

Effect of Settlement of *Goodman v. City of New York* Lawsuit on Calculation of Pensions of
Fire Department Pension Fund Members with Active Military Service

This is to advise members of the Fire Department Pension Fund (Firefighters, Fire Officers, Fire Marshals, Marine Titles, and Wipers) of the settlement of a class action lawsuit, *Goodman, et al. v. City of New York, et al.*, involving members of the New York City Police Pension Fund (“Goodman Settlement”). The Goodman Settlement has implications on how the Fire Department Pension Fund calculates pensionable earnings for periods when a member is absent from Fire Department employment performing Active Military Service.

The information provided here pertains to members of the Fire Department Pension Fund who performed Active Military Service* between 9/11/01 to present, both members who are retired and members who are currently active Fire Department employees (“Members”).

*Active Military Service is defined in the Goodman Settlement as “the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty, and a period for which a person is absent from employment for the purpose of performing funeral honors duty.” [38 U.S. C. § 4303(13)].

The Goodman Settlement requires that the City of New York take all reasonable steps to ensure that other City retirement systems, including the Fire Department Pension Fund, calculate the pensions of Members, in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”) (38 U.S.C. §§ 4301-35), and the terms of the Goodman Settlement. This may involve recalculation of the pensionable earnings of Members for periods of Active Military Service.

Recalculation of Pensionable Earnings

Recalculation of Pensionable Earnings for qualifying Members will entail determining the average amount of base salary, overtime, night shift differential, holiday pay, portal-to-portal, allowable longevity payments, and any other applicable differential amounts (“Pensionable Earnings”) that the Member would have earned had the Member been continuously present in his/her Fire Department position and not absent performing Active Military Service. The Pensionable Earnings that the Member would have received but for the period of Active Military Service will then be imputed to the military service period to be considered in calculating the Member’s pension benefits. To the extent that such Pensionable Earnings the Member would have received are “not reasonably certain”, Pensionable Earnings shall be determined based upon the average amount of Pensionable Earnings earned by the Member during the 12 months immediately preceding the Member’s period of Active Military Service.

When computing Pensionable Earnings for periods of Active Military Service, the Fire Department Pension Fund already credits a Member for the amount of base salary, holiday pay, longevity, and night

shift differential the Member would have earned if present at the Fire Department and not absent performing Active Military Service. The following information concerns imputing overtime, special assignment differentials, and any other applicable differential amounts to periods of Active Military Service when computing Pensionable Earnings.

Members Who Performed a Period of Active Military Service On Or After 9/11/01, and Returned from Such Period of Active Military Service On Or Before March 17, 2014

(a) Retired Members Who Began Receiving a Pension Check [Before 10/10/04](#)

Members who returned to Fire Department employment from a period of Active Military Service on or before March 17, 2014, retired from the Fire Department, and began receiving a pension check from the Fire Department Pension Fund before 10/10/04, may be ineligible for recalculation of Pensionable Earnings unless the Member performed Active Military Service after retiring from the Fire Department. Please contact the Fire Department Pension Bureau to determine if you are eligible for recalculation of your Pensionable Earnings.

(b) Retired Members Who Began Receiving a Pension Check [On Or After 10/10/04](#)

(c) Active Members (Non-Retired)

The following information is applicable to both: (b) Members who returned to Fire Department employment from a period of Active Military Service on or before March 17, 2014, retired from the Fire Department, and began receiving a pension check from the Fire Department Pension Fund on or after 10/10/04, AND (c) Members who are active Members (not retired from the Fire Department) who returned from a period of Active Military Service on or before March 17, 2014.

Such Members may elect to have their Pensionable Earnings recalculated for one or more periods of Active Military Service. A Member is not obligated to request recalculation of his/her Pensionable Earnings.

Depending on when the Member performed Active Military Service and the Member's date of retirement, recalculation may result in (1) an increase to the Member's annual pension benefit; or (2) no change to the Member's annual pension benefit. If the Member requests recalculation of his/her Pensionable Earnings, the Member will be given the opportunity to: (1) accept the recalculations; or (2) decline the recalculations (resulting in no change to the Member's pension benefit and no financial harm to the Member).

In the coming weeks, the Fire Department will mail to Members' home addresses information on their dates of military service on file with the Fire Department, preliminary information to

assist the Member in determining whether recalculation will benefit him/her, and how to elect recalculation.

Members Who Performed a Period of Active Military Service On Or After 9/11/01, and Returned From Such Period of Active Military Service On or After March 18, 2014

For members who returned from a period of Active Military Service on or after March 18, 2014, the Fire Department Pension Fund is required to determine how much the Member would have earned in Fire Department overtime, special assignment differentials, and any other applicable differential amounts had the Member not been absent on Active Military Service, and to impute these amounts to such periods of Active Military Service as Pensionable Earnings. The Member is required to make additional pension contributions for these imputed amounts within a repayment period prescribed by USERRA.

Upon returning from Active Military Service, the Member will be provided with information as to any additional pension contributions that the Member owes and payment options.

Additional Considerations

Imputing overtime, special assignment differentials, and any other applicable differential amounts to periods of Active Military Service is solely for purposes of calculating a Member's Pensionable Earnings, and the Member will not receive back pay for the imputed amounts. In addition, if the Member elects recalculation, or is subject to mandatory calculation, the Member will be responsible for making additional pension contributions for any Pensionable Earnings imputed to periods of Active Military Service.

When a member elects recalculation, or is subject to mandatory recalculation, the City shall make required employer contributions on any Pensionable Earnings imputed to periods of Active Military Service.

Members who performed Active Military Service between September 11, 2001, and March 17, 2014, but who are no longer members of the Fire Department Pension Fund because of a transfer to another system or withdrawal of member contributions are not entitled to a recalculation. If a former Member transferred to another public retirement system, he or she should make an application to the new retirement system to be recalculated in accordance with the statutory requirements of USERRA.

Please check back here periodically for additional and updated information. The Fire Department Pension Fund may be reached at (718) 999-1202.