-through-age-three pilot program receiving funds under Section 2-389 of the School Code shall be considered service as a teacher if employee and employer contributions have been received by the system and the system has not refunded those contributions.

An annuitant receiving a retirement annuity under this Article or under Article 17 of this Code who is employed by a board of education or other employer as permitted under Section 16-118 or 16-150.1 is not a "teacher" for purposes of this Article. A person who has received a single-sum retirement benefit under Section 16-136.4 of this Article is not a "teacher" for purposes of this Article.

(Source: P.A. 97-651, eff. 1-5-12; 98-463, eff. 8-16-13.)