

REFERENCE TITLE: retirement plans; plan election; rehire

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HB 2015

Introduced by
Representative Livingston

AN ACT

AMENDING SECTIONS 38-842.01, 38-867 AND 38-881.01, ARIZONA REVISED
STATUTES; RELATING TO PUBLIC RETIREMENT SYSTEMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-842.01, Arizona Revised Statutes, is amended
3 to read:

4 38-842.01. Benefit election; eligibility; disability; death;
5 employees hired on or after July 1, 2017

6 A. An employee who is hired on or after July 1, 2017 and who was
7 not an active, an inactive or a retired member of the system or a member
8 of the system with a disability on June 30, 2017 is eligible to
9 participate in the system or the public safety personnel defined
10 contribution retirement plan established pursuant to article 4.1 of this
11 chapter, depending on the employee's election under this section. The
12 employee's participation in either the system or the public safety
13 personnel defined contribution retirement plan established pursuant to
14 article 4.1 of this chapter begins ninety days after the date the employee
15 is hired. Unless the elections made under this section are made before
16 the ninetieth day after the date of employment, the employee is
17 automatically enrolled in the system for the remainder of the employee's
18 employment with any employer under the system. Any election made under
19 this section is irrevocable and is the employee's election for the
20 remainder of the employee's employment ~~with any employer under the system,~~
21 ~~regardless of whether the employee's employment is continuous.~~ IF AN
22 EMPLOYEE IS SUBSEQUENTLY REHIRED IN COMPLIANCE WITH SECTION 38-843.05 OR
23 HIRED BY A NEW EMPLOYER, THE EMPLOYEE MAY MAKE A NEW ELECTION UNDER THIS
24 SECTION BEFORE THE NINETIETH DAY AFTER THE DATE OF HIRE. IF THE EMPLOYEE
25 DOES NOT MAKE A NEW ELECTION WITHIN THAT TIME FRAME, THE EMPLOYEE'S
26 PREVIOUS ELECTION WILL CONTINUE. The employee may make one of the
27 following irrevocable elections:

- 28 1. To participate solely in the system.
- 29 2. To participate solely in the public safety personnel defined
30 contribution retirement plan established pursuant to article 4.1 of this
31 chapter.

32 B. An employee who makes an election to participate solely in the
33 system or is automatically enrolled in the system pursuant to subsection A
34 of this section and who is not covered by the federal old age and
35 survivors insurance system is also enrolled in the public safety personnel
36 defined contribution retirement plan established pursuant to article 4.1
37 of this chapter during any period that the employee is not covered by the
38 federal old age and survivors insurance system through an employer under
39 the system. If such employee is subsequently covered by the federal old
40 age and survivors insurance system, the employee and the employer may not
41 make any contributions on the employee's behalf to the public safety
42 personnel defined contribution retirement plan established pursuant to
43 article 4.1 of this chapter that are described in section 38-867,
44 subsection A, paragraph 1 or subsection B during the period the employee
45 is covered by the federal old age and survivors insurance system. If at

1 any later time the employee is not covered by the federal old age and
2 survivors insurance system through an employer under the system, the
3 employee and the employer shall again be required to contribute on behalf
4 of the employee to the public safety personnel defined contribution
5 retirement plan established pursuant to article 4.1 of this chapter as
6 required by section 38-867, subsection A, paragraph 1 and, if the employee
7 made an irrevocable election to contribute more of the employee's gross
8 pensionable compensation to the public safety personnel defined
9 contribution retirement plan as provided in section 38-867, subsection B,
10 such contributions shall be reestablished for the period the employee is
11 not covered by the federal old age and survivors insurance system.

12 C. If an employee in the employee's first ninety days of employment
13 is determined to be eligible for an accidental or catastrophic disability
14 pension pursuant to section 38-844, the employee shall be automatically
15 enrolled in the system for the remainder of the employee's employment with
16 any employer under the system commencing on the employee's date of
17 disability and shall receive an accidental or catastrophic disability
18 pension as prescribed in this article.

19 D. If an employee in the employee's first ninety days of employment
20 is killed in the line of duty or dies from injuries suffered in the line
21 of duty, the employee shall be considered as having been enrolled in the
22 system and the surviving spouse of the deceased employee is eligible for
23 survivor benefits as prescribed in this article.

24 Sec. 2. Section 38-867, Arizona Revised Statutes, is amended to
25 read:

26 38-867. Contributions; member; employer; pickup

27 A. Each participant in the defined contribution plan shall
28 contribute the following percentage of the participant's gross pensionable
29 compensation by salary reduction that shall be deposited in the
30 participant's annuity account:

31 1. For a participant as defined in section 38-865, paragraph 7,
32 subdivision (a), item (ii), three percent.

33 2. For a participant as defined in section 38-865, paragraph 7,
34 subdivision (a), item (i), nine percent.

35 3. For a participant as defined in section 38-865, paragraph 7,
36 subdivision (b), seven percent.

37 B. A participant as defined in section 38-865 may make a onetime
38 irrevocable election, before the participant is eligible to participate in
39 any qualified plan of the employer, to contribute more than the percentage
40 of the participant's gross pensionable compensation specified in this
41 section, up to the amount allowable under section 415(c) of the internal
42 revenue code. A participant as defined in section 38-865, paragraph 7,
43 subdivision (b) may make a onetime irrevocable election, before the
44 participant is eligible to participate in any qualified plan of the
45 employer, to contribute less than the percentage of the participant's

1 gross pensionable compensation specified in this section but may not elect
2 to contribute less than five percent of the participant's gross
3 pensionable compensation. The election made pursuant to this subsection
4 shall be the participant's contribution rate for the remainder of the
5 participant's employment ~~with any employer under the system or the~~
6 ~~corrections officer retirement plan, as applicable.~~

7 C. Although designated as employee contributions, all participant
8 contributions made to the defined contribution plan shall be picked up and
9 paid by the employer in lieu of contributions by the employee. The
10 contributions picked up by an employer may be made through a reduction in
11 the participant's compensation. A participant in the defined contribution
12 plan may not choose to receive the contributed amounts directly instead of
13 the employer paying the amounts to the defined contribution plan. All
14 participant contributions that are picked up by the employer as provided
15 in this subsection shall be treated as employer contributions under
16 section 414(h) of the internal revenue code, shall be excluded from the
17 participant's gross income for federal and state income tax purposes and
18 are includable in the gross income of the participant or the participant's
19 beneficiaries only in the taxable year in which they are distributed.

20 D. Each employer shall annually make a contribution equal to the
21 following percentages of each participant's gross pensionable
22 compensation:

23 1. For a participant as defined in section 38-865, paragraph 7,
24 subdivision (a), item (ii), three percent.

25 2. For a participant as defined in section 38-865, paragraph 7,
26 subdivision (a), item (i), nine percent.

27 3. For a participant as defined in section 38-865, paragraph 7,
28 subdivision (b), five percent.

29 E. The pro rata share of the amount paid in subsection D of this
30 section shall be paid on each date that a participant contribution is made
31 and shall be credited to the participant's annuity account.

32 F. A participant of the defined contribution plan may not take
33 loans on any portion of the accumulated assets in the participant's
34 annuity account.

35 G. Each participant as defined in section 38-865, paragraph 7,
36 subdivision (a), item (i) and subdivision (b) and each employer shall
37 contribute:

38 1. To the public safety personnel defined contribution retirement
39 plan disability program established by article 4.2 of this chapter.

40 2. For participants who make an election pursuant to section
41 38-869, an equal amount for the group health benefits plan payments as
42 specified in section 38-869 as determined by actuarial valuations reported
43 by the board to the employer and local board, which shall be deposited in
44 a separate account established pursuant to section 38-869.

1 H. A participant's contributions and earnings on those
2 contributions are immediately vested.

3 I. A participant as defined in section 38-865, paragraph 7,
4 subdivision (a) or section 38-865.01 is fully vested in the defined
5 contribution plan after ten years of service, with employer contributions
6 vesting at a rate of ten percent per year. If a participant described in
7 this subsection dies or is determined to be eligible for an accidental or
8 catastrophic disability pension pursuant to section 38-844 before
9 completing ten years of service, the employer contributions are
10 immediately fully vested.

11 J. A participant as defined in section 38-865, paragraph 7,
12 subdivision (b) is fully vested in the defined contribution plan after
13 three years of service, with the employer contributions vesting at the
14 following rates:

- 15 1. Twenty-five percent after the first year of service.
- 16 2. Fifty percent after the second year of service.
- 17 3. One hundred percent after the third year of service.

18 K. If a participant as defined in section 38-865, paragraph 7,
19 subdivision (b) dies or is determined to be eligible for an accidental or
20 total and permanent disability pension pursuant to section 38-886 before
21 completing three years of service, the employer contributions are
22 immediately fully vested.

23 Sec. 3. Section 38-881.01, Arizona Revised Statutes, is amended to
24 read:

25 38-881.01. Employees hired on or after July 1, 2018; defined
26 contribution plan; benefit election; disability

27 A. Except as provided in subsection B of this section, an employee
28 who is hired on or after July 1, 2018, who is a member as defined in
29 section 38-881, paragraph 27, subdivision (a) and who was not an active,
30 an inactive or a retired member of the plan or a member of the plan with a
31 disability on June 30, 2018 shall participate in the public safety
32 personnel defined contribution retirement plan established pursuant to
33 article 4.1 of this chapter. For an employee who is hired on or after
34 September 1, 2019, the employee's participation in the public safety
35 personnel defined contribution retirement plan established pursuant to
36 article 4.1 of this chapter begins ninety days after the date the employee
37 is hired.

38 B. An employee who is hired on or after July 1, 2018, who is in a
39 designated position as defined in section 38-881, paragraph 13,
40 subdivision (g) and who was not an active, an inactive or a retired member
41 of the plan or a member of the plan with a disability on June 30, 2018 is
42 eligible to participate in the corrections officer retirement plan or the
43 public safety personnel defined contribution retirement plan established
44 pursuant to article 4.1 of this chapter, depending on the employee's
45 election under this section. During the first sixty days of an employee's

1 employment and before the employee makes a decision regarding the
2 individual's retirement plan, the board shall provide each probation and
3 surveillance officer who is hired on or after July 1, 2018 interactive,
4 objective educational training, counseling and participant-specific plan
5 information about both the corrections officer retirement plan and the
6 public safety personnel defined contribution retirement plan options. The
7 employee's participation in either the plan or the public safety personnel
8 defined contribution retirement plan established pursuant to article 4.1
9 of this chapter begins ninety days after the date the employee is
10 hired. Unless the elections made under this section are made before the
11 ninetieth day after the date of employment, the employee is automatically
12 enrolled in the plan for the remainder of the employee's employment with
13 any employer under the plan. Any election made under this section is
14 irrevocable and is the employee's election for the remainder of the
15 employee's employment ~~with any employer under the plan, regardless of~~
16 ~~whether the employee's employment is continuous.~~ IF AN EMPLOYEE IS
17 SUBSEQUENTLY REHIRED IN COMPLIANCE WITH SECTION 38-891.01 OR HIRED BY A
18 NEW EMPLOYER, THE EMPLOYEE MAY MAKE A NEW ELECTION UNDER THIS SECTION
19 BEFORE THE NINETIETH DAY AFTER THE DATE OF HIRE. IF THE EMPLOYEE DOES NOT
20 MAKE A NEW ELECTION WITHIN THAT TIME FRAME, THE EMPLOYEE'S PREVIOUS
21 ELECTION WILL CONTINUE. The employee may make one of the following
22 irrevocable elections:

23 1. To participate solely in the corrections officer retirement
24 plan.

25 2. To participate solely in the public safety personnel defined
26 contribution retirement plan established pursuant to article 4.1 of this
27 chapter.

28 C. If an employee specified in subsection B of this section in the
29 employee's first ninety days of employment is determined to be eligible
30 for an accidental or total and permanent disability pension pursuant to
31 section 38-886, the employee shall be automatically enrolled in the
32 corrections officer retirement plan for the remainder of the employee's
33 employment with any employer under the plan commencing on the employee's
34 date of disability and shall receive an accidental or total and permanent
35 disability pension as prescribed in this article.

36 D. If an employee specified in subsection B of this section in the
37 employee's first ninety days of employment is killed in the line of duty
38 or dies from injuries suffered in the line of duty, the employee shall be
39 considered as having been enrolled in the corrections officer retirement
40 plan and the surviving spouse of the deceased employee is eligible for
41 survivor benefits as prescribed in this article.