

§ 128-26. Allowance for service.

(a) Each person who becomes a member during the first year of his or her employer's participation, if and only if that participation begins prior to November 1, 2015, and who was an employee of the same employer at any time during the year immediately preceding the date of participation, shall file a detailed statement of all service rendered by him or her to that employer prior to the date of participation for which he or she claims credit.

A participating employer may allow prior service credit to any of its employees on account of: their earlier service to the aforesaid employer; or, their earlier service to any other employer as the term employer is defined in G.S. 128-21(11); or, their earlier service to any state, territory, or other governmental subdivision of the United States other than this State.

A participating employer may allow prior service credit to any of its employees on account of service, as defined in G.S. 135-1(23), to the State of North Carolina to the extent of such service prior to the establishment of the Teachers' and State Employees' Retirement System on July 1, 1941; provided that employees allowed such prior service credit pay in a total lump sum an amount calculated on the basis of compensation the employee earned when the employee first entered membership and the employee contribution rate at that time together with interest thereon from year of first membership to year of payment shall be one half of the calculated cost.

(a1) With respect to a member retiring on or after July 1, 1967, the governing board of a participating unit may allow credit for any period of military service in the Armed Forces of the United States if the person returned to the service of the person's employer within two years after having been not dishonorably discharged, or becoming entitled to be discharged, released, or separated from such the Armed Forces of the United States; provided that, notwithstanding the above provisions, any member having credit for not less than 10 years of otherwise creditable service may be allowed credit for such military services which are not creditable in any other governmental retirement system; provided further, that a member will receive credit for military service under the provisions of this paragraph only if the member submits satisfactory evidence of the military service claimed and the participating unit of which the member is an employee agrees to grant credit for such military service prior to January 1, 1972.

A member retiring on or after July 1, 1971, who is not granted credit for military service under the provisions of the preceding paragraph will be allowed credit for any period of qualifying service in the Armed Forces of the United States, as defined for purposes of reemployment rights under federal law, provided that the member was an employee as defined in G.S. 128-21(10) at the time the member entered military service, and either (i) the returning member is in service, with the employer by whom the member was employed when the member entered military service, for a period of not less than 10 years after the member is separated or released from that military service under other than dishonorable conditions or (ii) the following conditions are met, in the conjunctive:

- (1) The member did not, prior to leaving for military service, provide clear written notice of an intent not to return to work after military service.
- (2) The member was discharged from uniformed service and returned from the leave of absence for uniformed service to membership service in this system within the time limit mandated by federal law for reporting back to work.
- (3) The period of uniformed service, for which additional service credit is sought, has been verified by suitable documentation and is not eligible for receipt of benefits under any other retirement system or pension plan.
- (4) All service credit forfeited by a refund pursuant to the provisions of G.S. 128-27(f) has been purchased.

The uniformed service credit allowed under this subsection shall be limited to a maximum of five years unless otherwise specifically exempted from that durational limitation by federal law. The salary or compensation of such an employee during the period of qualifying military service

shall be deemed to be that salary or compensation the employee would have received but for the period of service had the employee remained continuously employed, if the determination of that salary or compensation is reasonably certain. If the determination of the salary or compensation is not reasonably certain, then it shall be deemed to be that employee's average rate of compensation during the 12-month period immediately preceding the period of service.

Pursuant to 38 U.S.C. § 4318(b)(1), when a member who has been on military leave returns to work consistent with the provisions of this subsection concerning return to service within two years after the member's earliest eligibility for separation or release from military service, then the member's employer must remit to the System all the employer and employee contributions for the full period of that member's military service.

(b) In no case shall more than one year of service be creditable for all service in one calendar year.

(c), (d) Repealed by Session Laws 2020-29, s. 1(b), effective June 19, 2020.

(e) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by the member since he or she last became a member, and also if the member has a prior service certificate which is in full force and effect, the amount of the service certified on the prior service certificate; and if the member has sick leave standing to the member's credit upon retirement on or after July 1, 1971, one month of credit for each 20 days or portion thereof, but not less than one hour; sick leave shall not be counted in computing creditable service for the purpose of determining eligibility for disability retirement or for a vested deferred allowance. Creditable service for unused sick leave shall be allowed only for sick leave accrued monthly during employment under a duly adopted sick leave policy and for which the member may be able to take credits and be paid for sick leave without restriction. However, in no instance shall unused sick leave be credited to a member's account at retirement if the member's last day of actual service is more than 365 days prior to the effective date of the member's retirement. Days of sick leave standing to a member's credit at retirement shall be determined by dividing the member's total hours of sick leave at retirement by the hours per month such leave was awarded under the employer's duly adopted sick leave policy as the policy applied to the member when the leave was accrued.

(e1) On and after January 1, 1986, the creditable service of a member who was a member of the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by participating employers from that System to this Retirement System and whose accumulated contributions are transferred from that System to this Retirement System, includes service that was creditable in the Law Enforcement Officers' Retirement System; and membership service with that System is membership service with this Retirement System; provided, notwithstanding any provisions of this Article to the contrary, any inchoate or accrued rights of such a member to purchase creditable service for military service, withdrawn service and prior service under the rules and regulations of the Law Enforcement Officers' Retirement System may not be diminished and may be purchased as creditable service with this Retirement System under the same conditions that would have otherwise applied.

(f) Repealed by Session Laws 2020-29, s. 1(b), effective June 19, 2020.

(g) During periods when a member is on an approved leave of absence and is receiving less than his full compensation, he will be deemed to be in service only if he is contributing to the Retirement System as provided in G.S. 128-30(b)(4). If he is so contributing, the annual rate of compensation paid to such employee immediately before the leave of absence began will be deemed to be the actual compensation rate of the employee during the leave of absence.

(h) Repealed by Session Laws 2021-57, s. 2.4(a), effective July 1, 2022.

(h1) Repealed by Session Laws 2024-10, s. 7(n).

(h2) Recodified as part of G.S. 128-26.5(a) by Session Laws 2024-10, s. 7(a), (b).

(i) Repealed by Session Laws 2024-10, s. 7(n).

- (i1) Recodified as part of G.S. 128-26.5(a)(1) by Session Laws 2024-10, s. 7(b).
- (j) Repealed by Session Laws 1987, c. 617, s. 3.
- (j1) Recodified as G.S. 128-26.5(b) by Session Laws 2024-10, s. 7(h).
- (j2) Repealed by Session Laws 2024-10, s. 7(n).
- (j3) Recodified as G.S. 128-26.5(a)(2) by Session Laws 2024-10, s. 7(c).
- (k) Notwithstanding any language to the contrary of any provision of this section, or of any repealed provision of this section that was repealed with the inchoate and accrued rights preserved, all repayments and purchases of service credits, allowed under the provisions of this section or of any repealed provision of this section that was repealed with inchoate and accrued rights preserved, must be made within three years after the member first becomes eligible to make such repayments and purchases. Any member who does not repay or purchase service credits within said three years after first eligibility to make such repayments and purchases may, under the same conditions as are otherwise required, repay or purchase service credits provided that the repayment or purchase equals the full cost of the service credits calculated on the basis of the assumptions used for purchases of the actuarial valuation of the System's liabilities and shall take into account the additional retirement allowance arising on account of such additional service credit commencing at the earliest age at which such member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance. Notwithstanding the foregoing, on and after January 1, 2003, the provisions of this subsection shall not apply to the repayment of contributions withdrawn pursuant to subsection (i) of this section.
 - (l) Recodified as G.S. 128-26.5(c) by Session Laws 2024-10, s. 7(i).
 - (m) Recodified as G.S. 128-26.5(d) by Session Laws 2024-10, s. 7(j).
 - (n) Repealed by Session Laws 2002-153, s. 3, effective January 1, 2003.
 - (o) Repealed by Session Laws 2021-57, s. 2.4(a), effective July 1, 2022.
 - (p) Repealed by Session Laws 2020-29, s. 1(b), effective June 19, 2020.
 - (p1) Recodified as G.S. 128-26.5(a)(3) by Session Laws 2024-10, s. 7(d).
 - (q) Repealed by Session Laws 2024-10, s. 7(n).
 - (q1) Recodified as G.S. 128-26.5(a)(5) by Session Laws 2024-10, s. 7(f).
 - (r) Recodified as G.S. 128-26.5(a)(4) by Session Laws 2024-10, s. 7(e).
 - (s) Recodified as G.S. 128-26.5(a)(7) by Session Laws 2024-10, s. 7(g).
 - (t) Recodified as G.S. 128-26.5(f) by Session Laws 2024-10, s. 7(l).
 - (u) Recodified as G.S. 128-26.5(g) by Session Laws 2024-10, s. 7(m).
 - (u1) Expired.
 - (v) Recodified as G.S. 128-26.5(e) by Session Laws 2024-10, s. 7(k).
 - (w) If a member who is an elected government official and has not vested in this System on July 1, 2007, is convicted of an offense listed in G.S. 128-38.4 for acts committed after July 1, 2007, then that member shall forfeit all benefits under this System, except for a return of member contributions plus interest. If a member who is an elected government official and has vested in this System on July 1, 2007, is convicted of an offense listed in G.S. 128-38.4 for acts committed after July 1, 2007, then that member is not entitled to any creditable service that accrued after July 1, 2007, regardless of whether that creditable service was earned by virtue of membership in the System, accrued by conversion of sick leave at the point of the member's retirement, accrued by transfer of service from another retirement system, purchased by the member in accordance with this Article, or accrued by any other means. No member shall forfeit any benefit or creditable service earned from a position not as an elected government official. For purposes of this subsection, creditable service attributable to the conversion of sick leave accrues in this System

on the date of retirement, service transferred to this System from another system accrues in this System on the effective date of the transfer, and purchased service accrues in this System on the date of the purchase.

(x) If a member who is in service and has not vested in this System on December 1, 2012, is convicted of an offense listed in G.S. 128-38.4A for acts committed after December 1, 2012, then that member shall forfeit all benefits under this System, except for a return of member contributions plus interest. If a member who is in service and has vested in this System on December 1, 2012, is convicted of an offense listed in G.S. 128-38.4A for acts committed after December 1, 2012, then that member is not entitled to any creditable service that accrued after December 1, 2012, regardless of whether that creditable service was earned by virtue of membership in the System, accrued by conversion of sick leave at the point of the member's retirement, accrued by transfer of service from another retirement system, purchased by the member in accordance with this Article, or accrued by any other means. For purposes of this subsection, creditable service attributable to the conversion of sick leave accrues in this System on the date of retirement, service transferred to this System from another system accrues in this System on the effective date of the transfer, and purchased service accrues in this System on the date of the purchase.

(y) Contribution-Based Benefit Cap Purchase Provision. – If a member's retirement allowance is subject to an adjustment pursuant to the contribution-based benefit cap established in G.S. 128-27(a3), except as otherwise provided under this subsection, the retirement system shall notify the member and the member's employer that the member's retirement allowance has been capped. The retirement system shall compute and notify the member and the member's employer of the total additional amount the member would need to contribute in order to make the member not subject to the contribution-based benefit cap. This total additional amount shall be the actuarial equivalent of a single life annuity adjusted for the age of the member at the time of retirement, or when appropriate, the age at the time of the member's death that would have had to have been purchased to increase the member's benefit to the pre-cap level. If the member's employer did not report to the retirement system any compensation paid to the member during the period used to compute the member's average final compensation, the retirement system shall not notify the member's employer, but instead shall notify the employer or employers who reported compensation during the member's average final compensation period, with the notification for each such employer specifying that employer's share of the amount that would have had to have been purchased to increase the member's benefit to the pre-cap level, allocated proportionally to each employer based on the total amount of compensation to the member that each employer reported during the period used to compute the member's average final compensation. Except as otherwise provided in this subsection, the member shall have until 90 days after notification regarding this additional amount or until 90 days after the effective date of retirement, whichever is later, to submit a lump sum payment to the annuity savings fund in order for the retirement system to restore the retirement allowance to the uncapped amount. Nothing contained in this subsection shall prevent an employer or former employer from paying all or part of the cost of the amount necessary to restore the member's retirement allowance to the pre-cap amount. Notwithstanding the requirement that the payment be made as a lump sum, and notwithstanding Chapter 150B of the General Statutes, the retirement system may allow an employer or former employer of a member who became a member before January 1, 2015, or who has not earned at least five years of membership service in the retirement system after January 1, 2015, to pay the additional amount required in this subsection over an extended period using one of the following three options:

- (1) Option one. – An installment payment plan ending no more than 15 months after the retirement of the member.

- (2) Option two. – An installment payment plan ending no more than 27 months after the retirement of the member. Interest shall be assessed on the principal amount of the contribution-based benefit cap liability owed and applied to any installment payment plan term exceeding 12 months at a rate corresponding with the interest rate assumption based on the most recent actuarial valuation approved by the Board of Trustees.
- (3) Option three. – An adjustment to the required employer contribution rate for the employer as provided in G.S. 128-30(d)(4a).

Payment under the selected option must be completed regardless of whether the member continues to receive a recurring monthly retirement benefit through the end of the extended payment period. An employer's continuing compliance with a payment option selected from the three options above will be deemed payment of the employer's additional contribution required by this subsection for purposes of G.S. 128-30(b)(3).

(z) Creditable service may be purchased in accordance with G.S. 128-26.5, or as otherwise provided for in this Article. (1939, c. 390, s. 6; 1941, c. 357, s. 5; 1943, c. 535; 1945, c. 526, s. 3; 1951, c. 274, s. 3; 1955, c. 1153, s. 3; 1967, c. 978, ss. 11, 12; 1969, c. 442, s. 6; 1971, c. 325, ss. 9-11, 19; 1973, c. 243, s. 2; c. 667, s. 1; c. 816, s. 3; c. 1310, ss. 1-4; 1975, c. 205, s. 1; c. 485, ss. 1-3; 1977, c. 973; 1979, c. 866, s. 1; c. 868, ss. 1, 2; c. 1059, s. 1; 1981, c. 557, s. 3; 1981 (Reg. Sess., 1982), c. 1283, s. 1; c. 1396, s. 3; 1983, c. 533, s. 2; 1983 (Reg. Sess., 1984), c. 1034, s. 231; 1985, c. 407, s. 1; c. 479, s. 196(h); c. 649, ss. 1, 4; 1987, c. 533, s. 2; c. 617, ss. 1-4; c. 717, s. 1; 1987 (Reg. Sess., 1988), c. 1088, ss. 5, 6; c. 1110, s. 8; 1989, c. 255, ss. 1-10; c. 762, s. 2; 1989 (Reg. Sess., 1990), c. 1024, s. 28; 1991, c. 753, s. 1; 1991 (Reg. Sess., 1992), c. 1017, s. 1; 1995, c. 507, s. 7.23D(a); 1998-71, ss. 1, 2; 1998-214, s. 1; 1999-158, s. 1; 2001-487, s. 82; 2002-71, s. 3; 2002-153, ss. 1-3; 2003-359, ss. 17-19, 22; 2005-91, s. 8; 2006-29, s. 1; 2007-179, s. 2(b); 2007-304, s. 1; 2009-281, s. 1; 2009-392, s. 1; 2010-72, s. 5(b); 2011-183, ss. 97(a), (b); 2011-294, s. 5(b); 2012-130, s. 3(a); 2012-193, s. 4; 2013-288, ss. 2(a), 11; 2013-405, s. 6(b); 2014-88, s. 1(d); 2015-168, ss. 6, 7(b); 2016-56, s. 3; 2017-128, s. 2(b); 2017-129, s. 9(b); 2020-29, s. 1(b); 2020-48, ss. 4.4(c), (d); 2021-57, ss. 2.2(a), (b), 2.3, 2.4; 2021-72, ss. 1.1(c), 3.1(a); 2022-16, s. 2.2; 2023-89, ss. 2.1, 2.2, 2.4; 2024-9, s. 4(c); 2024-10, ss. 7(a)-(n), 9(b).)