

3. Upon election and the taking of an oath of office, the State, municipal or county member-trustees shall serve for a term of three years. In the event that no member is certified as the winner of an election, the incumbent trustee shall serve until a successor is certified by the Board of Trustees.

(j) If there are at least three candidates in an election for member-trustee and the victorious candidate dies or declines to serve as such member-trustee prior to the beginning of the candidate's term as trustee, the candidate who obtained the next highest number of votes in that election (that is, the first runner-up) shall be selected to fill the Board vacancy caused by the death or inability or unwillingness to serve of the successful candidate. If the Board selects the first runner-up in such election and that person is unable or unwilling to accept the position, then the Board shall select the candidate who obtained the next highest number of votes in that election. If there is no second runner-up, the Board shall conduct a new election to fill the Board vacancy. For purposes of this provision, a member-trustee's term begins upon the taking of the oath of office.

Amended by R.1973 d.118, effective April 30, 1973.

See: 5 N.J.R. 124(b), 5 N.J.R. 204(a).

Amended by R.1985 d.213, effective July 9, 1976.

See: 8 N.J.R. 260(a), 8 N.J.R. 407(c).

Amended by R.1985 d.590, effective November 18, 1985.

See: 17 N.J.R. 2238(a), 17 N.J.R. 2784(a).

(a)4 added text: "If only one . . . only one nominee."; and added (b)9.

Amended by R.1987 d.157, effective April 6, 1987.

See: 19 N.J.R. 52(a), 19 N.J.R. 565(a).

Substantially amended.

Amended by R.1993, d.78, effective February 16, 1993.

See: 24 N.J.R. 3690(a), 25 N.J.R. 711(a).

Added new (i).

Amended by R.1994 d.259, effective June 6, 1994.

See: 25 N.J.R. 5113(a), 26 N.J.R. 2299(d).

Repeal and New Rule, R.2000 d.73, effective March 6, 2000.

See: 31 N.J.R. 3926(a), 32 N.J.R. 821(a).

Section was "Election of member-trustee".

Amended by R.2004 d.84, effective March 1, 2004.

See: 35 N.J.R. 4831(a), 36 N.J.R. 1198(a).

Rewrote (e)1iv and (e)2iv; in (f), deleted 3 and recodified 4 as 3.

#### Case Notes

Request for recount in election of trustees of Public Employees' Retirement System was properly denied where there was no evidence of miscalculations or serious errors in counting process. *McLaughlin v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 181.

Candidate was ineligible to run for reelection to PERS Board of Trustees; prior disciplinary suspension. *Buriani-DeSantis v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 63.

#### 17:2-1.5 Certifying Officer (employer)

(a) The Chief Fiscal Officer or other officer duly designated via resolution of each county, municipality or public agency and the personnel officer of the Division, Bureau or Institution of the State locations shall serve as the Certifying Officer for that unit.

(b) The Certifying Officer shall be responsible for the duties described by N.J.S.A. 43:15A-67 and Section 80 and any other section which refers to the Department head.

(c) The Certifying Officer shall also be responsible for all other duties relating to matters concerning the System including providing requested documentation in a timely manner.

(d) Upon the request of the Board, the Certifying Officer shall be required to sign a statement, verifying that any information reported is accurate to the best of the Officer's knowledge, and conforms with the statutes and rules governing the retirement system.

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Substituted references to Certifying Officers for references to Certifying agents throughout; and added (d).

Amended by R.2005 d.75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

In (c), inserted "including providing requested documentation in a timely manner" following "System".

#### Case Notes

PERS member's employer, not the Division of Pensions and Benefits or the PERS Board, had duty to keep employees apprised of all duties and obligations under the PERS statute. *Kramer v. Board of Trustees of Public Employees' Retirement System*, 291 N.J.Super. 46, 676 A.2d 1117 (N.J.Super.A.D. 1996).

Petition to purchase pension credit for prior temporary service after expiration of statutory filing limitation denied: *Public Employees' Retirement System* held without statutory obligation to disseminate to certifying agents amendatory legislation concerning the retirement system at the time of enactment. In re *Krah*, 130 N.J.Super. 366, 327 A.2d 248 (App.Div.1974).

#### 17:2-1.6 Records

(a) In addition to the provisions of N.J.A.C. 17:1-1.2, the minutes of the Board are a matter of public record and may be inspected during regular business hours in the Office of the Board Secretary.

(b) The mailing addresses of all active and retired members are considered to be a part of the member's confidential files and shall not be released for any purpose.

(c) The designations of beneficiaries of all active and retired members are considered to be a part of the member's confidential files and shall only be released after the member's death.

(d) All medical testimony obtained in connection with an application for disability retirement shall be restricted for the confidential use of the Board of Trustees. The Division shall release a copy of the examining physician's medical report to the member, the member's attorney or any person authorized by the member in writing to receive a copy of such report. A copy of the Board appointed physician's medical report cannot be released until after the Board's initial determination. In no event shall the report be re-

leased to any individual not authorized in writing to receive the report.

(e) The annual report of the system's actuary shall not be released until it has been approved by the Board of Trustees.

(f) Original documents, if available, shall only be viewed by appointment at the Division of Pensions and Benefits.

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Inserted a new (c); and recodified former (c) as (d), and added the second and third sentences.

Amended by R.2005 d.75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

In (a), substituted "In addition to the provisions of N.J.A.C. 17:1-1.2, the" for "The"; in (d), added the third sentence; added (e) and (f).

### 17:2-1.7 Appeal from Board decisions

The following statement shall be incorporated in every written notice setting forth the Board's determination in a matter where such determination is contrary to the claim made by the claimant or the claimant's legal representative:

"(a) If you disagree with the determination of the Board, you may appeal by submitting a written statement to the Board within 45 days after the date of written notice of the determination. The statement shall set forth in detail the reasons for your disagreement with the Board's determination and shall include any relevant documentation supporting your claim. If no such written statement is received within the 45-day period, the determination by the Board shall be final.

(b) The Board shall determine whether to grant an administrative hearing based upon the standards for a contested case hearing set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

(c) Administrative hearings shall be conducted by the Office of Administrative Law pursuant to the provisions of N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1-1.

(d) If the granted appeal involves solely a question of law, the Board may retain the matter and issue a final determination which shall include detailed findings of fact and conclusions of law based upon the documents, submissions and legal arguments of the parties. The Board's final determination may be appealed to the Superior Court, Appellate Division.

(e) If the granted appeal involves a question of facts, the Board shall submit the matter to the Office of Administrative Law."

As amended, R.1971 d.71, effective May 18, 1971.

See: 3 N.J.R. 50(a), 3 N.J.R. 117(b).

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Rewrote the section.

### Case Notes

State agency's failure to give employee required notice of right to appeal adverse determination concerning substitution of survivor's benefits beneficiary necessitated court's transfer of issue back to agency for final determination. *Rienzi v. Rienzi*, 300 N.J.Super. 355, 693 A.2d 129 (A.D.1997).

Employee who sustained back injury which, at most, contributed to progression of arthritic condition by aggravation, held not to have disability which was a direct result of a traumatic event so as to entitle the employee to disability retirement benefits. *Gerba v. Bd. of Trustees, Public Employees' Retirement System*, 83 N.J. 174, 416 A.2d 314 (1980).

Legislative positions held by employee as Assistant to Speaker of General Assembly, Assistant Secretary of Senate and Secretary of Senate held not within explicit exclusions for temporary or seasonal employees or employees whose salary was less than \$500, but were regular State employment positions qualifying employee for PERS benefits, notwithstanding twice yearly rather than quarterly salary payments. *Gladden v. Bd. of Trustees, Public Employees' Retirement System*, 171 N.J.Super. 363, 409 A.2d 294 (App.Div.1979).

### 17:2-1.8 Suspension of pension checks

(a) The disbursement of pension checks shall be suspended under the following circumstances and such suspensions shall continue during the period in default:

1. If a disability retiree fails to appear for a medical examination;
2. If a disability retiree fails to timely file a report with the System of annual earned income if requested;
3. If a widow, widower, parent or guardian of a minor child(ren) fails to file a certificate of eligibility which is normally mailed to such beneficiaries on an annual basis;
4. If a retiree or beneficiary becomes mentally or physically incompetent. The disbursement of pension checks in this instance shall be suspended until a proper legal representative has been appointed; or
5. If a retiree does not complete a policy assignment of group life insurance as requested by the Board of Trustees.

As amended, R.1979 d.399, effective October 9, 1979.

See: 11 N.J.R. 411(a), 11 N.J.R. 596(b).

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

In (a)2, deleted "under age 60" following "retiree".

Amended by R.2005 d.75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

In (a), inserted "if requested" following "annual earned income" in 2 and added 5.

### 17:2-1.9 Verified discrepancy in member's age

The member's account, active or retired, shall be reconstructed and all benefit entitlements and contributions shall be determined on the basis of the member's correct date of birth.

### 17:2-1.10 (Reserved)

Repealed by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Section was "Travel".

**17:2-1.11 Proof of age**

(a) All members shall establish proof of their age with the System. Acceptable proofs of age include birth or baptismal certificates, passports, naturalization papers, Biblical records, affidavits of older members of the immediate family or primary school records.

(b) In the event a member dies before satisfactory evidence of the member's date of birth has been filed with the System, appropriate evidence may be required before any death claim is processed for settlement.

(c) In the event proof of age has not been filed with the System before retirement, such proof must be filed before any retirement benefits may be disbursed.

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Rewrote (a); and in (b), neutralized a gender reference, and substituted "shall" for "may" following "evidence".

Amended by R.2005 d.75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

In (b), substituted "may" for "shall" preceding "be required".

**17:2-1.12 State employees; biweekly salaries**

(a) Retirement and death benefits as well as service credit will be determined on the basis of biweekly pay periods for employees whose employers report salary and contributions on a biweekly basis. This biweekly schedule should conform to the biweekly reporting schedule issued by the State's Centralized Payroll Office.

(b) In the event a member is reported on a combination of monthly and biweekly pay periods, the member's last year's salary or final compensation as well as the member's service credit will be computed on a proportional basis.

R.1974 d.230, effective August 19, 1974.

See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Rewrote (a); and in (b), neutralized gender references throughout.

**17:2-1.13 Nearest attained age; enrollment; retirement**

(a) Members who are six months or more past their most recent birthdate at the time of enrollment or retirement will have their pension contribution rate and retirement factor based upon their age on their next birthday.

(b) A flat five percent pension rate of contribution was enacted by P.L. 1994, c.62 for all employees enrolled on or after July 1, 1994. For members enrolled prior to July 1, 1994 whose previous full rate of contributions was six percent or more, the five percent contribution rate became effective on July 1, 1995. For members enrolled prior to July 1, 1994 whose previous full rate of contributions was less than six percent, their rate of contributions became four percent on July 1, 1995 and then five percent on July 1, 1996.

(c) The contribution rate was reduced to 4.5 percent effective January 1, 1998 under the provisions of P.L. 1997,

c.115. P.L. 1999, c.415 further reduced the contribution rate to three percent of pensionable salary. The rate change was effective January 1, 2000, and remained in effect until July 1, 2004 for State employees and January 1, 2005 for local employees when the rates returned to five percent. Future reductions are possible if the System is fully funded.

New Rule, R.1991 d.115, effective March 4, 1991.

See: 22 N.J.R. 3707(a), 23 N.J.R. 712(a).

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Rewrote the section.

Amended by R.2005 d.75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

Added (c).

**Case Notes**

No early retirement incentive benefits for employee who did not turn 50 until two months after retirement date specified in special retirement legislation. *Ryan v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 217.

**SUBCHAPTER 2. ENROLLMENT****17:2-2.1 Enrollment eligibility**

(a) A position with a public employer must be covered by Social Security as a prerequisite for membership in the system. In the case of multiple employments, Social Security coverage is required in each position or employment for each to qualify for membership.

(b) Subsection (c) below shall only be applicable to individuals who become members of PERS on or after November 2, 2008.

(c) Pursuant to the provisions of N.J.S.A. 43:15A-7, the \$7,500 minimum annual base salary for participation in the retirement system shall be adjusted annually by the Director of the Division in accordance with changes in the Consumer Price Index, but by no more than four percent. For the calendar year beginning January 1, 2010, the minimum base annual salary required for enrollment will be adjusted annually to reflect increases in the Consumer Price Index. For purposes of this calculation, "Consumer Price Index" means the average of the annual increase in the consumer price index for all urban consumers, not seasonally adjusted for all items, in the New York City and Philadelphia metropolitan statistical areas during the preceding calendar year as reported by the United States Department of Labor, Bureau of Labor Statistics.

1. The adjustment factor for a calendar year shall be calculated as a fraction, pursuant to the following:

i. The numerator shall be the annual Consumer Price Index for all urban consumers in the New York City metropolitan statistical area for the calendar year ending December 31 of the first year preceding the July 1 calculation date, plus the annual Consumer Price Index

for all urban consumers in the Philadelphia metropolitan statistical area for the same time period; and

ii. The denominator shall be the annual Consumer Price Index for all urban consumers in the New York City metropolitan statistical area for the calendar year ending December 31 of the second year preceding the July 1 calculation date, plus the annual Consumer Price Index for all urban consumers in the Philadelphia metropolitan statistical area for the same time period.

2. If the value of the calculation in (c)1 above is less than zero for a calendar year, then the adjustment factor for the calendar year shall be equal to zero. If the value of that fraction is greater than 1.04 for a calendar year, then the adjustment factor for the calendar year shall be equal to 1.04.

3. The adjustment shall be calculated on or about July 1 each calendar year to become effective on January 1 of the subsequent calendar year.

4. Increases in the minimum annual base salary shall be made in multiples of \$100.00, except that any increase, which is not a multiple of \$100.00 will be rounded to the next lowest multiple of \$100.00. Each annual adjustment shall not be more than four percent when compared to the preceding year's minimum annual base salary.

(d) The calculation and any needed adjustments pursuant to (c) above shall be published via a notice of administrative change in the New Jersey Register revising the minimum annual base salary.

Amended by R.1981 d.58, effective February 20, 1981.  
See: 12 N.J.R. 554(b), 13 N.J.R. 247(b).

(c) deleted.

Amended by R.2000 d.26, effective January 18, 2000.  
See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

In (b), deleted a reference to dual enrollments, and substituted "required" for "prescribed" following "coverage is".

Amended by R.2009 d.252, effective August 17, 2009.  
See: 41 N.J.R. 1712(a), 41 N.J.R. 3110(a).

Section was "Social Security coverage". Rewrote the section.  
Public Notice: August 28, 2009 Increase in the Minimum Annual Base Salary for Participation in the Public Employees' Retirement System.  
See: 41 N.J.R. 3863(a).

### 17:2-2.2 Multiple employment's

(a) Any employee who has enrolled in a covered position must also enroll in any other position regardless of the employee's employment status in such other position if the employee meets the salary and Social Security qualifications for enrollment. However, if an employee who is ineligible for membership later accepts an additional position which makes the employee eligible for membership in that second position, the employee's ineligibility for membership in the earlier position is not altered by the employee's enrollment in the Public Employees' Retirement System.

(b) An elected official must also enroll on the basis of such office if the elected official is enrolled or is enrolling on the basis of other public employment. If the elected official was

employed in the optional position first, the enrollment date for the optional position is established as the effective date of enrollment of the position which required the elected official to establish membership in the retirement system. If the individual has already established membership in the retirement system, the effective date of enrollment of the optional employment is established as the date of hire.

Amended by R.1974 d.230, effective August 19, 1974.

See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).

Amended by R.1979 d.399, effective October 9, 1979.

See: 11 N.J.R. 411(a), 11 N.J.R. 596(b).

Amended by R.1988 d.351, effective August 1, 1988.

See: 20 N.J.R. 969(b), 20 N.J.R. 1953(c).

Deleted requirement that PERS employees be paid in four calendar quarters to be eligible for PERS membership.

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Rewrote (b); and deleted a former (c).

Amended by R.2005 d.75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

### 17:2-2.3 Ineligible persons

(a) The following classes of persons are ineligible for membership in the system:

1. Motor vehicle agents and their non-State employees;

2. Licensing agents of the Fish and Game Division and their non-State employees;

3. Any person paid from State, county, local public, or Federal funds who is a member of or required to join the Federal Civil Service Retirement System on total salary;

4. Any employee who is provisionally appointed to a Civil Service position is considered as an employee with temporary employment status and is ineligible to establish membership until the employee receives a regular Civil Service appointment, or has one year of continuous service. This does not apply to anyone who is already enrolled as a member or is a retiree from the System. Breaks in service of less than 30 days do not negate the continuity of service;

5. Any employee who is employed on a seasonal basis. Seasonal employment is a category of occasional employment which the employer, consistent with past practices, does not expect to lead to permanent employment and is not a temporary position as defined under N.J.A.C. 17:2-2.4(c). To qualify as seasonal employment, work periods shall not extend beyond six consecutive months for locations that report contributions on a 12-month basis, or five consecutive months for locations that report contributions on a 10-month basis, and severance of the employer/employee relationship shall occur during breaks in employment, and such breaks shall exceed 30 consecutive days;

6. Any person not in the career, senior executive and unclassified service, or a regular budgeted position, who is employed on an on-call basis and works on average less than 10 days a month throughout the regular work year of the employer. This type of employment is temporary employment which is not continuous;

## Case Notes

Waiver of interest payment assessments on petitioner's purchase of retroactive compulsory service credit was properly denied. *Montagna v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 119.

**17:2-5.5 Optional purchases of eligible service**

(a) A shared-cost purchase is one in which the member pays only the employee's share and not the employer's share of the purchase. A member may purchase all or a portion of such eligible service. A shared-cost purchase will be calculated on the basis of the actuarial purchase factor established for the member's age at the time of the purchase request times the higher of either the member's current annual base salary or highest fiscal year base salary. The following types of purchases are shared-cost purchases:

1. Former membership credit in a New Jersey State-administered retirement system;
2. Former service with any other employer which was not certified for membership but which would have qualified on an optional or a compulsory basis at the time the service was rendered;
3. After August 6, 2001, continuous temporary service immediately preceding enrollment;
4. Leaves of absence without pay:
  - i. The period of the leave for personal reasons which does not exceed 93 days. Child care is considered leave for personal reasons;
  - ii. The period of the leave up to two years for personal illness. The Division may require proof from the employer that the illness existed for the length of the leave;
5. Non-veterans may purchase continuous service subsequent to the date their employer adopted the retirement system, provided the service was with the same employer to the date of enrollment;
6. Non-veterans, hired prior to July 1, 1966, whose employers have not adopted the retirement system, may enroll any time and purchase continuous service retroactive to July 1, 1966, provided the service was with the same employer to the date of enrollment;
7. Eligible out-of-State public employment, up to a total purchase of 10 years. As provided in N.J.S.A. 43:15A-42, out-of-State service cannot be used to qualify for an ordinary disability retirement;
8. Intermittent service, as defined by N.J.A.C. 17:2-2.3(a)8, which resulted, without interruption, in permanent employment with the same employer. The intermittent service shall have been in a position which satisfied, in whole or in part, the job's requirement for experience needed to qualify for the permanent title; and
9. Non-concurrent Teachers' Pension and Annuity Fund service if a dual member of TPAF and PERS

pursuant to P.L. 2001, c.6 (N.J.S.A. 43:15A-14). All or a portion of non-concurrent service in the PERS from an expired or withdrawn account may be purchased.

(b) The types of purchases indicated in (b)1 through 3 below are considered to be full-cost purchases. A member may purchase all or a portion of such eligible service. The lump sum purchase cost shall be calculated on the basis of the actuarial purchase factor established for the member's nearest age at the time of the purchase request times the higher of either the member's current annual base salary or highest fiscal year base salary. The computed lump sum purchase cost shall then be doubled to establish the full cost to the member. This cost is calculated in this manner as N.J.S.A. 43:15A-73.1 provides that the employer shall not be liable for any costs of purchasing this service; therefore, the member must pay both the employee and employer share.

1. Active duty military service prior to enrollment. Active military service that is eligible for purchase means full-time duty in the active military service of the United States. Such term includes full-time training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. It cannot include periods of service of less than 30 days. It does not include weekend drills or annual summer training of a national guard or reserve unit nor does it include periods when the member was on-call. It also does not include time spent in the Reserved Officers Training Corps or as a cadet or midshipman at one of the service academies. Military service before enrollment cannot be used to qualify for an ordinary disability retirement;
2. Employment with the Federal government. Pursuant to N.J.S.A. 43:15A-42, U.S. Government service cannot be used to qualify for an ordinary disability retirement;
3. Service established under a local municipal or county retirement system within the State of New Jersey.

(c) A member shall be eligible to purchase an aggregate of up to 10 years of out-of-State public employment, military service and Federal employment provided that the member is not receiving nor is entitled to receive a retirement allowance for such service from any other public retirement system and provides proof to the Division of Pensions and Benefits that the member has withdrawn from such other system. A qualified veteran shall be eligible to purchase an additional five years of military service rendered during periods of war for an aggregate of 15 years of such service.

(d) Rules concerning the purchase and/or conversion of Class A credit include the following:

1. The cost of Class B service credit is based on the actuarial factors and such factors provide a retirement benefit which is one-sixth greater than service credited as Class A. If Class A credit is purchased, the cost will be

six-sevenths of the amount computed for a Class B purchase. The computation is based on the member's present salary or highest fiscal year base salary multiplied by the actuarial purchase factor for the member's age at the time of purchase with regular interest.

2. If a Class A member converts to Class B, the member will contribute an additional one-sixth of the total contributions that would have been payable based on the member's full Class A contribution rate with regular interest.

Amended by R.1999 d.289, effective August 16, 1999.

See: 31 N.J.R. 1581(a), 31 N.J.R. 2368(a).

Rewrote the section.

Amended by R.2001 d.258, effective August 6, 2001.

See: 33 N.J.R. 1341(a), 33 N.J.R. 2677(a).

In (a), inserted "and" preceding "not the employer's"; in (a)1, substituted "in a New Jersey" for "with another"; in (a)(3), substituted "After the effective date of this amendment, continuous" for "Continuous" and deleted "with the same employer"; added (a)9.

Amended by R.2005 d.75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

In (a), inserted "from the employer" following "may require proof" in 4ii; in (b), rewrote 1.

#### Case Notes

Denial of application to purchase additional service credit due to insufficient evidence affirmed. *Webb v. Public Employees' Retirement System*, 97 N.J.A.R.2d (TYP) 83.

Retiree's request to cancel and obtain refund of previously purchased prior service credit in the retirement system denied. *Chmieloweic v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 73.

#### 17:2-5.6 Methods of payment

(a) Methods of payment include the following:

1. Lump sum;
2. Partial lump sum; balance by extra payroll deductions;
3. Extra deductions equal to at least one-half of the full regular pension deduction for a maximum period of 10 years;
4. Extra payroll deductions will include regular interest for the term of the installment.
5. Direct rollover/trustee-to-trustee transfer of funds: Lump sum payments and partial lump sum payments can include the direct rollover or transfer of tax-deferred contributions from financial plans that qualify under terms specified by the Internal Revenue Service. All payments remitted to the Division must be accompanied by properly completed forms as specified by the Division. Checks remitted to the Division without the required forms shall be returned to the member. A lump sum rollover payment for a purchase cannot exceed the lump sum cost of that purchase. Checks in an amount greater than the lump sum cost of the purchase shall be returned to the member.

Amended by R.1991 d.281, effective June 3, 1991.

See: 23 N.J.R. 685(b), 23 N.J.R. 1800(a).

Mandatory age requirement eliminated.

Amended by R.2001 d.422, effective November 19, 2001.

See: 33 N.J.R. 2609(a), 33 N.J.R. 3907(b).

In (a)2, deleted "of \$250.00 or more".

Amended by R.2005 d.75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

In (a), added 5.

#### 17:2-5.7 (Reserved)

Repealed by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Section was "Military leave".

#### 17:2-5.8 Per diem credit

For the purchase of granting prior service credit for service performed on a per diem, hourly, on-call, or as-needed basis, credit shall be prorated and granted on the basis of 10 days equal one month of credit.

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Inserted a reference to hourly, on-call, or as needed basis, and substituted a reference to 10 days for a reference to 20 days.

#### 17:2-5.9 (Reserved)

Recodified to N.J.A.C. 17:2-4.15 by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

#### 17:2-5.10 (Reserved)

Recodified to N.J.A.C. 17:2-4.16 by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

#### 17:2-5.11 Service ineligible for purchase

Service rendered outside of the United States, with the exception of eligible service rendered in certain instances in territories or possessions of the United States, Washington, DC and the Canal Zone, is not purchasable.

Amended by R.1999 d.289, effective August 16, 1999.

See: 31 N.J.R. 1581(a), 31 N.J.R. 2368(a).

Rewrote the section.

#### 17:2-5.12 Correction of errors for prior service credit

Credit for all previous service established under the provisions of P.L. 1974, c.104 (N.J.S.A. 43:15A-54), and payment therefore, shall be calculated on the basis of salaries received during the period of such service with applicable regular interest. The pension rate of contribution will be determined as of the member's compulsory date of enrollment.

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Inserted "and payment therefor," preceding "shall be" and added "with applicable regular interest" at the end of the first sentence, and deleted a former third sentence.

Amended by R.2005 d.75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).  
Added the N.J.S.A. reference.

### 17:2-5.13 Lump sum purchases

If a purchase is paid in a lump sum, the member shall receive full credit for the amount of service covered by the purchase upon receipt of the lump sum payment. The service may be used for any purchase for which it is authorized under the Public Employees' Retirement System Act (N.J.S.A. 43:15A-1 et seq.) and the rules of the Retirement System.

New Rule, R.1989 d.516, effective October 2, 1989.  
See: 21 N.J.R. 1820(b), 21 N.J.R. 3176(b).  
Amended by R.2000 d.26, effective January 18, 2000.  
See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).  
Amended by R.2005 d.75, effective February 22, 2005.  
See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

## SUBCHAPTER 6. RETIREMENT

### 17:2-6.1 Applications

(a) Applications for retirement must be made on forms required by the System. Such forms must be completed in all respects and filed with the Division of Pensions and Benefits (Division) on or before the requested date of retirement. A member's retirement application becomes effective on the first of the month following receipt of application unless a future date is requested. Members enrolled at multiple PERS locations must retire from employment in all covered positions before a retirement shall become effective.

(b) In the event a member files an incomplete application, the deficiencies shall be brought to the member's attention and the member shall be required to file a completed application with the Division to enable processing.

(c) A member shall, on the retirement application, select one of nine ways (options) to receive retirement benefits. Each option provides the member with a lifetime monthly retirement benefit. Once a retirement benefit becomes due and payable as defined by N.J.A.C. 17:2-6.2, the option cannot be changed. Except under the Maximum Option and Option 1, once a member designates a beneficiary, that beneficiary cannot be changed. P.L. 2001, c.120 provides for additional payment options that allow the member to choose an actuarially reduced retirement allowance in order to provide a beneficiary with an allowance equivalent to the full amount, three-quarters, one-half or one-quarter of the reduced allowance. If the beneficiary dies before the retiree, the retiree's allowance will increase to the maximum amount. These additional payment options shall be known as Options A, B, C, and D as defined below. The options, as established by N.J.S.A. 43:15A-50, include the following:

1. Maximum Option provides the largest allowance for the member but does not include a pension benefit paid to a beneficiary upon the member's death.

2. Option 1 provides a reducing retirement reserve to one or more beneficiaries. At retirement, a reserve amount is established to pay the member's lifetime retirement allowance. This reserve is reduced each month by the member's original monthly retirement allowance. Upon the member's death, the beneficiary or beneficiaries receive the balance of the reserve, if any.

3. Option 2 provides, upon the member's death, a lifetime monthly retirement allowance equal to 100 percent of the member's monthly retirement allowance to a beneficiary.

4. Option 3 provides, upon the member's death, a lifetime monthly retirement allowance equal to 50 percent of the member's monthly allowance to a beneficiary.

5. Option 4 provides, upon the member's death, a lifetime monthly retirement allowance to one or more beneficiaries. The member determines the retirement allowance which in the aggregate cannot be more than the Option 2 allowance.

6. Option A provides, upon the member's death, a lifetime monthly retirement allowance equal to 100 percent of the member's monthly retirement allowance to a beneficiary. If the member's beneficiary predeceases the member, the member's retirement allowance shall increase to the Maximum Option.

7. Option B provides, upon the member's death, a lifetime monthly retirement allowance equal to 75 percent of the member's monthly retirement allowance to a beneficiary. If the member's beneficiary predeceases the member, the member's retirement allowance shall increase to the Maximum Option.

8. Option C provides, upon the member's death, a lifetime monthly retirement allowance equal to 50 percent of the member's monthly retirement allowance to a beneficiary. If the member's beneficiary predeceases the member, the member's retirement allowance shall increase to the Maximum Option.

9. Option D provides, upon the member's death, a lifetime monthly retirement allowance equal to 25 percent of the member's monthly retirement allowance to a beneficiary. If the member's beneficiary predeceases the member, the member's retirement allowance shall increase to the Maximum Option.

(d) Before an application for retirement may be processed, the Division must receive proof of the member's age, if none is already in the member's record, proof of the beneficiary's age, if the member elected Option 2, 3, 4, A, B, C, or D, and a completed Certification of Service and Final Salary form from the employer setting forth the employment termination date, and the salaries reported for contributions in the member's final year of employment.

(e) In addition to the foregoing requirements:



1. An application for a physical disability retirement must be supported by at least two medical reports, one by the member's personal or attending physician and the other may be either hospital records supporting the disability or a report from a second physician; and

2. An application for a mental health medical disability retirement must be supported by at least two medical reports, one by the member's personal or attending psychiatrist or psychologist and the other in the form of either hospital records supporting the disability or a report from a second psychiatrist or psychologist or from the member's personal or attending physician or licensed clinical social worker.

(f) Retired members, who return to public employment, shall have their previous retirement allowances cancelled and be reenrolled in the System pursuant to N.J.S.A. 43:15A-44 for those who retired on disability retirements or N.J.S.A. 43:15A-57.2 for those who retired on early, service, veteran or deferred retirements. A member who ceases covered employment and retires again must file a new retirement application with the Division in accordance with (a) through (d) above in order to initiate payment of the retirement allowance. The previous retirement allowance shall then be reinstated, and the new retirement allowance, based on the member's subsequent covered employment, shall commence. The previous and subsequent retirement allowances shall then be combined and paid in one monthly benefit check. The retirement allowance shall become effective on the first of the month following receipt of the application unless a future date is requested.

(g) If the total amount of retirement allowances received by a member or beneficiary under the option selected is less than the value of the member's contributions and interest on those contributions, the balance of contributions and interest shall be paid in a lump sum to the member's designated beneficiary or estate.

Amended by R.1986 d.432, effective October 20, 1986.

See: 18 N.J.R. 1451(a), 18 N.J.R. 2135(b).

Deleted subsections (b) and (d) and recodified accordingly.

Administrative Correction to (a): Deleted text "at least one month".

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Rewrote the section.

Amended by R.2001 d.131, effective May 7, 2001.

See: 33 N.J.R. 372(a), 33 N.J.R. 1398(a).

In (d), substituted "a member's" for "an" and inserted "medical" preceding "reports"; and added (e).

Amended by R.2002 d.268, effective August 19, 2002.

See: 34 N.J.R. 1600(a), 34 N.J.R. 2971(a).

Added new (c); recodified former (c) as (d) and inserted "A, B, C, or D," following "4,"; recodified former (d) and (e) as (e) and (f).

Amended by R.2005 d.75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

Added (g).

Amended by R.2007 d.11, effective January 16, 2007.

See: 38 N.J.R. 2997(a), 39 N.J.R. 237(a).

In the introductory paragraph of (e), substituted a colon for "a member's"; in (e), inserted designation I; in (e)1, inserted "An" and "a physical", and substituted "and" for a period at the end; and added (e)2.

### Case Notes

Employee who sustained back injury which, at most, contributed to progression of arthritic condition by aggravation, held not to have disability which was a direct result of a traumatic event so as to entitle the employee to disability retirement benefits. *Gerba v. Bd. of Trustees, Public Employees' Retirement System*, 83 N.J. 174, 416 A.2d 314 (1980).

To be eligible for accidental disability retirement benefits where disability involved combined effect of traumatic event and underlying disease, traumatic source must constitute the essential significant or substantial contributing cause of resultant disability; employee's slip and fall against automobile tailgate held a traumatic event: remand to Appellate Division to determine whether traumatic event was of such nature as to allow benefits eligibility under enunciated standard. *Korelnia v. Bd. of Trustees, Public Employees' Retirement System*, 83 N.J. 163, 416 A.2d 308 (1980).

Special education teacher who suffered from numerous and unrelated ailments which rendered her unable to perform duties associated with her job was entitled to ordinary disability retirement allowance. *Daniels v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 292.

Tick bite was not traumatic event for purpose of awarding accidental disability benefits. *Ackerman v. PERS*, 96 N.J.A.R.2d (TYP) 42.

Retirement application had to be executed and filed prior to effective date of the retirement. *Knabner v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 85.

Former member was without standing to refile application for accidental disability retirement allowance. *Coleman v. Retirement System*, 93 N.J.A.R.2d (TYP) 265.

Breach of duty by city employees did not qualify nurse for modification of retirement date. *Kuehner v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 190.

Retirement application; effectiveness; arrival at New Jersey Public Employees' Retirement System. N.J.S.A. 43:15A-47. *Phillips v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 163.

Employee with diminished mental capacity due to alcoholism not entitled to retroactive effective retirement date. *Young v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 53.

Agreement with employer did not entitle employee to retroactive requested effective date of retirement. *Epps v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 45.

Approval of tax assessor's application for service retirement rescinded where tax assessor's close corporation was awarded contracts for essentially the same tax assessment work. *Board of Trustees v. Atkinson*, 92 N.J.A.R.2d (TYP) 8.

Decedent's signing of application for retirement and filing of support documents prior to his death held to constitute substantial compliance with regulatory requirements, in light of Division's failure to act on documents' deficiency in a timely fashion; survivors held eligible for insurance benefits. *Giaconia v. Bd. of Trustees, Public Employees' Retirement System*, 2 N.J.A.R. 304 (1980).

### 17:2-6.2 Effective date

A member's retirement allowance shall not become due and payable until 30 days after the date the Board approved the application for retirement or 30 days after the date of the retirement, whichever is later.

New Rule, R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Former N.J.A.C. 17:2-6.2, Effective dates; change, recodified to N.J.A.C. 17:2-6.3.



**17:2-6.3 Effective dates; change**

(a) Except as provided by N.J.A.C. 17:2-6.7, a member shall have the right to withdraw, cancel or change an application for retirement at any time before the member's retirement allowance becomes due and payable by sending a written request signed by the member. Thereafter, the retirement shall stand as approved by the Board.

(b) Except in the event of deferred retirement, if a member requests a change of retirement date or option selection before the member's retirement allowance becomes due and payable, said change will require approval of the Board and the revised retirement allowance shall not become due and payable until 30 days have elapsed following the effective date or the date the Board met and approved the change in the member's retirement application, whichever is later.

(c) A deferred retirement shall become effective on the first of the month following the member's 60th birthday. At the election of a member, if the member's 60th birthday falls on the first of a month, the retirement shall become effective on that date, provided the member files a timely retirement application pursuant to N.J.S.A. 43:15A-38(b) and requests that date as the retirement date.

(d) In the case of deferred retirement, if an applicant desires to amend the retirement application, the amended application must be filed with the Division a minimum of one month prior to the effective date of retirement.

(e) Should the member continue to receive a salary beyond the effective date of retirement, no retirement benefits shall be paid for the period where the member received salary and no salary or service credit shall be provided for the service rendered after the effective date of retirement.

Amended by R.1974 d.230, effective August 19, 1974.

See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).

Amended by R.1979 d.399, effective October 9, 1979.

See: 11 N.J.R. 411(a), 11 N.J.R. 596(b).

Amended by R.1981 d.274, effective August 6, 1981.

See: 13 N.J.R. 244(f), 13 N.J.R. 525(b).

(f) added.

Recodified from N.J.A.C. 17:2-6.2 and amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Rewrote the section. Former N.J.A.C. 17:2-6.3, Effective date; death prior thereto, repealed.

Amended by R.2005 d.75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

In (e), deleted "after approval of the retirement by the Board of Trustees" following "effective date of retirement".

Amended by R.2005 d.393, effective November 21, 2005.

See: 37 N.J.R. 1927(a), 37 N.J.R. 4459(a).

In (a), substituted "Except as provided by N.J.A.C. 17:2-6.7, a" for "A"; in (e), deleted "approved."

Amended by R.2007 d.382, effective December 17, 2007.

See: 39 N.J.R. 1642(a), 39 N.J.R. 5367(a).

In (a), updated the N.J.A.C. reference.

**Case Notes**

Board of Trustees of the Public Employees' Retirement System has the inherent authority, when good cause is shown, to reopen its own proceeding to consider a pension benefit change requested by a retiree

after the benefit becomes due and payable, notwithstanding N.J.A.C. 17:2-6.3; good cause may be established by showing that reopening the proceedings would serve the ends of essential justice and the policy of the law. *In re Van Orden*, 383 N.J. Super. 410, 891 A.2d 1257, 2006 N.J. Super. LEXIS 57 (App.Div. 2006).

Retiree showed good cause for changing his pension payment option after the 30-day time period for making changes expired and after the retiree began receiving the retirement allowance, because the retiree was attempting to protect his full interest in the pension after a final divorce judgment established that the retiree's wife had relinquished all of her interest in the pension. *In re Van Orden*, 383 N.J. Super. 410, 891 A.2d 1257, 2006 N.J. Super. LEXIS 57 (App.Div. 2006).

Reversal and remand of denial of veteran's retirement benefits was warranted where initial approval of application was rescinded without notice. *Galvano v. Board of Trustees of Public Employees' Retirement System*, 225 N.J. Super. 388, 542 A.2d 926 (A.D.1988).

Retirement allowance was available only for those months after filing application for retirement. *Kamin v. Retirement System*, 93 N.J.A.R.2d (TYP) 249.

Employee with diminished mental capacity due to alcoholism not entitled to retroactive effective retirement date. *Young v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 53.

Agreement with employer did not entitle employee to retroactive requested effective date of retirement. *Epps v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 45.

Applicant not entitled to change effective date of service retirement so as to qualify for early retirement incentive program with effective date after her retirement. *Pykon v. Board of Trustees of the Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 144.

Absent a showing of a decedent's incompetence, mutual mistake, fraud or other compelling equitable considerations, a retirement application shall not be reformed; petition to change pension payment option denied. *Schaeffer v. Bd. of Trustees, Public Employees' Retirement System*, 8 N.J.A.R. 427 (1984).

**17:2-6.4 Outstanding loan**

(a) A member who has an outstanding loan balance at the time of retirement may repay the loan balance, with accrued interest, as follows:

1. In full before the retirement allowance becomes due and payable as provided in N.J.A.C. 17:2-6.2; or

2. By deductions from retirement benefit payments of the same monthly amount deducted from the member's compensation immediately preceding retirement until the loan balance, with accrued interest, is repaid as authorized by P.L. 1999, c.132 (N.J.S.A. 43:15A-34.1). If the member does not request repayment in full, repayment is by deductions in the same monthly amount deducted from the member's compensation immediately preceding retirement.

(b) If a retirant dies before the loan balance, with accrued interest, is repaid, the remaining balance is paid first from the group life insurance proceeds, and then from the proceeds of any other benefits payable on account of the retirant in the form of monthly payments or the balance of the Option 1 reserves or the balance of the retirant's accumulated deductions and regular interest that are due to the beneficiary or estate. If the retirant designated multiple beneficiaries to re-

ceive these benefits, each beneficiary shares in repaying the remaining balance in the same proportion in which they are entitled to the benefits.

Amended by R.1999 d.409, effective December 6, 1999.  
See: 31 N.J.R. 2519(a), 31 N.J.R. 4119(a).

In (a), rewrote 2i, and added 3; deleted former (b) and (c); and recodified former (b) as (d).

Amended by R.2002 d.267, effective August 19, 2002.  
See: 34 N.J.R. 1599(a), 34 N.J.R. 2970(b).

In (a), deleted existing 2 and recodified former 3 as 2.  
Amended by R.2005 d.75, effective February 22, 2005.  
See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

In (a), amended the N.J.A.C. reference in 1 and added the N.J.S.A. reference in 2; in (b), substituted "I" for "I" following "Option"; inserted "accrued" preceding "interest" throughout.

### 17:2-6.5 Willful negligence

(a) Willful negligence is defined as:

1. Deliberate act or deliberate failure to act; or,
2. Such conduct as evidences reckless indifference to safety; or,
3. Intoxication, operating as the proximate cause of injury.

### 17:2-6.6 (Reserved)

Recodified to N.J.A.C. 17:2-4.5 by R.2004 d.226, effective June 21, 2004.

See: 36 N.J.R. 620(a), 36 N.J.R. 3066(b).

Former N.J.A.C. 17:2-6.6, Retirement credit, recodified.

### 17:2-6.7 Disability determination

(a) A member for whom an application for accidental disability retirement allowance has been filed by the member, by his employer, or by one acting in behalf of the member, will be retired on an ordinary disability retirement allowance if the Board finds that:

1. The applicant was considered a member at the time of filing the application for a disability retirement allowance or is covered by the provisions of N.J.A.C. 17:2-6.15;
2. The member is physically or mentally incapacitated for the performance of duty; and
3. The member is not eligible for accidental disability since the incapacity is not a direct result of a traumatic event occurring during and as a result of the performance of the member's regular or assigned duties; and
4. The member meets the service requirement for ordinary disability.

(b) Once the Board approves a member for a disability retirement allowance, the member's retirement application shall not be withdrawn or canceled, or amended to a later retirement date than the date specified in the approved retirement application.

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

In (a), rewrote 1, and neutralized a gender reference in 3.

Amended by R.2005 d.393, effective November 21, 2005.

See: 37 N.J.R. 1927(a), 37 N.J.R. 4459(a).

Added (b).

### Case Notes

To be eligible for accidental disability retirement benefits where disability involved combined effect of traumatic event and underlying disease, traumatic source must constitute the essential significant or substantial contributing cause of resultant disability; employee's slip and fall against automobile tailgate held a traumatic event; remand to Appellate Division to determine whether traumatic event was of such nature as to allow benefits eligibility under enunciated standard (citing former rule). *Korelnia v. Bd. of Trustees, Public Employees Retirement System*, 83 N.J. 163, 416 A.2d 308 (1980).

Nurse entitled to accidental disability pension due to traumatic injury at work. *Mullen v. Board of Trustees of the Public Employees' Retirement System*, 97 N.J.A.R.2d (TYP) 110.

Incident's lack of traumatic event defeats application for accidental disability retirement benefits. *Ming v. Board of Trustees, Public Employees' Retirement System*, 97 N.J.A.R.2d (TYP) 90.

Denial of accidental disability benefits due to employee's failure to establish total and permanent disability affirmed. *Oliver v. Board of Trustees of the Public Employees' Retirement System*, 97 N.J.A.R.2d (TYP) 77.

Electrical installer suffering personal injury from falling air conditioner unit entitled to accidental disability pension. *Zillante v. Board of Trustees of the Public Employee's Retirement System*, 97 N.J.A.R.2d (TYP) 44.

Permanent injuries not arising from great rush of force or uncontrollable power fail to meet test to receive accidental disability benefits. *DiBlashi v. Public Employee's Retirement System*, 97 N.J.A.R.2d (TYP) 36.

Failure to prove great rush of force or uncontrollable power defeats claim for accidental disability benefits. *Pino v. Public Employee's Retirement System*, 97 N.J.A.R.2d (TYP) 21.

Ordinary disability retirement benefits granted bus driver who sustained shoulder injury after fall in parking lot. *Hessler v. Public Employees' Retirement System*, 97 N.J.A.R.2d (TYP) 13.

Bus driver who sustained lower back injury when stack of tires fell on him did not suffer traumatic event and thus was not entitled to accidental disability retirement benefits. *Pino v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 298.

Motor vehicle operator who sustained arm and shoulder injuries when van door malfunctioned, and who later reinjured her arm while maneuvering client's wheelchair, was not entitled to accidental disability retirement benefits; neither incident constituted qualifying traumatic event. *McDaniel v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 284.

Survivors of maintenance worker whose blood alcohol level was in excess of legal limit at time he died in work-related automobile collision could not recover accidental death benefits; employee who drives automobile while intoxicated is willfully negligent and thus ineligible to receive such benefits. *Komiskey v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 271.

Housing inspector who experienced chest pains after climbing eight flights of stairs did not suffer traumatic event, and thus was not eligible for accidental disability retirement benefits. *Cartagena v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 266.

Clerk who tripped and fell down flight of stairs failed to establish that injuries she suffered rendered her unable to perform her regular employment duties, and thus she was not eligible for accidental disability retirement benefits. *Bonomo v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 261.

Injuries sustained by clerk stenographer when she fell over several boxes after being frightened by rat in workplace lunchroom were not caused by requisite "great rush of force or uncontrollable power," and thus clerk was not entitled to accidental disability retirement benefits. *Hunter v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 252.

Laborer who injured himself while attempting to lower entire man-hole casing by himself was not entitled to accidental disability retirement benefits; injury was not caused by requisite "great rush of force or uncontrollable power." *Tomasi v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 239.

Public works employee injured in slip and fall on bus steps did not suffer traumatic event entitling him to accidental disability retirement benefits. *Yodice v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 210.

2. If it is found by the Division that gross earned income for the prior calendar year exceeded the difference between the pension portion of the retirement benefit and the salary of the retiree's former position and if the retiree does not refund the excess pension to the System within 30 days of notification of the difference, the pension portion of the retirement allowance shall be further reduced in order to recover the overpayment. If the remaining pension portion of the retirement benefit is not large enough to recover the amounts owed after a dollar for dollar reduction has been taken, then the annuity portion of the benefit as well as any death benefits or survivor's benefits shall be reduced by the amounts owed.

3. System interest shall be assessed on any repayment schedules.

(d) Retirees who retired on or before October 1, 1992, and who are age 60 or older, shall be exempt from the above earnings test beginning with the calendar year in which they attain the age of 60. Retirees who retired on or after November 1, 1992 are subject to the earnings test for their lifetime.

Amended by R.1998 d.323, effective July 6, 1998.

See: 30 N.J.R. 1026(b), 30 N.J.R. 2514(b).

Rewrote the section.

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Rewrote (b)3.

Amended by R.2005 d.40, effective January 18, 2005.

See: 36 N.J.R. 4023(a), 37 N.J.R. 293(a).

Rewrote the section.

#### **17:2-6.15 Disability retirements; filing after more than two years' discontinuance of service**

(a) Following the filing of a disability retirement application, a vested member, who has not withdrawn his or her contributions from the retirement system, and has discontinued service for more than two consecutive years, and who was otherwise eligible for disability retirement at the time service was discontinued, shall be approved to receive disability retirement benefits by the Board of Trustees, if:

1. The applicant demonstrates to the satisfaction of the Board of Trustees that he or she was physically or mentally incapacitated for the performance of duty at the time service was discontinued and continues to be so incapacitated, with the same disability or disabilities, at the time of filing; and

2. The applicant factually demonstrates to the satisfaction of the Board of Trustees that service was discontinued because of the disability or disabilities.

(b) A disability retirement application that is filed under this rule may take effect, in accordance with the laws and rules applicable to effective dates for disability retirements, only on or after the date the application is filed.

New Rule, R.1999 d.36, effective February 1, 1999.

See: 30 N.J.R. 3375(b), 31 N.J.R. 458(a).

Amended by R.2003 d.391, effective October 6, 2003.

See: 35 N.J.R. 2408(a), 35 N.J.R. 4734(a).

Deleted (c) and (d).

#### **17:2-6.16 Compulsory retirement; Law Enforcement Officers (LEO)**

(a) Members classified as "Law Enforcement Officers" shall be retired automatically by the Board as of the compulsory retirement date established pursuant to N.J.S.A. 43:15A-99.

(b) Should a member classified as a Law Enforcement Officer fail to file an application with the Division before the member's compulsory retirement date, the member shall be granted the maximum allowance payable on the member's account; however, no retirement checks will be disbursed until the member files the required application.

(c) If an application is not filed with the Division before a period of 30 days has elapsed after the Board has acted on the member's retirement, the member shall not be eligible to exercise any of the available retirement survivorship options and the member's retirement on maximum allowance shall stand as approved.

(d) When such a member files an application with the Division, the member shall be eligible to receive retirement benefits for the months that have elapsed since the date of the member's compulsory retirement, provided satisfactory evidence is received to show that the member terminated employment as of the member's compulsory retirement date.

(e) No retirement benefits shall be paid for any period the member continued in service beyond the compulsory retirement date, nor shall the member receive any credit for retirement purposes for salary received or service rendered beyond the compulsory retirement date.

(f) A LEO member who is also enrolled as a non-LEO member cannot continue the LEO membership or employment in the LEO capacity beyond age 65 should the member continue membership on the basis of the non-LEO position per N.J.S.A. 43:15A-99.

Amended by R.1974 d.230, effective August 19, 1974.

See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Neutralized gender references and substituted references to the Division for references to the system throughout; and in (f), added N.J.S.A. reference.

Amended by R.2005 d.75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

#### **17:2-6.17 Approved allowance**

When a retirement allowance becomes effective pursuant to N.J.A.C. 17:2-6.2, the type of retirement benefit and option elected shall stand as approved.

Amended by R.2002 d.268, effective August 19, 2002.

See: 34 N.J.R. 1600(a), 34 N.J.R. 2971(a).

Substituted "retirement benefit and option" for "allowance (maximum or option)".

Amended by R.2005 d.75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

Inserted "pursuant to N.J.A.C. 17:2-6.2".

### 17:2-6.18 Option 1 benefit

The reserve established under the provisions of Option 1 shall be a form of reducing term insurance, as the reserve shall reduce in value by the amount of the retirant's regular monthly allowance, whether received or not, for each month that the retirant survives after the effective date of retirement.

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Substituted a reference to regular monthly allowance for a reference to monthly allowance, and neutralized gender references throughout.

Amended by R.2005 d.75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

### 17:2-6.19 (Reserved)

Repealed by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Section was "Maximum allowance prescribed".

### 17:2-6.20 Final compensation; 10 and 12-month members reported monthly

(a) In order to determine the final compensation (three-year average) for benefits of a member reported on a monthly basis under a 10-month contract, the creditable salaries upon which contributions were made to the System for the member's final 30 months, or the highest three fiscal years of pensionable service, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees shall be used.

(b) In order to determine the final compensation (three-year average) for benefits of a member reported on a monthly basis under a 12-month contract, the creditable salaries upon which contributions were made to the system for the member's last 36 months or the highest three fiscal years of pensionable service, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees shall be used.

(c) If a member was reported on any combination of ten and 12-month contract years in such three-year period, the final average compensation shall be determined on a proportional basis.

Amended by R.1974 d.230, effective August 19, 1974.

See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Rewrote the section.

Amended by R.2005 d.75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

In (a) and (b), substituted "benefits of a member" for "benefits on a member", deleted "use" preceding "the creditable salaries" and inserted "shall be used" following "group of employees".

### Case Notes

Full amount of pension; requiring former employer to submit retroactive payment into retirement system reserve fund. *Muzzarelli v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 214.

### 17:2-6.21 Determination of last year's salary; veterans paid on a monthly basis

(a) In order to determine the last year's salary for a veteran with 35 or more years of creditable service, age 55 or older, reported on a monthly basis under a 10-month contract, the creditable salaries upon which contributions were made in the member's final 10 months of pensionable service preceding retirement or in the consecutive 10-month period in which the member achieved the greatest earnings, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees shall be used.

(b) In order to determine the last year's salary with a veteran with 35 or more years of creditable service, age 55 or older, reported on a monthly basis under a 12-month contract, the creditable salaries upon which contributions were made in the member's final 12 months of pensionable service preceding retirement or in the consecutive 12-month period in which the member achieved the greatest earnings, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees shall be used.

(c) In order to determine the last year's salary for a veteran with 20 or more years of creditable service, age 60 or older, or a veteran with 25 or more years of creditable service, age 55 or older, reported on a monthly basis under a 10-month contract, the creditable salaries upon which contributions were made in the member's final 10 months of pensionable service preceding retirement or in the consecutive 10-month period in which the member achieved the greatest earnings, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees shall be used.

(d) In order to determine the last year's salary for a veteran with 20 or more years of creditable service, age 60 or older, or a veteran with 25 or more years of creditable service, age 55 or older, reported on a monthly basis under a 12-month contract, the member's creditable salaries upon which contributions were made in the member's final 12 months of pensionable service preceding retirement or in the consecutive 12-month period in which the member achieved the greatest earnings, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees shall be used.

"Regular Public Employees' Retirement System service" means all service credited as a public employee not meeting the definition of "service" as defined below.

"Service" as a prosecutor as defined by N.J.S.A. 43:15A-155 shall include service as the following. For members employed as prosecutors on January 7, 2002, service shall also include any Public Employees' Retirement System service credited to a member's account on January 7, 2002. Pursuant to P.L. 2003, c. 140, for an individual nominated and appointed pursuant to Article VII, Section II, paragraph 1 of the New Jersey Constitution to the position of a county prosecutor after January 7, 2002, service shall also include regular Public Employees' Retirement System service credited as of the date of appointment.

1. A county prosecutor, first assistant prosecutor, or assistant prosecutor as defined in N.J.S.A. 2A:158-1 et seq.;

2. The Director of the Division of Criminal Justice in the Department of Law and Public Safety; any assistant director, deputy director, assistant attorney general or deputy attorney general employed by that Department and assigned to that Division on or after January 7, 2002; and

3. A criminal investigator (as defined by N.J.S.A. 52:17B-100.1) in the Division of Criminal Justice who was ineligible for enrollment in the Police and Firemen's Retirement System on or after January 7, 2002.

"Special retirement" as defined in N.J.S.A. 43:15A-159 means a retirement election by a prosecutor who has established at least 25 years of creditable service in the Prosecutors Part regardless of age, for which the pension, when added to the prosecutor's annuity, will provide a total retirement allowance of 65 percent of final compensation, plus one percent of final compensation multiplied by the number of years of creditable service over 25 but not over 30.

Amended by R.2007 d.382, effective December 17, 2007.  
See: 39 N.J.R. 1642(a), 39 N.J.R. 5367(a).

In the introductory paragraph of definition "Service", substituted "c. 140" for "c.140"; in paragraph 2 of definition "Service", substituted "Department" for "department" and "Division" for "division" and inserted "and" at the end; in paragraph 3 of definition "Service", substituted a period for "; and" at the end; and deleted paragraph 4.

### 17:2-8.2 (Reserved)

Repealed by R.2007 d.382, effective December 17, 2007.  
See: 39 N.J.R. 1642(a), 39 N.J.R. 5367(a).

Section was "Criteria for determining eligibility for enrollment for employees of the Department of Law and Public Safety".

### 17:2-8.3 Contribution rate

(a) The rate of contribution to the Prosecutors Part of the Public Employees' Retirement System shall be a percent of base salary as established by the Board of Trustees. The amount of the members' contribution rate shall be established upon recommendation of the actuary using consistent and generally-accepted actuarial standards, as established by the Governmental Accounting Standards Board.

(b) The rate of contribution shall be reviewed by the System's actuaries periodically and adjusted by the Board as necessary. The Board of Trustees shall review the contribution rate at every three-year period as part of the valuation by the PERS System's actuary and whenever the PERS, PFRS, TPAF or SPRS rate is adjusted by the Legislature. A notice of any change in the rate shall be published through a notice in the New Jersey Register and shall become effective on the date authorized by the Board.

Amended by R.2009 d.351, effective December 7, 2009.

See: 41 N.J.R. 3040(a), 41 N.J.R. 4462(a).

In (a), substituted "a percent of base salary" for "7.5 percent", and inserted the last sentence; and in (b), inserted the last two sentences.

### 17:2-8.4 Ineligibility for credit in the Prosecutors Part

A person who was not employed as a prosecutor on January 7, 2002 is not eligible to have any portion of his or her Public Employees' Retirement System account credited to the Prosecutors Part except as provided under the definition of "service" in N.J.A.C. 17:2-8.1.

### 17:2-8.5 Interfund transfers

(a) A person who contributes to another State-administered retirement system and was not employed as a prosecutor on January 7, 2002 is not eligible to have any portion of his or her State-administered defined benefit retirement system credit transferred into the Prosecutors Part. The State-administered defined benefit retirement system credit shall become regular PERS credit.

(b) The service credit of a member of the Prosecutors Part who transfers into another State-administered retirement system pursuant to N.J.S.A. 43:2-1 shall be converted into service credit in the new retirement system. If the member later transfers back into the Public Employees' Retirement System, service that was previously credited in the Prosecutors Part shall be credited as Prosecutors Part service, while all other service shall be credited as regular PERS service.

### 17:2-8.6 Purchase of service

(a) Any active member of the Prosecutors Part may make an optional purchase of service as authorized by N.J.A.C. 17:2-5.5

(b) Any purchase requested after January 7, 2002 shall be credited as regular PERS service in the calculation of benefits except for the following three types of service which shall be credited as Prosecutors Part service. The cost of this Prosecutors Part service shall be determined using Prosecutors Part actuarial purchase factors:

1. Temporary service after January 7, 2002 as a prosecutor leading directly to permanent employment as a prosecutor;

2. Service properly credited in the Prosecutors Part on or after January 7, 2002 as to which contributions had been withdrawn in accordance with N.J.S.A. 43:15A-8b; and

3. Leaves of absence without pay after January 7, 2002 from service as prosecutor. A prosecutor may purchase the period of a leave of absence pursuant to N.J.A.C. 17:2-5.5(a)4.

(c) An active member who wishes to purchase service credit shall file an application with the Division of Pensions and Benefits. The cost shall be calculated in accordance with N.J.A.C. 17:2-5.5. The member must pay into the annuity savings fund the amount required by applying the factor, supplied by the actuary, to the member's age at the time of purchase and to the member's salary at that time or to the highest annual compensation for service in this State during any fiscal year, including a fiscal year for which credit is purchased, whichever is the highest. Such purchase may be made in regular installments, equal to at least one-half the full normal contribution to the retirement system over a maximum period of 10 years.

#### **17:2-8.7 Eligibility for a loan**

Active, contributing members of the Prosecutors Part with at least three years of service credit may exercise the privilege of obtaining a loan pursuant to the provisions of N.J.S.A. 43:15A-34 and IRS regulations. The monthly or biweekly payment amount shall be at least equal to the member's rate of contribution to the Prosecutors Part and cannot exceed 25 percent of the member's compensation. Not more than two loans may be granted to any member in any calendar year. The member's total outstanding loan balance shall not exceed the lesser of 50 percent of the accumulated deductions posted to the member's account or \$50,000. Should a prosecutor retire or die with an outstanding loan balance, repayment shall be made according to the provisions of N.J.S.A. 43:15A-34.1 and N.J.A.C. 17:2-6.4.

#### **17:2-8.8 Vesting**

(a) A prosecutor with service in both the Prosecutors Part and the regular Public Employees' Retirement System may use the combined noncurrent service in order to meet the 10-year vesting requirement found at N.J.S.A. 43:15A-38 for a member of the PERS.

(b) If the prosecutor begins receipt of a Prosecutors Part retirement benefit prior to the date of eligibility to receive a PERS retirement benefit, the Prosecutors Part service credit shall be subtracted from the member's active account and any credited regular PERS service would remain. A retired member of the Prosecutors Part who does not have 10 or more years of credited regular PERS service remaining in the active account after the Prosecutors Part service is subtracted, and whose regular PERS account will not be active pursuant to N.J.S.A. 43:15A-7e when the member attains the age of 60, cannot collect a benefit based on that service. An application for return of contributions made on the basis of such other public service, if no part of the service was used in the calculation of a retirement allowance or to qualify for payment of health benefits, may be approved.

#### **17:2-8.9 Withdrawal from Prosecutors Part or regular PERS service**

(a) A prosecutor, upon termination of service as a prosecutor, may elect to receive the return of the accumulated contributions in accordance with the provisions of N.J.S.A. 43:15A-41 and N.J.A.C. 17:2-4.10 and 4.11.

(b) If a prosecutor is a member of the Public Employees' Retirement System on the basis of other public service, no application for a return of contributions shall be approved until the prosecutor has terminated all service covered by the System and makes application for a return of all contributions made to the System. An application for return of contributions made on the basis of such other public service, if no part of the service was used in the calculation of a retirement allowance or to qualify for payment of health benefits, may be approved.

(c) A prosecutor cannot withdraw from the regular PERS unless retired or withdrawn from the Prosecutors Part.

#### **17:2-8.10 Retirement effective date**

A member's retirement allowance shall not become due and payable until 30 days after the date the Board approved the application for retirement or 30 days after the date of retirement, whichever is later.

#### **17:2-8.11 Election of largest possible retirement allowance**

(a) At the time of retirement, a member enrolled on the basis of service as a prosecutor, or on a combination of service as a prosecutor and regular PERS service, shall be permitted to elect the largest possible retirement allowance, if the member qualifies for benefits under both the provisions of P.L. 2001, c.366 and N.J.S.A. 43:15A-1 et seq. and the combined service provides a higher benefit. The member may elect any PERS retirement benefit for which the member qualifies, including early retirement pursuant to N.J.S.A. 43:15A-41, veterans retirement pursuant to N.J.S.A. 43:15A-61 and service retirement pursuant to N.J.S.A. 43:15A-48. A prosecutor who elects to receive a regular PERS retirement benefit instead of a prosecutor's benefit, and has 10 or more years of service credit, will have a death benefit equal to 3/16 of the last 12 months of salary upon retirement.

(b) A prosecutor electing to receive a retirement allowance under the Prosecutors Part shall be ineligible to receive a retirement allowance or pension for the same service under any other law of the State.

(c) There will be no refund of Prosecutors Part employee contributions if a regular PERS benefit is elected; nor, will there be a refund of the difference in employee contribution rates between the Prosecutors Part and regular PERS.



**17:2-8.12 Service retirement**

(a) If a prosecutor is a member of the PERS on the basis of other public service, no application for retirement shall be approved until the prosecutor has terminated all service covered by the System.

(b) A member who was employed as a prosecutor on January 7, 2002 may retire with 20 or more years of creditable Prosecutors Part service at any age by filing a written application, duly attested, stating at what time subsequent to the execution and filing thereof the member desires to be retired.

(c) A member who was not employed as a prosecutor on January 7, 2002 may retire at age 55 by filing a written application, duly attested, stating at what time subsequent to the execution and filing thereof the member desires to be retired.

(d) The service retirement allowance shall consist of:

1. An annuity which shall be the actuarial equivalent of the prosecutor's aggregate contributions; and