
Public Employee Retirement Incentive Governor's Program Bill No. 249R

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On June 2, 2010, Governor Paterson signed into law Governor's Program Bill No. 249R ("249R"), which establishes a temporary retirement incentive program for certain State employees and other public employees in an effort to streamline the workforce while achieving cost savings for the employer. This incentive is divided into two parts: Part A and Part B. The Part A incentive provides eligible individuals in qualifying positions one month of additional retirement service credit for each year of pension service, up to a maximum of three years of additional retirement service credit. Part B creates a separate temporary incentive for public employees, allowing eligible employees who have attained the age of 55 and completed at least 25 years or more of service to retire during a specified window of time without the reduction of their retirement benefit that would otherwise be imposed.

Overview of Governor's Program Bill No. 249R

The retirement incentives within 249R are intended to achieve cost savings for public employers and to avoid layoffs of public employees during this time of fiscal need. As such, the incentives are designed to be only temporary. Employers may choose to participate in one, both, or neither of the incentives; however, employees may not combine the benefits of both Part A and Part B.

Eligible employers for both Parts A and B include any employer that participates in a "retirement system" as defined by the Bill. This includes the New York State and Local Retirement System, the New York State Teachers' Retirement System, the Teachers' Retirement System of the City of New York, the Board of Education Retirement System of the City of New York, and the New York City Employees' Retirement System. *Note: this incentive is not applicable to members of the Police and Fire Retirement System.*

Local governments have the option to choose whether to participate in these retirement incentives. As such, it is incumbent on public employers to first conduct an analysis of whether either part of this incentive is likely to lead to a cost savings for them if the incentive is adopted.

Part A

Part A of 249R creates a temporary retirement incentive for public employees (1) in positions that can be eliminated for reasons of economy, consolidation, abolition, or curtailment of governmental activities; and (2) in positions into which another employee could be transferred to avoid a layoff. The incentive provides one month of additional retirement service credit for each year of pension service, up to a maximum of three years of additional retirement service credit. This benefit is subject to reduction for early retirement based on the employee's tier, age, and years of service.

Eligible employees participating in a separate optional retirement program would receive an additional employer contribution equal to the amount of 1/12th of their years of service multiplied by 15% multiplied by the employee's annual salary, up to a maximum benefit of 45% of salary.

Example: An eligible employee participating in an optional retirement program has achieved 24 years of service and currently earns \$100,000 a year:

$$1/12 \times 24 \text{ years of service} \times 15\% \times \$100,000 = \$30,000 \text{ additional contribution}$$

Employers who elect to participate in the incentive program are required to provide a 30- to 90-day open period to allow eligible employees adequate time to consider the incentive. Municipalities and State employers related to State universities and colleges must enact a local law or resolution on or before August 31, 2010 to take advantage of the program, while school districts must do so by July 30, 2010.

Employers are allowed to pay the pension costs of offering a retirement incentive program over a period not to exceed five years, commencing in the State fiscal year ending March 31, 2012. In no way may employees combine the benefits of Part A and Chapter 45 of the Laws of 2010, which previously authorized incentive programs for certain education employees.

Who is Eligible for the Part A Incentive?

Eligibility for the Part A incentive is determined by the employer at its discretion and excludes agency heads and elected officials. In order to be eligible for the incentive, an employee must meet the following requirements:

1. The employee must work in a position that can be eliminated for reasons of economy, consolidation, abolition, or curtailment of governmental activities. An eligible position can also include a title into which an employee could be transferred to avoid a layoff.
2. Elimination of the employee's position must not unacceptably reduce quality of patient care, pose health or safety risks, or result in adverse budgetary implications.
3. The employee must provide written notice of his or her intention to participate in the incentive program to the employer at least 21 days prior to the end of the open period.
4. The employee must have been in continuous active service from February 1, 2010, through the date immediately prior to the commencement date of the open period.
5. The employee must be currently eligible to retire or be at least 50 years of age with 10 or more years of service.

Employees who participate in a pension plan that allows for retirement after 25 years of service without regard to age may use the service credit provided by the incentive in Part A to meet that 25-year requirement.

Part B

Part B of 249R creates a temporary retirement incentive for certain public employees that allows those employees to retire without the reduction of retirement benefits that would otherwise be

imposed. Unlike Part A and other previous incentive programs, Part B does not contain any cost savings or position elimination requirement.

Employers who elect to participate in the program must provide a 90-day open period to allow eligible employees adequate time to consider the incentive. Participating employers must elect to provide employees the benefits of Part B on or before September 1, 2010; except, educational employers must make such election by July 1, 2010.

Employers are allowed to pay the pension costs of offering a retirement incentive program over a period not to exceed five years, commencing in the State fiscal year ending March 31, 2012.

Who is Eligible for the Part B Incentive?

Eligibility for the Part B incentive is determined solely by the employer and excludes agency heads and elected officials. In order to be eligible for the incentive, an employee must meet the following requirements:

1. The employee must be at least 55 years old and have at least 25 years of creditable service in an eligible retirement system.
2. The employee must have been in continuous active service from February 1, 2010, through the commencement date, which, if not set by the participating employer, occurs by default on July 1, 2010.
3. The employee must not hold a position that is deemed critical to the maintenance of public health and safety by the relevant official designated by the Act.

Commentary

Employees and employee organizations representing employees that would be eligible for either part of the incentive may expect public employers to provide these retirement incentives as a matter of course; however, every public employer has the discretion to elect to participate or not to participate in either or both of these optional programs. It is incumbent on each employer to analyze the potential costs and benefits of participation in each of the incentive programs.

In addition, the option to participate in these programs may give public employers some leverage and a limited opportunity to negotiate concessions for new hire wages and benefits with employee organizations that represent potentially eligible employees.

If you have any questions about Governor's Program Bill No. 249R, please contact Sean P. Beiter at 716.843.3805 or sbeiter@jaeckle.com.

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