

**CHAPTER 2**

**PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

**Authority**

N.J.S.A. 43:15A-17.

**Source and Effective Date**

R.2005 d.75, effective January 24, 2005.  
See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

**Chapter Expiration Date**

Chapter 2, Public Employees' Retirement System, expires on January 24, 2010.

**Chapter Historical Note**

Chapter 2, Public Employees' Retirement System, was adopted and became effective prior to September 1, 1969. Pursuant to Executive Order No. 66(1978), Chapter 2, Public Employees' Retirement System, expired on October 9, 1984.

Chapter 2, Public Employees' Retirement System, was adopted as new rules by R.1984 d.562, effective December 17, 1984. See: 16 N.J.R. 2515(b), 16 N.J.R. 3479(a).

Pursuant to Executive Order No. 66(1978), Chapter 2, Public Employees' Retirement System, was readopted as R.1989 d.597, effective November 8, 1989. See: 21 N.J.R. 2439(a), 21 N.J.R. 3788(a). Pursuant to Executive Order No. 66(1978), Chapter 2, Public Employees' Retirement System, expired on November 8, 1994.

Chapter 2, Public Employees' Retirement System, was adopted as new rules by R.1995 d.91, effective February 21, 1995. See: 26 N.J.R. 4747(a), 27 N.J.R. 754(a).

Pursuant to Executive Order No. 66(1978), Chapter 2, Public Employees' Retirement System, was readopted as R.2000 d.26, effective December 17, 1999. See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a)

Subchapter 8, Prosecutors Part, was adopted as new rules by R.2004 d.227, effective June 21, 2004. See: 36 N.J.R.291(a), 36 N.J.R. 3068(a).

Chapter 2, Public Employees' Retirement System, was readopted as R.2005 d.75, effective January 24, 2005. See: Source and Effective Date. See, also, section annotations.

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#### SUBCHAPTER 1. ADMINISTRATION

##### 17:2-1.1 Board meetings

(a) The Board of Trustees shall meet on the third Wednesday of each month or at such other time as may be deemed necessary by the Board.

(b) The chairperson may call for special meetings when necessary.

Amended by R.1977 d.148, effective April 27, 1977.

See: 9 N.J.R. 142(b), 9 N.J.R. 295(a).

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

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

Deleted former (b); and recodified former (c) as (b), and substituted a reference to chairpersons for a reference to chairmen.

##### 17:2-1.2 Fiscal year

The transaction of business and control of finance shall be conducted from a July 1 to June 30 fiscal year.

Amended by R.2000 d.430, effective November 6, 2000.

See: 32 N.J.R. 2660(a), 32 N.J.R. 3996(a).

Rewrote the section.

##### 17:2-1.3 Officers and committees

(a) The members of the Board shall elect a chairperson and vice chairperson, and a representative to the State Investment Council from its membership for the forthcoming year at its regular meeting held in July. A representative to the Pension System Actuary Selection Committee, as provided for by N.J.S.A. 43:4b-1, shall be elected by the Board whenever the selection of a new actuary is needed.

(b) The chairperson of the Board shall preside at all of its meetings, or in the absence of the chairperson, the vice chairperson shall assume the chairperson's responsibilities. In the absence of the chairperson and vice chairperson, another member selected by the majority of the members in attendance will preside for that single meeting.

(c) The chairperson and the Secretary of the Board shall have the power to act for the Board in any matter which may be referred to them by the Board of Trustees.

(d) There shall be one standing committee which is the finance committee pursuant to N.J.S.A. 43:15A-32. The committee shall be appointed by the chairperson at the July meeting for the forthcoming fiscal year. The finance committee shall review all investment transactions and financial reports referred to it by the Secretary for presentation to the Board at its regular monthly meetings. The committee shall consist of five members three of whom shall be elected members of the Board.

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

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

As amended, R.1976 d.383, effective December 6, 1976.

See: 8 N.J.R. 537(c), 8 N.J.R. 48(a).

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 chairpersons for references to chairmen throughout; in (a), inserted a reference to a representative to the State Investment Council and the Pension System Actuary Committee; and in (e), substituted "five members, three of whom shall be elected members of the Board" for "three members" at the end.

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

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

Rewrote the section.

**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 Social Security coverage**

(a) Social Security coverage as a public employee is a prerequisite for membership in the system.

(b) In the case of multiple employments, Social Security coverage is required in each position or employment for each to qualify for membership.

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".

**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;

7. Any retired member who returns to a PERS covered position or positions for which the aggregate compensation is less than the aggregate calendar year compensation limit for exclusion from membership pursuant to N.J.S.A. 43:15A-57.2b. Retired members shall notify their employer or employers when the aggregate calendar year compensation limit will be reached, so that the retired members may be reenrolled in the PERS. If the contractual or regularly budgeted compensation for the position or positions exceeds the calendar year compensation limit, the retired member shall be reenrolled in the PERS as of the beginning of their employment. A retired member who is employed on an hourly basis shall be reenrolled in the PERS as soon as the compensation received exceeds the calendar year compensation limit. For the purposes of this paragraph, a "retired member" is a former member who has terminated all employment covered by the retirement system, who has not received compensation from employment covered by the retirement system for at least 30 consecutive calendar days, who is not receiving a disability retirement allowance and whose retirement benefit has become due and payable as provided in N.J.A.C. 17:2-6.2;

8. Any person who is employed in an intermittent title. The designation "intermittent" shall be used for those titles in the career service in which work responsibilities are characterized by unpredictable work schedules and which do not meet the normal criteria for regular year-round, full-time or part-time assignments;

9. Any temporary employee hired under the Workforce Investment Act of 1998. Temporary employees hired under the Workforce Investment Act shall be deemed to be Job Training Partnership Act (JTPA) employees and, therefore, ineligible for PERS membership pursuant to N.J.S.A. 43:15A-7h;

10. Any retired member, as defined in (a)7 above, who returns to employment with an institution of higher education in a teaching position covered by the PERS pursuant to N.J.S.A. 43:15A-57.2; and

11. Any retired member, as defined in (a)7 above, who becomes employed by the State Department of Education in a position of critical need as determined by the State Commissioner of Education, or becomes employed by a board of education in a position of critical need as determined by the superintendent of the district on a contractual basis for a term of not more than one year pursuant to N.J.S.A. 43:15A-57.2. The retired member so reemployed may renew a contract for one additional year, pursuant to N.J.S.A. 43:15A-57.2, provided that the total period of employment with any individual board of education does not exceed a two-year period. The cancellation, reenrollment, and additional retirement allowance provisions and the compensation limitations shall apply if the retired member becomes employed within 120 days of retirement in a position with the employer from which the member retired.

Amended by R.1981 d.58, effective February 20, 1981.

See: 12 N.J.R. 554(b), 13 N.J.R. 247(b).

(a)4: delete "is not paid"; add "does not earn wages", "of a year", and "is considered . . . community".

Amended by R.1983 d.7, effective February 7, 1983.

See: 14 N.J.R. 1150(a), 15 N.J.R. 162(d).

Treatment of provisional appointments and seasonal/occasional employment.

Amended by R.1989 d.312, effective June 19, 1989.

See: 21 N.J.R. 437(b), 21 N.J.R. 1743(a).

Added eligibility to establish membership in PERS with one year of continuous service, without regular Civil Service appointment, to (a)4. Temporary employment defined and excluded, at (a)6.

Amended by R.1998 d.321, effective July 6, 1998.

See: 30 N.J.R. 1025(a), 30 N.J.R. 2513(c).

In (a), added 7.

Amended by R.1999 d.290, effective August 16, 1999.

See: 21 N.J.R. 1580(a), 31 N.J.R. 2366(a).

In (a), substituted references to non-State employees for references to employees in 1 and 2, added the last sentence in 4, rewrote 5, substituted a reference to calendar year compensation for a reference to annual compensation in the first sentence, substituted "calendar days, who is not receiving a disability retirement allowance" for "days," following "consecutive" in the last sentence, and substituted references to calendar year compensation and calendar year compensation limits for references to compensation and compensation limits throughout 7, and added 8.

Administrative change.

See: 32 N.J.R. 2925(a).

Amended by R.2001 d.117, effective April 2, 2001.

See: 32 N.J.R. 4239(a), 33 N.J.R. 1114(a).

In (a), added 9.

Amended by R.2004 d.225, effective June 21, 2004.

See: 36 N.J.R. 619(a), 36 N.J.R. 3066(a).

In (a), inserted "or is a retiree from the System" at the end of the second sentence in 4, rewrote 7, added 10 and 11.

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), rewrote 7.

#### Case Notes

Legislative positions held by employees 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).

Seasonal continuing education college instructors not eligible for PERS enrollment as seasonal employees. *Josephs v. Board of Trustees, Public Employees' Retirement System*, 97 N.J.A.R.2d (TYP) 87.

Regulation excluding teacher from purchase of prior service credit, on grounds that her sporadic substitute teaching during period in question constituted break in service, was inconsistent with N.J.S.A. 18A:66-14, and thus would not be applied to deny teacher eligibility for purchase. *Walling v. Teachers' Pension and Annuity Fund*, 96 N.J.A.R.2d (TYP) 107.

Retiree's temporary reemployment in public service rendered him ineligible for retirement benefits. *Bedell v. PERS*, 96 N.J.A.R.2d (TYP) 39.

Substitute teacher was temporary employee within meaning of statutory amendment including temporary public employees in retirement system. *Schulaner v. Board of Trustees*, 92 N.J.A.R.2d (TYP) 55.

#### 17:2-2.4 Enrollment date

(a) New employees in the classified service shall be considered as beginning their service on the date of their regular appointments.

1. For employers who report on a monthly basis, the compulsory enrollment date shall be fixed as the first of the month for an employee whose regular appointment date falls between the first through the 16th of the month and the compulsory enrollment date shall be fixed as the first of the following month for an employee whose regular appointment date falls between the 17th and the end of the month.

2. For employers who report on a biweekly basis, the compulsory enrollment date shall be fixed as the first day of the pay period for an employee whose appointment date falls on the first through seventh day of the biweekly pay period. The compulsory enrollment date shall be fixed as the first day of the following biweekly pay period for an employee whose appointment date falls on any subsequent date within that pay period.

(b) If an employee is an optional enrollee the employee shall be enrolled as of the first of the month for those whose employers report on a monthly basis or the first day of the next biweekly pay period for those whose employers report on a biweekly basis following the receipt of the enrollment application.

(c) An employee in the unclassified service or an elected position shall be considered as beginning service on the date of the original appointment, or the date when the employee assumed duties of the elective office, as the case may be.

1. For local employers not covered by Civil Service, a regular appointment shall constitute the date the employee originally accepted employment in a regular budgeted position.

2. For employers who report on a monthly basis, the compulsory enrollment date shall be fixed as the first of the month for an employee whose beginning employment date falls between the first through 16th of the month and the compulsory enrollment date shall be fixed as the first of the following month for an employee whose beginning employment date falls between the 17th and the end of the month.

3. For employers who report on a biweekly basis, the compulsory enrollment date shall be fixed as the first day of the pay period for an employee whose date of hire falls on the first through seventh day of the biweekly pay period. The compulsory enrollment date shall be fixed as the first day of the following biweekly pay period for an employee whose date of hire falls on any subsequent date within that pay period.

(d) An employee of a Civil Service employer who is not in a classified or unclassified position or an employee of a non-Civil Service employer who is not in a regular budgeted position may be considered a temporary employee by the employer for the 12-month period following the employee's date of hire, but if the employment continues into a second year, the employee will be required to enroll immediately, as follows:

1. For employees whose employers report on a monthly basis, the compulsory enrollment date will be the first of the month following the end of the 12-month period.

2. For employees whose employers report on a bi-weekly basis, the compulsory enrollment date will be the first day of the pay period following the end of the 12-month period.

(e) An employee cannot receive credit in the retirement system for the initial pay period or month of employment if that employment began after the seventh day of the pay period or after the 16th day of the month.

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.1987 d.144, effective April 6, 1987.

See: 18 N.J.R. 2320(b), 19 N.J.R. 565(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 (d), substituted references to the 12-month period for references to the one-year period; added (e).

#### Case Notes

Rule held a valid exercise of rulemaking authority, both reasonably and rationally related to purpose of enabling legislation: denial of death benefits to survivor of decedent public employee held proper where decedent died before his elected delay in pension enrollment expired and made no pension contributions. *Frew v. Bd. of Trustees, Public Employees' Retirement System*, 8 N.J.A.R. 16 (1984), affirmed per curiam Docket No. A-4071-83T6 (App.Div.1984).

Determination of non-temporary employee status requiring enrollment in PERS: equitable determination of monies to be repaid PERS for pension benefits received. *Vliet v. Bd. of Trustees, Public Employees' Retirement System*, 156 N.J.Super. 83, 383 A.2d 463 (App.Div. 1978).

#### 17:2-2.5 Optional enrollment

(a) Any employee, other than a veteran, who was considered an optional enrollee prior to July 1, 1966, under the previous rules of the board, shall continue to retain the option to enroll or not enroll if his employer does not change.

(b) Part-time employees who cannot be classified as veterans and who were hired prior to July 1, 1966, are considered optional enrollees.

Amended by R.1971 d.71, effective May 18, 1971.

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

#### 17:2-2.6 Enrollment eligibility of professors and instructors employed on a temporary, provisional or adjunct basis by public institutions of higher education

(a) Professors and instructors, employed on a temporary, provisional or adjunct basis by public institutions of higher education, who are not in regularly appointed teaching or administrative staff positions, in classified or unclassified positions with a Civil Service employer, or in regularly budgeted positions with a non-Civil Service employer, shall be eligible for enrollment if they:

1. Earn more than the minimum threshold salary required for enrollment;
2. Work for the entire normal school year; and
3. Have their services renewed for the succeeding school year.

(b) Professors and instructors employed on a temporary, provisional or adjunct basis by public institutions of higher education who are not in regularly appointed teaching or administrative staff positions, in classified or unclassified positions with a Civil Service employer, or in regularly budgeted positions with a non-Civil Service employer, shall not be eligible for enrollment on the basis of any course they teach which:

1. Provides no academic credit; or
2. Varies in length from the normal academic term.

New Rule, R.1999 d.61, effective March 1, 1999.

See: 30 N.J.R. 4146(b), 31 N.J.R. 668(b).

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), deleted "or salary or service credit" preceding "on the basis" in the introductory paragraph, substituted "or" for "and" in 1 and substituted "term" for "semester" in 2.

#### 17:2-2.7 Enrollment following deferred retirement

(a) The membership account under which a member elected deferred retirement who resumes regular service prior to age 60 shall be reinstated.

1. The member shall be assigned the original rate of contribution if the member resumes service before a period of two years has elapsed since the member last made a contribution to the account.

2. If there has been a lapse of more than two years, a commuted rate shall be assigned. Such commuted rate of contribution shall be determined by adding the lapsed period to the member's age as of the date of original enrollment.

3. Members who return to employment after July 1, 1995 shall be assigned the contribution rate of five percent.

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), neutralized gender references throughout, and added 3.

#### Case Notes

Retired city employee who accepted city manager position with another city would be required to re-enroll in PERS and cancel his retirement benefits, even though employee and city which hired him considered employee to be independent contractor. *Murphy v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 235.