**Section 1600.275 Employer Contributions for Employing Affected Annuitants**

a) Purpose and Applicability

1) This Section implements Section 15-139.5 of the Code concerning employer reporting and contribution requirements for employing or reemploying annuitants and affected annuitants, effective for academic years beginning on or after August 1, 2013.

2) Effective November 19, 2013, this Section *shall not apply to an annuitant if the employer of that annuitant provides documentation to SURS that:*

A) *the annuitant is employed in a status appointment position, as that term is defined in 80 Ill. Adm. Code 250.80; and*

B) *due to obligations contained under the State Universities Civil Service Act* [110 ILCS 70]*, the employer does not have the ability to limit the earnings or duration of employment for the annuitant while employed in the status appointment position.* [40 ILCS 5/15-139.5(j)]

b) Definitions. For purposes of Section 15-139.5 of the Code and this Section, the following terms shall have the meanings ascribed in this subsection (b).

1) "Academic Year" means *the 12-month period beginning on September 1.* [40 ILCS 5/15-139.5(a)]

2) "Affected Annuitant"

A) Means an annuitant *on the first day of the academic year following the academic year in which the annuitant first met the following conditions:*

i) *While receiving a retirement annuity under Article 15 of the Code, the annuitant was employed on or after August 1, 2013 by one or more employers under that Article and received or became entitled to receive during an academic year compensation for that employment in excess of 40% of his or her highest annual earnings prior to retirement; except that compensation paid from federal, corporate, foundation, or trust funds or grants of State funds that identify the principal investigator by name is excluded.*

ii) For the academic year containing June 1, 2015 and academic years thereafter, *the annuitant received an annualized retirement annuity under Article 15 of at least $10,000.* [40 ILCS 5/15-139.5(b)] The annualized retirement annuity of at least $10,000 shall be a gross monthly retirement annuity of at least $833.33 per month.

B) *A person who becomes an affected annuitant remains an affected annuitant, except for:*

i) *any period during which the person returns to active service and does not receive a retirement annuity from SURS; or*

ii) *any period on or after December 8, 2017 during which an annuitant received an annualized retirement annuity under Article 15 of the Code that is less than $10,000.* [40 ILCS 5/15-139.5(b)]

3) "Annuitant" means a person who is receiving a retirement annuity or, if the retirement annuity payment or payments have not yet been paid due to SURS processing, a person whose retirement annuity payment period has commenced. A person is not an annuitant if he or she:

A) has received a lump-sum retirement benefit under the Portable Benefit Package; or

B) is receiving or has received retirement benefits under the Self-Managed Plan.

4) "Catastrophic Incident" means an occurrence of widespread or severe damage or loss of property resulting from any manmade or natural cause, including, but not limited to, fire (including arson), flood, earthquake, wind, storm, explosion or extended periods of severe inclement weather.

5) "Compensation" means any remuneration paid by an employer that is reportable to the Internal Revenue Service by the employer as "wages, tips, or other compensation" on IRS Form W-2.

6) "Critical Operations" means *teaching services, medical services, student welfare services, and any other services that are critical to the mission of the employer.* [40 ILCS 5/15-139.5(i)]

7) "Disaster" means an event that results in the Governor declaring that a disaster exists pursuant to Section 7 of the Illinois Emergency Management Agency Act [20 ILCS 3305/7] or an event that results in a municipality to declare that a state of emergency exists pursuant to 65 ILCS 5/11-1-6.

8) "Employed or Reemployed" means the employer and annuitant have entered into an employer-employee relationship under common law and the annuitant is not an independent contractor. *For the purposes of this Section, an annuitant whose employment by an employer extends over more than one academic year shall be deemed to be reemployed by that employer in each of those academic years.*[40 ILCS 5/15-139.5(a)]

9) "Highest Annual Earnings" shall have the meaning ascribed in Section 1600.202(d).

10) "Retirement Annuity" means an annuity payable under Section 15-136, 15-136.1, 15-136.3 or 15-136.4 of the Code, excluding any survivor annuitant portion of a joint and survivor annuity.

c) Initial Notification for Employed Annuitants. Within 60 days after the date of employing or reemploying an annuitant, the employer shall submit notification to the System of the following items:

1) *A summary of the contract of employment or specify the rate of compensation and the anticipated length of employment of that annuitant* [40 ILCS 5/15-139.5(a)]. If an employer enters into a new contract with an annuitant during the same academic year of employment or reemployment, the employer shall submit a new summary or rate of compensation and anticipated length of employment within 60 days after the effective date of the contract. The employer shall provide a copy of the contract upon SURS' request.

2) A certification of whether *the annuitant will be compensated from*

*federal, corporate, foundation, or trust funds or grants of State funds that identify the principal investigator by name* [40 ILCS 5/15-139.5(a)].

3) Critical Operations

A) A certification of whether the annuitant has become an affected annuitant and:

i) if the annuitant is an affected annuitant, whether the annuitant was employed *in order to continue critical operations in the event of either an employee's unforeseen illness, accident, or death or a catastrophic incident or disaster; or* [40 ILCS 5/15-139.5(i)]

ii) if the annuitant is an affected annuitant, whether the employer has certified the annuitant as a participating employee under Section 15-139(c) of the Code.

B) If the employment is for critical operations, the notice in this subsection (c) shall be submitted within 5 business days after employing or reemploying the annuitant.

d) Annual Certification of Employed Annuitants. For each employed annuitant, an employer shall submit to SURS the following information no later than 30 days following the conclusion of the academic year:

1) *The amount of compensation paid to the annuitant for employment in the academic year; and*

2) *The amount of compensation that comes from federal, corporate, foundation, or trust funds or grants of State funds that identify the principal investigator by name* that has been paid to the annuitant in the academic year. [40 ILCS 5/15-139.5(a)]

e) Affected Annuitants

1) *It is the obligation of the employer to determine whether an annuitant is an affected annuitant before employing the annuitant. For that purpose, the employer may require the annuitant to disclose and document his or her relevant prior employment and earnings history. Failure of the employer to make this determination correctly and in a timely manner or to include this determination with the notification required under subsection* (d) *does not excuse the employer from making the contribution required under subsection* (g).

2) *SURS may assist the employer in determining whether a person is an affected annuitant. SURS will inform the employer if it discovers that the employer's determination is inconsistent with the employment and earnings information in the System's records*. [40 ILCS 5/15-139.5(c)]

f) Annuitant and Employer Information Requests. Upon written request, SURS will provide an annuitant or employer with the following information concerning the annuitant:

1) The annuitant's status as an annuitant or participating employee;

2) Whether an employer has determined and reported to SURS that the annuitant is an affected annuitant;

3) The annuitant's highest annual earnings;

4) The compensation paid for the annuitant's post-retirement employment in each academic year as reported by employers;

5) Whether any of the annuitant's post-retirement *employment or compensation has been certified to SURS as being paid from federal, corporate, foundation, or trust funds or grants of State funds that identify the principal investigator by name.* [40 ILCS 5/15-139.5(d)]

g) Payment of Employer Contributions

1) Certification of Contribution. If an employer employs or reemploys an affected annuitant in an academic year, and no exception applies, the System shall notify the employer and certify the amount of the contribution, which shall be *equal to 12 times the amount of the gross monthly retirement annuity payable to the annuitant for the month in which the first paid day of employment in that academic year occurs, after any reduction in that annuity that may be imposed under* Section 15-139(b) of the Code.

2) Multiple Employers. *If an affected annuitant is employed by more than one employer in an academic year, the employer contribution required under this Section shall be divided among those employers in proportion to their respective portions of the total compensation paid to the affected annuitant for that employment during that academic year.*

3) Double Contribution Penalty

A) *If SURS determines that an employer, without reasonable justification, has failed to make the determination of affected annuitant status correctly and in a timely manner, or has failed to notify SURS or to correctly document or certify to SURS any of the information required by this Section, and that failure results in a delayed determination by SURS that a contribution is payable under this Section, then the amount of that employer's contribution otherwise determined under this Section shall be doubled.*

B) *SURS will deem a failure to correctly determine the annuitant's status to be justified if the employer establishes to SURS' satisfaction that the employer, after due diligence, made an erroneous determination that the annuitant was not an affected annuitant due to reasonable reliance on false or misleading information provided by the annuitant or another employer, or an error in the annuitant's official employment or earnings records.* [40 ILCS 5/15-139.5(e)]

4) Payment Deadline and Interest. *The employer may pay the required contribution without interest at any time within one year after receipt of the certification. If the employer fails to pay within that year, then interest shall be charged at a rate equal to SURS' prescribed rate of interest, compounded annually from the 366th day after receipt of the certification from SURS. Payment must be concluded within 2 years after receipt of the certification by the employer. If the employer fails to make complete payment, including applicable interest, within 2 years, then SURS may, after giving notice to the employer, certify the delinquent amount to the State Comptroller, and the Comptroller shall thereupon deduct the certified delinquent amount from State funds payable to the employer and pay them instead to SURS.* [40 ILCS 5/15-139.5(f)] The delinquent amount shall be certified to the Comptroller if the employer does not pay the delinquent amount within 90 days after the date on which SURS sent the notice of the delinquency to the employer.

5) Reparticipating Annuitants. *If an employer is required to make a contribution to SURS as a result of employing an affected annuitant and the annuitant later elects to forgo his or her annuity in that same academic year pursuant to* Section 15-139(c) of the Code, *then the required contribution by the employer shall be waived, and if the contribution has already been paid, it shall be refunded to the employer without interest.* [40 ILCS 5/15-139.5(g)]

6) Employment for Critical Operations. *Notwithstanding any other provision of this Section to the contrary, if an employer employs an affected annuitant in order to continue critical operations in the event of either an employee's unforeseen illness, accident, or death or a catastrophic incident or disaster, then, for one and only one academic year, the employer is not required to pay the contribution set forth in Section 15-139.5 of the Code for that annuitant.* [40 ILCS 5/15-139.5(i)]

7) Appeals. The employer may appeal a certification of the contribution amount pursuant to Section 1600.510.

(Source: Amended at 44 Ill. Reg. 17714, effective October 22, 2020)