

SUBCHAPTER 4. PURCHASES AND ELIGIBLE SERVICE

17:1-4.1 Purchases; cancellation, interest on outstanding purchases or cash discount requested

(a) A member who authorizes a purchase of service credit may cancel that purchase at any time on a prospective basis only. No refunds will be made of any lump sum payments, partial payments or installment payments. The member will receive a pro rata credit for the service purchased to the date installment payments cease. Any subsequent requests to purchase the remaining service credit shall be based on the laws and rules in effect on the date that the subsequent request is received.

(b) No more than one request received from a member for the cash discount value of an outstanding arrearage or a purchase quotation for previous service will be honored in a calendar year.

(c) A member who authorizes a purchase, which requires installment payments but who has not had installment payments made toward that purchase for two years due to inactivity in the account, shall be informed by the Division that the remainder of the purchase will be canceled. The member shall receive a pro rata credit for the service purchased to the date that the installment payments ceased. The member may request to pay the cash discount value of the outstanding arrearage for the purchase in full within 60 days of the Division notice. Any subsequent requests to purchase the remaining service credit shall be based on the laws and rules in effect on the date that the subsequent request is received.

(d) A member returning from an approved leave of absence after two years may request that the original purchase be resumed. Such purchase shall be recalculated to include additional regular interest accrued between two years after the date of the last installment payment and the date the purchase is resumed.

(e) For a member who has authorized a purchase of service credit prior to September 8, 1998 and who is inactive, or becomes inactive, the purchase shall remain outstanding. The outstanding balance on the purchase shall include additional regular interest beginning September 8, 2000, or the date of inactivity, whichever is later.

Amended by R.2009 d.25, effective January 5, 2009.

See: 40 N.J.R. 4928(a), 41 N.J.R. 277(a).

In (c), inserted a comma following the first occurrence of "purchase", and deleted the comma following the first occurrence of "payments".

17:1-4.2 Purchase terms; grace period

A member who receives a written optional purchase cost quotation is given a 90-day grace period to confirm that he or she wishes to make the purchase of service credit. If the confirmation of the purchase is not received from the member

within 90 days, the cost of purchase must be recalculated to determine if any change in the cost is warranted as a result of change in age or salary.

Amended by R.2009 d.25, effective January 5, 2009.

See: 40 N.J.R. 4928(a), 41 N.J.R. 277(a).

Inserted "service".

17:1-4.3 Final compensation; salaries to be used for a period of purchased service credit

(a) A period of purchased New Jersey service may be included in the period for the calculation of final compensation. Actual base salaries paid during such period will be certified and used in the computation.

(b) The period of a purchased leave of absence will not be included in the calculation of final compensation.

Amended by R.2009 d.25, effective January 5, 2009.

See: 40 N.J.R. 4928(a), 41 N.J.R. 277(a).

Section was "Final compensation; salaries to be used for a period of purchased service". In (a), substituted "A" for "If a" and "compensation. Actual" for "compensation, actual".

17:1-4.4 Purchase of service credit; continuation of death benefits coverage; maternity leaves of absence

No period for unpaid maternity leave, even if granted by the public employer, can be approved for the subsequent purchase of service credit in excess of three months unless the Division receives verification that such member was disabled due to pregnancy and resulting disability for the period in excess of three months. During the first three months of an unpaid leave of absence for maternity, the member shall be presumed to be disabled from the performance of her job duties because of her pregnancy and any resulting disabilities.

Amended by R.2009 d.25, effective January 5, 2009.

See: 40 N.J.R. 4928(a), 41 N.J.R. 277(a).

Substituted "No period for unpaid maternity leave, even if granted by the public employer," for "In the event of an unpaid leave of absence for maternity, no leave of absence period granted by any public employer", "service credit" for "credit for a period", "receives verification" for "of Pensions and Benefits receives a certification from a physician" and the second occurrence of "any" for "its".

Case Notes

New Jersey pension credit; working from 17th of month to end of month. *Thompson v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 166.

SUBCHAPTER 5. INSURANCE AND DEATH BENEFITS

17:1-5.1 Multiple beneficiaries

Where a member has designated more than one beneficiary, in the absence of a specific request, the payment will be made to the beneficiaries on a "share and share alike, survivor or survivors" basis.

Case Notes

Policeman was not entitled to reopen denied application for accidental disability retirement benefits. *Obsuth v. Board of Trustees of the Police and Firemen's Retirement System*, 93 N.J.A.R.2d (TYP) 175.

17:1-5.2 Optional settlements; group life insurance

As the statutes provide that death benefits under the group life insurance contracts may be paid under any optional settlement made available by the insurance company. The beneficiary will be informed of such opportunity when such optional settlements are possible. If the beneficiary requests advice concerning such settlements, the claim shall be forwarded to the carrier for contact with the beneficiary. The Division will be advised of the final settlement for the recording of the data with the retirement system.

Amended by R.2009 d.25, effective January 5, 2009.

See: 40 N.J.R. 4928(a), 41 N.J.R. 277(a).

Substituted "company. The" for "company, the", and deleted "in the correspondence" following "opportunity".

17:1-5.3 Accrued increase; limitations

Upon the death of a retiree or a beneficiary receiving a pension, any payments which were due to the deceased shall be paid to a named beneficiary as established in the records of the State-administered retirement system, or if none is named, to the deceased's estate.

17:1-5.4 Group life insurance and pension benefits

(a) A deceased member's group life insurance and pension benefits shall be payable directly to a named beneficiary who is at least 18 years old.

(b) If a member designates a beneficiary who is not yet 18 years old to receive the group life insurance and pension benefits, and no trustee or guardian is appointed, the Division will pay the benefit as soon as possible after the beneficiary's 18th birthday. The beneficiary must notify the Division at the time of his or her 18th birthday for the benefit to be paid.

(c) No interest accrues on the member's contributions between the date of the member's death and the date of distribution.

New Rule, R.2004 d.265, effective July 19, 2004.

See: 36 N.J.R. 1733(a), 36 N.J.R. 3413(a).

Amended by R.2009 d.25, effective January 5, 2009.

See: 40 N.J.R. 4928(a), 41 N.J.R. 277(a).

Section was "Return of pension contributions; death of member". In (a), substituted "group life insurance and pension benefits" for "pension contributions" and inserted "directly"; and in (b), substituted "group life insurance and pension benefits" for "return of pension contributions", deleted "of Pensions and Benefits" following "Division" and "as possible" following the first occurrence of "birthday", and inserted "as possible" following "soon".

17:1-5.5 Retired members—group life insurance and pension benefits

(a) If the member was retired at the time of death, the benefits to eligible beneficiaries shall become effective on the

first of the month following the member's death and shall terminate as of the month in which the beneficiary no longer qualifies for such benefits. A pension allowance shall be payable for the entire month in which the retiree or beneficiary dies.

(b) In the event a retired member dies before repaying any outstanding obligations, the remaining balance will be deducted first from the group life insurance proceeds and then from the proceeds of any pension benefit, such as a monthly allowance or last check benefit. If multiple beneficiaries are to receive these benefits, each beneficiary shares in repaying the remaining balance in the same proportion in which he or she is entitled to the benefits. Any remaining funds will be distributed in accordance with the member's last Designation of Beneficiary on file.

New Rule, R.2009 d.25, effective January 5, 2009.

See: 40 N.J.R. 4928(a), 41 N.J.R. 277(a).

Former N.J.A.C. 17:1-5.5, Domestic partners, recodified to N.J.A.C. 17:1-5.6.

17:1-5.6 Domestic partners

(a) Resolutions by the employer to adopt the provisions of P.L. 2003, c. 246, the Domestic Partnership Act, cannot take effect prior to the date of the resolution. If the employer decides to adopt the provisions of P.L. 2003, c. 246, the employer must adopt the provisions for all its employees and retirees in all of the retirement systems in which it participates and not just members of a specific retirement system.

1. An employer may adopt the provision of P.L. 2003, c. 246, for the State Health Benefits Program (SHBP) and School Employees Health Benefits Program (SEHBP) separately from the resolution for the retirement systems. Once a resolution is adopted, it may only be rescinded on a prospective basis. Anyone receiving a survivor's benefit, SHBP or SEHBP coverage based on the old resolution shall continue to do so until such time as they no longer meet the definition of widow, widower, surviving spouse or dependent.

2. A retired employee of a public employer that has not elected to provide coverage for domestic partners or does not participate in the SHBP or SEHBP cannot add a domestic partner to SHBP or SEHBP coverage.

(b) Pursuant to P.L. 2003, c. 246, the Domestic Partnership Act (N.J.S.A. 26:8A-1 et seq.), the SHBP, SEHBP and State-administered retirement system provisions found in sections 41 through 56 of the Act only apply in the case of two persons who are of the same sex and have established a domestic partnership. Therefore:

1. The domestic partner of a member or retiree who is of the opposite sex of the member cannot meet the definition of widow, widower or surviving spouse found in N.J.S.A. 18A:66-2, 43:6A-3, 43:15A-6, 43:16A-1, 53:5A-3

and cannot receive any statutory survivor benefits through the retirement systems;

2. The domestic partner of a participant in the SHBP or SEHBP who is the opposite sex of the participant cannot enroll for SHBP or SEHBP coverage; and

3. If the widow, widower or surviving spouse of a member or retiree is receiving retirement benefits and then enters into a domestic partnership with a member of the opposite sex, that widow, widower or surviving spouse may continue to receive the retirement benefits.

(c) Since the Federal tax code does not view a domestic partner in the same manner as a spouse, any benefit an employer provides its employees or retirees for a domestic partner will be taxable to the employee or retiree. The employer who adopts the domestic partner benefit for its active and retired employees should report the value of the benefit provided for the domestic partner on Form W-2 as income to the employee or retiree, and the value of the benefit will be subject to Federal income, Social Security, and Medicare taxes. The adopting employer shall also be responsible for the employer share of Social Security and Medicare taxes due on the domestic partner benefit, including the taxes due on any State paid benefits.

1. The income reported by the employer shall be the full cost of single coverage in the plan in which the domestic partner is enrolled.

2. Anything that the employee or retiree pays for the domestic partner coverage through premium sharing arrangements will reduce the amount of the income reported to the Federal government for the domestic partner benefit. These premiums cannot be made on a pre-tax basis unless the domestic partner meets the Federal definition of dependent. If the domestic partner qualifies as a dependent of the covered member for Federal income tax purposes, the value of the domestic partner benefit will not be taxable to the employee or retiree, and any premium paid by the employee toward the domestic partner benefit can be deducted on a pre-tax basis through the State's Section 125 Tax\$ave Program. To be eligible for the tax exemption, the employee or retiree must file a certification of tax dependency with the Division.

(d) The Division will implement equitable distribution for a domestic partner if an acceptable order as described in N.J.A.C. 17:1-1.12 is received by the Division.

New Rule, R.2004 d.413, effective November 1, 2004.

See: 36 N.J.R. 3472(a), 36 N.J.R. 4952(c).

Recodified from N.J.A.C. 17:1-5.5 and amended by R.2009 d.25, effective January 5, 2009.

See: 40 N.J.R. 4928(a), 41 N.J.R. 277(a).

Substituted "c. 246" for "c.246" throughout; in (a)1, inserted "and School Employees Health Benefits Program (SEHBP)" and substituted "SHBP or SEHBP" for "or SHBP"; in (a)2, the introductory paragraph of (b) and (b)2, substituted "SHBP or SEHBP" for "State Health Benefits Program" throughout; and in (c)2, deleted "of Pensions and Benefits" following "Division".

17:1-5.7 Civil unions

(a) Civil union partners have all the rights and privileges as married couples. The Federal Internal Revenue Code (IRC) allows an employer to provide certain benefits to its employees on a tax-exempt basis. Those benefits can also be extended to spouses and dependents of an employee on the same tax-exempt basis. The IRC, however, does not recognize a civil union partner in the same manner as a spouse and does not automatically recognize a civil union partner as a dependent for tax purposes. Therefore, employers may have to treat civil union SHBP and SEHBP benefits as taxable on Form W-2 and withhold Federal income, Social Security and Medicare taxes on its value. The employer shall be responsible for the employer share of Social Security and Medicare taxes due on the civil union benefit, including the taxes due on any State paid benefits.

1. The income reported by the employer shall be the full cost of single coverage in the plan in which the civil union partner is enrolled.

2. Anything that the employee or retiree pays for the civil union coverage through premium sharing arrangements will reduce the amount of the income reported to the Federal government for the civil union benefit. These premiums cannot be made on a pre-tax basis unless the civil union partner meets the Federal definition of dependent. If the civil union partner qualifies as a dependent of the covered member for Federal income tax purposes, the value of the civil union benefit will not be taxable to the employee or retiree, and any premium paid by the employee toward the civil union partner can be deducted on a pre-tax basis through the State's Section 125 Tax\$ave Program. To be eligible for the tax exemption, the employee or retiree must file a certification of tax dependency with the Division.

New Rule, R.2009 d.25, effective January 5, 2009.

See: 40 N.J.R. 4928(a), 41 N.J.R. 277(a).

SUBCHAPTER 6. HONORABLE SERVICE

17:1-6.1 Honorable service

(a) The receipt of a public pension or retirement benefit is expressly conditioned upon the rendering of honorable service by a public officer or employee. Pursuant to N.J.S.A. 43:1-3, the Boards of Trustees of the State-administered retirement systems are authorized to order the forfeiture of all or part of the pension or retirement benefit of a member of the fund or system for misconduct occurring during the member's public service, which render the member's service or part thereof, dishonorable.

(b) Whenever the Board of Trustees determines that a partial forfeiture of pension or retirement benefits is warranted, it shall order that benefits be calculated as if the accrual of

pension rights terminated as of the date the misconduct first occurred unless (c) below applies.

(c) In circumstances where the termination of pension rights as of the date of the misconduct results in no reduction, or a minimal reduction of pension or retirement benefits, or in an excessive forfeiture, as compared to the nature and extent of the misconduct and the years of honorable service, the Board may, in its sole discretion, provide a more equitable relief. Alternate methods available to the Board when a forfeiture of service renders an unreasonable or unjust result include, but are not limited to:

1. Forfeiture of salary credit upon which retirement benefits are based;
2. Forfeiture of system-paid retired State Health Benefits;
3. Forfeiture of right to participate in the retired SHBP and SEHBP;
4. Reduction in monthly retirement allowance;
5. Forfeiture of service and/or salary credit in a specific title or rank;
6. Forfeiture of service in excess of that needed to qualify for a specific retirement benefit; or
7. Forfeiture of a percentage of the retirement benefit based on the calculation of the percentage of time which was dishonorable service as compared to the total years and months of service credit.

Amended by R.2009 d.25, effective January 5, 2009.
See: 40 N.J.R. 4928(a), 41 N.J.R. 277(a).

In (a), inserted a comma following the second occurrence of "service"; in the introductory paragraph of (c), deleted "the limited" following "In"; and in (c)3, substituted "SHBP and SEHBP" for "State Health Benefits Program".

17:1-6.2 Indictments, dismissals, litigation or appeals

(a) When a member is subject to criminal charges, such an indictment, information or accusation or dismissed from public employment due to administrative charges, the matter shall be referred to the Board Secretary's office to determine the status of any claim, which may be filed by the member.

(b) No credit shall be granted for the period during which the member's salary has been terminated while under indictment, information, accusation or suspension, until the outcome of the proceedings determines the basis for the award of such credit, if any.

(c) All claims for retirement, death benefits and the return of contributions cannot be processed until the matter has been fully adjudicated and completely resolved to the satisfaction of the Board of Trustees, pursuant to N.J.A.C. 17:1-1.13(a)4. Resolution of these charges must be verified by contact with the County Prosecutor's Office, the Attorney General's Office, the Department of Education, the Civil Service Commission, the employer or other responsible agencies.

(d) Likewise in cases where anything pertaining to a member's employment is in litigation, or under appeal, the matter shall be held in abeyance until the Division determines if claims can be processed or whether the processing of such claims are to be postponed pending a final resolution of the litigation or appeal.

(e) If charges listed in N.J.A.C. 17:1-1.13(a)4 are received by the Boards or Division after the member's date of retirement, the Boards may suspend retirement benefits pending the outcome of such charges.

Amended by R.2009 d.25, effective January 5, 2009.
See: 40 N.J.R. 4928(a), 41 N.J.R. 277(a).

In (a), substituted "subject to criminal charges, such an indictment, information or accusation" for "indicted"; inserted "from public employment due to administrative charges" and inserted a comma following "claim"; in (b), inserted "information, accusation"; in (c), inserted "fully adjudicated and", "pursuant to N.J.A.C. 17:1-1.13(e)", and "the employer"; and substituted "these" for "the indictment, dismissal or other"; and in (e), substituted "charges listed in N.J.A.C. 17:1-1.13(e) are" for "an indictment, regarding charges related to a member's public employment is" and "such charges" for "the indictment".
Administrative corrections and change.
See: 41 N.J.R. 2337(b).

Case Notes

Pension may be reduced due to retiree's admission of participation in kickback scheme during public service. *Estate of Verderese v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 11.

Conviction on plea of guilty to job-related criminal charges required total forfeiture of retirement benefits. *Gallerano v. Retirement System*, 93 N.J.A.R.2d (TYP) 299.

Three years of bribe taking warrants forfeiture of 28 years of service credit. *Sudia v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 118.

Conviction of receiving bribes and of income tax evasion warrants forfeiture of pension benefits accumulated during such employment; however, employee could withdraw contributions plus interest. *Tomasso v. Board of Trustees of the Public Employees' Retirement System*. 93 N.J.A.R.2d (TYP) 48.

Extortion conviction warranted denial of 12 years and 8 months of retirement service credit. *Fisher v. Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 114.

School psychologist's service not honorable after his criminal sexual contact conviction, and therefore not creditable for calculating pension benefits. *LePrince v. Board of Trustees, Teachers' Pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 59, affirmed and remanded 267 N.J.Super. 270, 631 A.2d 545, certification denied 134 N.J. 482, 634 A.2d 528, certiorari denied 114 S.Ct. 1072, 510 U.S. 1119, 127 L.Ed.2d 390.

17:1-6.3 Settlement agreements; employer responsibility for reimbursement to the pension fund or retirement system for associated costs

(a) Pursuant to the provisions of P.L. 2007, c. 49 (N.J.S.A. 43:1-3.3), the following shall apply:

1. A State, county or local employer participating in a State pension fund or retirement system shall be respon-