

352.01 DEFINITIONS.

Subdivision 1. **Terms.** Unless the language or context clearly indicates that a different meaning is intended, the terms defined in this section, for the purposes of this chapter, have the meanings given them.

Subd. 2. **State employee.** "State employee" means any employee or officer in the classified and unclassified service of the state. The term also includes the special classes of persons listed in subdivision 2a but excludes the special classes of persons listed in subdivision 2b.

Subd. 2a. **Included employees.** (a) "State employee" includes:

- (1) employees of the Minnesota Historical Society;
- (2) employees of the State Horticultural Society;
- (3) employees of the Minnesota Crop Improvement Association;
- (4) employees of the adjutant general whose salaries are paid from federal funds and who are not covered by any federal civilian employees retirement system;
- (5) employees of the Minnesota State Colleges and Universities who are employed under the university or college activities program;
- (6) currently contributing employees covered by the system who are temporarily employed by the legislature during a legislative session or any currently contributing employee employed for any special service as defined in subdivision 2b, clause (8);
- (7) employees of the legislature who are appointed without a limit on the duration of their employment and persons employed or designated by the legislature or by a legislative committee or commission or other competent authority to conduct a special inquiry, investigation, examination, or installation;
- (8) trainees who are employed on a full-time established training program performing the duties of the classified position for which they will be eligible to receive immediate appointment at the completion of the training period;
- (9) employees of the Minnesota Safety Council;
- (10) any employees who are on authorized leave of absence from the Transit Operating Division of the former Metropolitan Transit Commission and who are employed by the labor organization which is the exclusive bargaining agent representing employees of the Transit Operating Division;
- (11) employees of the Metropolitan Council, Metropolitan Parks and Open Space Commission, Metropolitan Sports Facilities Commission, or Metropolitan Mosquito Control Commission unless excluded under subdivision 2b or are covered by another public pension fund or plan under section 473.415, subdivision 3;
- (12) judges of the Tax Court;
- (13) personnel who were employed on June 30, 1992, by the University of Minnesota in the management, operation, or maintenance of its heating plant facilities, whose employment transfers to an employer assuming operation of the heating plant facilities, so long as the person is employed at the University of Minnesota heating plant by that employer or by its successor organization;

(14) personnel who are employed as seasonal employees in the classified or unclassified service;

(15) persons who are employed by the Department of Commerce as a peace officer in the Insurance Fraud Prevention Division under section 45.0135 who have attained the mandatory retirement age specified in section 43A.34, subdivision 4;

(16) employees of the University of Minnesota unless excluded under subdivision 2b, clause (3);

(17) employees of the Middle Management Association whose employment began after July 1, 2007, and to whom section 352.029 does not apply; and

(18) employees of the Minnesota Government Engineers Council to whom section 352.029 does not apply.

(b) Employees specified in paragraph (a), clause (13), are included employees under paragraph (a) if employer and employee contributions are made in a timely manner in the amounts required by section 352.04. Employee contributions must be deducted from salary. Employer contributions are the sole obligation of the employer assuming operation of the University of Minnesota heating plant facilities or any successor organizations to that employer.

Subd. 2b. **Excluded employees.** "State employee" does not include:

(1) students who are employed by the University of Minnesota, or the state colleges and universities, unless approved for coverage by the Board of Regents of the University of Minnesota or the Board of Trustees of the Minnesota State Colleges and Universities, whichever is applicable;

(2) employees who are eligible for membership in the state Teachers Retirement Association, except employees of the Department of Education who have chosen or may choose to be covered by the general state employees retirement plan of the Minnesota State Retirement System instead of the Teachers Retirement Association;

(3) employees of the University of Minnesota who are excluded from coverage by action of the Board of Regents;

(4) officers and enlisted personnel in the National Guard and the naval militia who are assigned to permanent peacetime duty and who under federal law are or are required to be members of a federal retirement system;

(5) election officers;

(6) persons who are engaged in public work for the state but who are employed by contractors when the performance of the contract is authorized by the legislature or other competent authority;

(7) officers and employees of the senate, or of the house of representatives, or of a legislative committee or commission who are temporarily employed;

(8) receivers, jurors, notaries public, and court employees who are not in the judicial branch as defined in section 43A.02, subdivision 25, except referees and adjusters employed by the Department of Labor and Industry;

(9) patient and inmate help who perform services in state charitable, penal, and correctional institutions including the Minnesota Veterans Home;

(10) persons who are employed for professional services where the service is incidental to their regular professional duties and whose compensation is paid on a per diem basis;

(11) employees of the Sibley House Association;

(12) the members of any state board or commission who serve the state intermittently and are paid on a per diem basis; the secretary, secretary-treasurer, and treasurer of those boards if their compensation is \$5,000 or less per year, or, if they are legally prohibited from serving more than three years; and the board of managers of the State Agricultural Society and its treasurer unless the treasurer is also its full-time secretary;

(13) state troopers and persons who are described in section 352B.011, subdivision 10, clauses (2) to (8);

(14) temporary employees of the Minnesota State Fair who are employed on or after July 1 for a period not to extend beyond October 15 of that year; and persons who are employed at any time by the state fair administration for special events held on the fairgrounds;

(15) emergency employees who are in the classified service; except that if an emergency employee, within the same pay period, becomes a provisional or probationary employee on other than a temporary basis, the employee must be considered a "state employee" retroactively to the beginning of the pay period;

(16) temporary employees in the classified service, and temporary employees in the unclassified service who are appointed for a definite period of not more than six months and who are employed less than six months in any one-year period;

(17) interns who are hired for six months or less and trainee employees, except those listed in subdivision 2a, clause (8);

(18) persons whose compensation is paid on a fee basis or as an independent contractor;

(19) state employees who are employed by the Board of Trustees of the Minnesota State Colleges and Universities in unclassified positions enumerated in section 43A.08, subdivision 1, clause (9);

(20) state employees who in any year have credit for 12 months service as teachers in the public schools of the state and as teachers are members of the Teachers Retirement Association or a retirement system in St. Paul, Minneapolis, or Duluth, except for incidental employment as a state employee that is not covered by one of the teacher retirement associations or systems;

(21) employees of the adjutant general who are employed on an unlimited intermittent or temporary basis in the classified or unclassified service for the support of Army and Air National Guard training facilities;

(22) chaplains and nuns who are excluded from coverage under the federal Old Age, Survivors, Disability, and Health Insurance Program for the performance of service as specified in United States Code, title 42, section 410(a)(8)(A), as amended, if no irrevocable election of coverage has been made under section 3121(r) of the Internal Revenue Code of 1986, as amended through December 31, 1992;

(23) examination monitors who are employed by departments, agencies, commissions, and boards to conduct examinations required by law;

(24) persons who are appointed to serve as members of fact-finding commissions or adjustment panels, arbitrators, or labor referees under chapter 179;

(25) temporary employees who are employed for limited periods under any state or federal program for training or rehabilitation, including persons who are employed for limited periods from areas of economic distress, but not including skilled and supervisory personnel and persons having civil service status covered by the system;

(26) full-time students who are employed by the Minnesota Historical Society intermittently during part of the year and full-time during the summer months;

(27) temporary employees who are appointed for not more than six months, of the Metropolitan Council and of any of its statutory boards, if the board members are appointed by the Metropolitan Council;

(28) persons who are employed in positions designated by the Department of Management and Budget as student workers;

(29) members of trades who are employed by the successor to the Metropolitan Waste Control Commission, who have trade union pension plan coverage under a collective bargaining agreement, and who are first employed after June 1, 1977;

(30) off-duty peace officers while employed by the Metropolitan Council;

(31) persons who are employed as full-time police officers by the Metropolitan Council and as police officers are members of the public employees police and fire fund;

(32) persons who are employed as full-time firefighters by the Department of Military Affairs and as firefighters are members of the public employees police and fire fund;

(33) foreign citizens who are employed under a work permit of less than three years, or an H-1b/JV visa valid for less than three years of employment, unless notice of extension is supplied which allows them to work for three or more years as of the date that the extension is granted, in which case they are eligible for coverage from the date extended;

(34) persons who are employed by the Board of Trustees of the Minnesota State Colleges and Universities and who elected to remain members of the Public Employees Retirement Association or of the MERF division of the Public Employees Retirement Association as the successor of the Minneapolis Employees Retirement Fund, whichever applies, under Minnesota Statutes 1994, section 136C.75; and

(35) employees who have elected to transfer service to the unclassified program under section 352D.02, subdivision 1d.

Subd. 3. **Head of department.** "Head of department" means the head of any department, institution, or branch of the state service that directly pays salaries out of its income or that prepares, approves, and submits salary abstracts of its employees to the commissioner of management and budget.

Subd. 4. **Accumulated contributions.** "Accumulated contributions" means the total, exclusive of interest, of (1) the sums deducted from the salary of an employee, (2) the amount of payments, including assessments, paid by the employee in lieu of salary deductions and all other payments made under this chapter and credited to the employee's individual account in the retirement fund.

Subd. 5. **Retirement fund.** (a) "Retirement fund" means the general state employees retirement fund created by section 352.04, subdivision 1, with respect to the general state employees retirement plan or the correctional state employees retirement fund created by section 352.911, subdivision 1, with respect to the correctional state employees retirement plan.

(b) The retirement fund includes the aggregate of accumulated contributions of employees covered by the applicable plan, and all other funds paid into the state treasury or received by the director under this chapter, together with all income and profits from the money and interest on it, including contributions on the part of the federal government, the state, and state departments.

Subd. 6. [Repealed, Ex1967 c 57 s 29]

Subd. 7. [Repealed, 1993 c 307 art 7 s 1]

Subd. 8. [Repealed, 1957 c 928 s 33]

Subd. 9. [Repealed, 1957 c 928 s 33]

Subd. 10. [Repealed, 1963 c 383 s 59]

Subd. 11. **Allowable service.** (a) "Allowable service" means:

(1) service by an employee for which on or before July 1, 1961, the employee chose to obtain credit for service by making payments to the fund under Minnesota Statutes 1961, section 352.24;

(2) service by an employee after July 1, 1957, for any calendar month in which the employee is paid salary from which deductions are made, deposited, and credited in the fund, including deductions made, deposited, and credited as provided in section 352.041;

(3) service by an employee for any calendar month for which payments in lieu of salary deductions are made, deposited, and credited in the fund, as provided in section 352.27;

(4) the period of absence from their duties by employees who are temporarily disabled because of injuries incurred in the performance of duties and for which disability the state is liable under the workers' compensation law until the date authorized by the director for the commencement of payments of a total and permanent disability benefit from the retirement fund;

(5) service covered by a refund repaid as provided in section 352.23 or 352D.05, subdivision 4, except service rendered as an employee of the adjutant general for which the person has credit with the federal civil service retirement system;

(6) service before July 1, 1978, by an employee of the Transit Operating Division of the Metropolitan Transit Commission or by an employee on an authorized leave of absence from the Transit Operating Division of the Metropolitan Transit Commission who is employed by the labor organization which is the exclusive bargaining agent representing employees of the Transit Operating Division, which was credited by the Metropolitan Transit Commission-Transit Operating Division employees retirement fund or any of its predecessor plans or funds as past, intermediate, future, continuous, or allowable service as defined in the Metropolitan Transit Commission-Transit Operating Division employees retirement fund plan document in effect on December 31, 1977;

(7) service after July 1, 1983, by an employee who is employed on a part-time basis for less than 50 percent of full time, for which the employee is paid salary from which deductions are made, deposited, and credited in the fund, including deductions made, deposited, and credited as provided in section 352.041 or for which payments in lieu of salary deductions are made,

deposited, and credited in the fund as provided in section 352.27 shall be credited on a fractional basis either by pay period, monthly, or annually based on the relationship that the percentage of salary earned bears to a full-time salary, with any salary paid for the fractional service credited on the basis of the rate of salary applicable for a full-time pay period, month, or a full-time year. For periods of part-time service that is duplicated service credit, section 356.30, subdivision 1, clauses (i) and (j), govern; and

(8) any period of authorized leave of absence without pay that does not exceed one year and for which the employee obtained credit by payment to the fund under section 352.017.

(9) [Renumbered clause (8)]

(10) MS 2002 [Expired]

(11) [Expired, 2002 c 392 art 2 s 4]

(b) For purposes of paragraph (a), clauses (2) and (3), any salary that is paid for a fractional part of any calendar month, including the month of separation from state service, is deemed to be the compensation for the entire calendar month.

(c) Allowable service determined and credited on a fractional basis must be used in calculating the amount of benefits payable, but service as determined on a fractional basis must not be used in determining the length of service required for eligibility for benefits.

Subd. 12. **Actuarial equivalent.** "Actuarial equivalent" means the condition of one annuity or benefit having an equal actuarial present value as another annuity or benefit, determined as of a given date at a specified age with each actuarial present value based on the appropriate mortality table adopted by the board of directors based on the experience of the fund as recommended by the actuary retained under section 356.214, and approved under section 356.215, subdivision 18, and using the applicable preretirement or postretirement interest rate assumption specified in section 356.215, subdivision 8.

Subd. 13. **Salary.** (a) Subject to the limitations of section 356.611, "salary" means wages, or other periodic compensation, paid to an employee before deductions for deferred compensation, supplemental retirement plans, or other voluntary salary reduction programs.

(b) "Salary" does not include:

(1) lump-sum sick leave payments;

(2) severance payments;

(3) lump-sum annual leave payments and overtime payments made at the time of separation from state service;

(4) payments in lieu of any employer-paid group insurance coverage, including the difference between single and family rates that may be paid to an employee with single coverage;

(5) payments made as an employer-paid fringe benefit;

(6) workers' compensation payments;

(7) employer contributions to a deferred compensation or tax-sheltered annuity program; and

(8) amounts contributed under a benevolent vacation and sick leave donation program.

(c) Amounts provided to an employee by the employer through a grievance proceeding or a legal settlement are salary only if the settlement is reviewed by the executive director and the amounts are determined by the executive director to be consistent with paragraph (a) and prior determinations.

Subd. 13a. **Reduced salary during period of workers' compensation.** An employee on leave of absence receiving temporary workers' compensation payments and a reduced salary or no salary from the employer who is entitled to allowable service credit for the period of absence, may make payment to the fund for the difference between salary received, if any, and the salary the employee would normally receive if not on leave of absence during the period. The employee shall pay an amount equal to the employee and employer contribution rate under section 352.04, subdivisions 2 and 3, on the differential salary amount for the period of the leave of absence.

The employing department, at its option, may pay the employer amount on behalf of its employees. Payment made under this subdivision must include interest at the rate of 8.5 percent per year, and must be completed within one year of the return from leave of absence.

Subd. 14. [Repealed, 1963 c 383 s 59]

Subd. 14a. **Average salary.** (a) "Average salary" means the average of the highest five successive years of salary upon which the employee has made contributions to the retirement fund by payroll deductions. Average salary must be based upon all allowable service if this service is less than five years.

(b) "Average salary" does not include the payment of accrued unused annual leave or overtime paid at time of final separation from state service if paid in a lump sum nor does it include the reduced salary, if any, paid during the period the employee is entitled to workers' compensation benefit payments for temporary disability.

(c) For an employee covered by the correctional state employees retirement plan, "average salary" means the average of the monthly salary during the employee's highest five successive years of salary as an employee covered by the general state employees retirement plan, or the correctional state employees retirement plan, or by a combination of the two. If the total of the covered service is less than five years, the determination of average salary must be based on all allowable service.

Subd. 15. **Approved actuary.** "Approved actuary" means any actuary who is either a fellow of the society of actuaries or who has at least 15 years of service to major public employee funds, or any firm retaining an approved actuary on its staff.

Subd. 16. **Year of allowable service.** "Year of allowable service" means any 12 calendar months not necessarily consecutive in which an employee is entitled to allowable service credit. It also means 12 months credit each calendar year for teachers in the state universities and state institutions who may or may not receive compensation in every month in the calendar year.

Subd. 17. **Total and permanent disability.** "Total and permanent disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that has existed or is expected to continue for a period of at least one year.

Subd. 17a. **Occupational disability.** "Occupational disability," for purposes of determining eligibility for disability benefits for a correctional employee, means a disabling condition that

is expected to prevent the correctional employee, for a period of not less than 12 months, from performing the normal duties of the position held by the correctional employee.

Subd. 17b. **Duty disability, physical or psychological.** "Duty disability, physical or psychological," for a correctional employee, means an occupational disability that is the direct result of an injury incurred during, or a disease arising out of, the performance of normal duties or the performance of less frequent duties either of which are specific to the correctional employee.

Subd. 17c. **Regular disability, physical or psychological.** "Regular disability, physical or psychological," for a correctional employee, means an occupational disability resulting from a disease or an injury that arises from any activities while not at work or from activities while at work performing normal or less frequent duties that do not present inherent dangers specific to covered correctional positions.

Subd. 17d. **Normal duties.** "Normal duties" means specific tasks designated in the applicant's job description and which the applicant performs on a day-to-day basis, but do not include less frequent duties which may be requested to be done by the employer from time to time.

Subd. 17e. **Less frequent duties.** "Less frequent duties" means tasks designated in the applicant's job description as either required from time to time or as assigned, but which are not carried out as part of the normal routine of the applicant's job.

Subd. 18. **"Annuity" and "benefit" synonymous.** The words "annuity" and "benefit," wherever they appear in this chapter, are synonymous.

Subd. 19. **Retirement.** "Retirement" means the time after a state employee is entitled to an accrued annuity, as defined in subdivision 21, payable under an application for annuity filed in the office of the system as provided in section 352.115, subdivision 8 or, in the case of an employee who has received a disability benefit, when that employee reaches normal retirement age.

Subd. 20. **Retired employee.** "Retired employee" means an employee who has retirement status as defined in subdivision 19.

Subd. 21. **Accrued annuities.** (a) In this chapter and chapters 3A, 352B, 352C, and 490, "accrued annuity" means an annuity that had become payable to a retired employee in the lifetime of the employee.

(b) An annuity or benefit authorized as provided in this chapter and chapters 3A, 352B, 352C, and 490 becomes payable on the first day of each calendar month for that calendar month and must be paid on the first day of each calendar month.

(c) Notwithstanding any provision to the contrary in this chapter and chapters 3A, 352B, 352C, and 490, benefit payment authorized as "payable for life" is payable for the entire month in which death occurs, and the benefit payment for the month of death is payable to the surviving spouse or other beneficiary only if the annuitant dies before negotiating the benefit check.

Subd. 22. **Disabled employee.** "Disabled employee" means an employee who is totally and permanently disabled as defined in subdivision 17, and who as a result of the disability is entitled to receive a disability benefit as provided in section 352.113.

Subd. 23. **Coverage or covered by the system.** "Coverage" or "covered by the system" means that a state employee who serves the state of Minnesota and makes the required employee contributions to the retirement fund is, by reason of these contributions, entitled to either (1) a

retirement annuity, or (2) a disability benefit, or (3) a refund of accumulated contributions, as provided in this chapter.

Subd. 24. **System.** "System" means the Minnesota State Retirement System.

Subd. 25. **Normal retirement age.** "Normal retirement age" means age 65 for a person who first became a covered employee or a member of a pension fund listed in section 356.30, subdivision 3, before July 1, 1989. For a person who first becomes a covered employee after June 30, 1989, normal retirement age means the higher of age 65 or "retirement age," as defined in United States Code, title 42, section 416(l), as amended, but not to exceed age 66.

Subd. 26. **Dependent child.** "Dependent child" means a biological or adopted child of a deceased employee who has not reached the age of 20 and is dependent upon the employee for more than one-half of the child's support at the time of the employee's death. It also means a child of the member conceived during the member's lifetime and born after the member's death.

History: (254-1) 1929 c 191 s 1; 1931 c 351 s 1; 1933 c 326 s 1; 1935 c 238 s 1; 1939 c 432 s 1; 1941 c 391 s 1; 1943 c 622 s 1; 1945 c 38 s 1; 1945 c 284 s 1,2; 1947 c 631 s 2-6; 1949 c 644 s 2,3; 1951 c 441 s 2-8; 1953 c 320 s 1; 1955 c 239 s 1-3; 1957 c 576 s 1,2; 1957 c 928 s 1-6,34; Ex1959 c 6 s 1-3; 1961 c 560 s 31; Ex1961 c 67 s 1,2; 1963 c 383 s 1-8; 1965 c 230 s 1,2; 1965 c 590 s 1; 1965 c 698 s 3; 1967 c 148 s 2; Ex1967 c 1 s 6; Ex1967 c 57 s 1-7; 1969 c 6 s 45; 1971 c 12 s 1,2; 1973 c 178 s 20; 1973 c 221 s 1,2; 1973 c 349 s 2; 1973 c 492 s 14; 1973 c 507 s 45; 1973 c 582 s 3; 1975 c 271 s 6; 1975 c 321 s 2; 1975 c 359 s 23; 1975 c 368 s 13; 1976 c 134 s 78; 1976 c 329 s 2; 1977 c 98 s 1; 1977 c 388 s 1; 1978 c 538 s 1,2; 1978 c 672 s 11,12; 1978 c 720 s 3; 1980 c 342 s 1,2; 1980 c 614 s 135; 1980 c 617 s 47; 1981 c 37 s 2; 1981 c 224 s 41-44; 1983 c 128 s 1-3; 1983 c 247 s 137; 1983 c 286 s 3; 1984 c 654 art 3 s 100; 1985 c 248 s 54; 1Sp1985 c 7 s 4; 1Sp1985 c 13 s 317; 1986 c 444; 1987 c 83 s 1; 1987 c 229 art 6 s 1; art 11 s 1; 1987 c 259 s 12; 1987 c 372 art 1 s 2; 1987 c 384 art 2 s 1; 1989 c 209 art 2 s 35; 1989 c 319 art 1 s 2; art 13 s 1,2; 1989 c 335 art 3 s 4; 1990 c 426 art 1 s 41; 1990 c 570 art 1 s 2; art 10 s 1; art 12 s 2; 1992 c 432 art 1 s 1; 1992 c 598 art 1 s 2; 1993 c 307 art 1 s 3,4; art 3 s 1; 1993 c 336 art 6 s 1; 1993 c 375 art 8 s 14; 1994 c 528 art 1 s 2,3; 1994 c 572 s 4; 1994 c 628 art 3 s 26,27; 1995 c 54 s 26; 1995 c 186 s 70; 1995 c 195 art 2 s 1; 1995 c 212 art 4 s 64; 1995 c 262 art 1 s 3; 1Sp1995 c 3 art 16 s 13; 1997 c 183 art 3 s 38; 1997 c 233 art 1 s 16; 1997 c 241 art 8 s 3,4; 2000 c 457 s 6; 1Sp2001 c 10 art 3 s 4,5; art 6 s 1,21; art 8 s 1; 2002 c 392 art 2 s 1; art 11 s 52; 2003 c 112 art 2 s 50; 2003 c 130 s 12; 1Sp2003 c 12 art 6 s 5; 2004 c 267 art 2 s 1; 1Sp2005 c 8 art 1 s 1,2; art 3 s 1; art 4 s 2; art 10 s 7-10; 2007 c 134 art 2 s 2-4; art 11 s 6; 2008 c 204 s 42; 2008 c 277 art 1 s 73; 2008 c 349 art 5 s 1; 2009 c 101 art 2 s 109; 2009 c 169 art 2 s 3-8; 2010 c 359 art 2 s 1; art 4 s 1; art 12 s 11