

Federal Law regarding the WEP

The WEP primarily affects people who earned a pension from a government job which was not subject to Social Security and also worked at other jobs where they paid Social Security taxes long enough to qualify for retirement or disability benefits from Social Security. For affected individuals, a modified formula is used to calculate the Social Security benefit amount, resulting in a lower benefit. SSA Publication No. 05-10045, Windfall Elimination Provision (January 2005).

The modified formula applies to individuals who reach age 62 or become disabled after 1985 and first become eligible after 1985 for a monthly pension based in whole or in part on work not covered by Social Security. 42 U.S.C. § 415(a)(7); 20 C.F.R. § 404.213; SSA Publication No. 05-10045; IRS Publication 963, Federal-State Reference Guide (2002) (emphasis added). The Social Security Regulations provide "[w]e consider you to first become eligible for a monthly pension in the first month for which you met all requirements for the pension except that you were working or had not yet applied." 20 C.F.R. § 404.213 (emphasis added).

Even if covered by the above categories, the WEP does not apply to:

- Persons who have 30 or more years of substantial earnings under Social Security (the reduction is phased in for 21 to 29 years of substantial earnings);
- Pensions based entirely on non-covered employment before 1957;
- Pensions based on earnings under the Railroad Retirement Act;
- Federal workers first hired after December 31, 1983; and
- Certain employees of non-profit organizations

42 U.S.C. § 415(a)(7); 20 C.F.R. § 404.213; SSA Publication No. 05-10045; IRS Publication 963.

Application to Members of the State Police Pension Plan

The version of the Pension Trust in effect before the 1963 Amendment provided as follows:

C. 10 Years but less than 20 Years of Service. When an Employee Beneficiary, under the age of 55, having completed 10 years of service, but less than 20 years of service, shall cease to be an Employee for any reason other than death, there shall be paid to such Employee Beneficiary a monthly retirement benefit (instead of a cash settlement as applied to Employee Beneficiary with less than 10 years of service) of 5% of his pension classification (or otherwise calculated retirement benefit) for each year of service with the Department;

provided further that such amount of retirement benefit will be reduced by the following table [table omitted].

[Members with 20 or more years of service received a retirement benefit reduced for age starting at age 45.]

....

E. Termination benefits paid in a lump sum shall be payable not later than 30 days after termination. The first monthly payment of benefits payable on a monthly basis shall be payable one month after the Employee Beneficiary leaves the payroll of the Department.

Thus, under these provisions, an Employee Beneficiary with 10 years of service who terminated employment could have commenced monthly benefits (although the benefit may have been reduced) immediately.

The 1963 Amendment, effective January 1, 1963, provided as follows:

E. Termination benefits paid in a lump sum shall be payable not later than 30 days after termination. The first monthly payment of benefits payable on a monthly basis shall be payable one month after the Employee Beneficiary leaves the payroll of the Department when such termination follows normal retirement age of 55 or twenty years or more of service, or, in the case of persons becoming Employee Beneficiaries prior to January 1, 1963, when such termination follows ten years or more of service. Provided, that in the case of persons becoming Employee Beneficiaries on or after January 1, 1963, no monthly retirement benefit shall be payable to such Employee Beneficiary in any event before one month after the twentieth anniversary of such person having become an Employee Beneficiary, or age 55, whichever occurs first. Provided further, that nothing in this paragraph shall be construed to alter the method of payment of death benefits.

(Emphasis added).

Thus, for individuals who became members on or after January 1, 1963, although they still vested in a monthly benefit after 10 years of service, there were additional requirements which had to be met before the monthly benefit became payable (i.e., the earlier of attaining age 55 or reaching the twentieth anniversary of membership).