

**CHAPTER 2**

**PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

**Authority**

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

**Source and Effective Date**

R.1995 d.91, effective February 21, 1995.  
See: 26 N.J.R. 4747(a), 27 N.J.R. 754(a).

**Executive Order No. 66(1978) Expiration Date**

Chapter 2, Public Employees' Retirement System, expires on February 21, 2000.

**Chapter Historical Note**

Chapter 2, Public Employees' Retirement System was filed and became effective prior to September 1, 1969. Pursuant to Executive Order No. 66(1978), Chapter 2 expired on October 9, 1984, and subsequently 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 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 expired on November 8, 1994, and subsequently was adopted as new rules by R.1995 d.91. See: Source and Effective Date.

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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) No meeting will be held in the month of August unless it is deemed necessary by the chairman or the secretary.

(c) The chairman 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).

### 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, with the exception of the actuarial valuation, which shall be prepared on the basis of the membership payroll status of all account results as of March 31 of each year.

### 17:2-1.3 Officers and committees

(a) The members of the board shall elect a chairman and vice chairman from its membership for the forthcoming year at its regular meeting held in July.

(b) The chairman of the board shall preside at all of its meetings, or in the absence of the chairman, the vice chairman shall assume the chairman's responsibilities.

(c) The chairman 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 three standing committees, which are the finance committee, the retirement committee, and the executive committee. The committees shall be appointed by the chairman at the July meeting for the forthcoming fiscal year.

(e) 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 three members.

(f) The retirement committee shall consider all cases referred to it by the secretary and submit its recommendations to the board at its next meeting. The committee shall consist of three members.

(g) The executive committee shall consider all cases referred to it by the secretary and submit its recommendations to the board at its next meeting. The committee shall consist of three members.

As amended, R.1971 d.71, eff. May 18, 1971.  
See: 3 N.J.R. 50(a), 3 N.J.R. 117(b).  
As amended, R.1976 d.383, eff. December 6, 1976.  
See: 8 N.J.R. 537(c), 8 N.J.R. 48(a).

### 17:2-1.4 Election of member-trustee

(a) The election of the Board of Trustee members will include the use of nominating petitions.

1. This will entail the separate distribution of at least two forms for all active member employees of the State or of the counties or municipalities, as the case may be.

2. Public agencies will vote on the basis of whether they are State, county or municipal instrumentalities.

3. The first will be an election notice setting forth the rules for filing nominating petitions and other pertinent data.

4. The second will be ballot, containing the names of the candidates who have been properly nominated as well as the rules governing the balloting. If only one candidate is nominated, the second form will be a notice containing the name of the candidate and an indication that the candidate is deemed elected to the position without balloting because there was only one nominee.

5. Petition forms will be available at the office of the Public Employees' Retirement System.

6. Biographical information on the candidates will be distributed to the certifying officer of each employing agency at the time of distribution of ballots or notices of election without balloting.

(b) Rules concerning election notice and petition are as follows:

1. At least four months prior to the expiration of the term of each elected trustee, a notice will be prepared and distributed to the certifying agents of the State or of the counties or municipalities, as the case may be, advising them of the position to be voted upon (position and term), as well as the name and expiration of term of office of the present trustee. The names of all present trustee members of the Board of Trustees and the expiration of their terms will also be shown. The notice will also inform the members that petition forms are available at the office of the retirement system. The election notice will specify the time and place of the drawing by lot for position on the ballot. All petitioners will be invited to attend on the given date.

2. The petition will indicate to the members that the member to be nominated by this petition must be a member of the Public Employee's Retirement System and either a State, county or municipal employee, according to the position being voted upon. (State employee members may petition only for State employee candidates; county employee members only for county employee candidates; and municipal employee members only for municipal employee candidates.

3. The instructions will indicate that at least 500 eligible State employee members, county members or municipal members, as the case may be, must sign the petition in order for a candidate's name to be placed on the ballot.

4. Petitioners must indicate their employing agencies, in addition to printing and signing their names on the petition.

5. A member may sign a petition for only one candidate.

6. The candidate named on a petition must sign the petition in a designated space indicating that he is willing to be a candidate.

7. The instructions will indicate the closing date for the filing of such petitions and also indicate the fact that a ballot bearing the names of all candidates so nominated will be forwarded for each eligible voter.

8. The names of all properly nominated candidates will appear on the ballot in the order drawn by lot. The employing agency will also be shown after the name of each candidate.

9. If only one candidate is nominated for a position, the candidate is deemed elected to the position without balloting.

(c) Rules concerning the ballot are as follows:

1. For each eligible voter there will be forwarded to the certifying agent, a ballot addressed by name.

2. The closing date of the election will be indicated.

3. The name of each candidate nominated by proper petition filed within the prescribed time will appear on the ballot.

4. Instructions supplied to the voter for the proper casting of the ballot (marking of the ballot, returning of such ballot through the postage paid return envelope and notice to sign such envelope) will be shown on the reverse side of the ballot or on a separate sheet.

5. The instructions will also indicate that the candidate receiving a plurality of the legal votes cast will be declared elected to the position.

(d) Rules concerning the election notice are as follows:

1. Election notices will be forwarded in bulk and in the appropriate number to the certifying agent or appropriate

fiscal officer of such employing agency, together with instructions as to who are to receive the same.

2. A receipt and report will also be forwarded to each certifying agent or appropriate fiscal officer; such form is to be returned to this office and will indicate:

i. Receipt of the forwardings by the certifying agent or appropriate fiscal officer;

ii. The extent to which the certifying agent or appropriate fiscal officer has distributed the election notices.

(e) Rules concerning ballot distribution are as follows:

1. The ballots, each bearing the name and register number of an eligible voter, will be forwarded to the payroll agents, together with instructions governing distribution.

2. State, county and municipal employee members' ballots and return envelopes will be differentiated by colored forms or by some other symbol.

3. A receipt and report form will also be forwarded to each certifying agent or appropriate fiscal officer. Such form will indicate:

i. Receipt of the forwardings by the certifying agent or appropriate fiscal officer;

ii. The extent or distribution of election ballots;

iii. Return of undelivered ballots and reason for same.

4. The returned ballot-bearing envelopes are to be examined for validity. A record will be maintained to identifying the registered numbers of the members who have voted. The sealed ballots will be deposited in a locked container. Immediately prior to the counting of the ballots, the information identifying the individual voters will be separated from the still sealed ballots in the presence of the election judges.

(f) Rules concerning election judges are as follows:

1. An election board consisting of a judge and two tellers to examine the returned ballots and to tabulate the votes cast. The counting of these ballots will be accomplished by the use of a machine, the normal design of which is for the purpose of counting paper stock. The Board will have the power to eliminate any ballot which is not properly cast. The Board will report on the results of the election to the Board of Trustees.

2. The candidates whose names are printed on the ballots will be informed as to the method and the date of counting the ballots, and will be invited to be present or to be represented at the counting of the ballots.

(g) Rules concerning recount are as follows:

1. Any candidate who shall have reason to believe that an error has been made in counting the vote or declaring the vote of the election may within 20 days of the certification of the results of the election, request, in writing, that the Board of Trustees shall, at its next regular meeting or at a special meeting, consider the request and determine whether a recount shall be held. The Board shall notify all candidates of its decision within 10 days thereafter. At such meeting, any member of the Board who is a candidate on the contested ballot shall not participate in the Board's deliberation or decision on this request.

2. If a candidate for a position on the Board requests a recount within the prescribed time, this request may be granted if a recount could possibly affect the result of the election. All ballots received will then be recounted and the recount will be supervised by the Election Board. The Board will certify the result of the recount to the Board of Trustees. If a recount is not requested within 20 days the ballots may be destroyed.

(h) Rules concerning biographical information on candidates are as follows:

1. An informational sheet of biographical information on each candidate shall be prepared by the Division of Pensions. The information to be included on each candidate shall be approved by the candidate. The informational sheet shall be approved by the board.

2. Copies of the informational sheet shall be distributed to the certifying officer of each employing agency at the time of distribution of ballots or notices of election without balloting.

3. The informational sheets shall be posted at appropriate places throughout the workplace of each employing agency or be otherwise distributed so that the members of the retirement system will have reasonable opportunity to read and consider the biographical information on the candidates.

(i) 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 his or her term as trustee, the candidate who obtained the next highest number of votes in that election (that is, the first runner-up) may be selected, at the Board's discretion, 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 may, in its discretion, select the candidate who obtained the next highest number of votes in that election or may 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.

(j) Only active members of the Public Employees' Retirement System may vote in the election of member-trustees of the Board of Trustees of the Public Employees' Retirement System.

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).

#### Case Notes

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 agent (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 agent for that unit.

(b) The Certifying Agent 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 Agent shall also be responsible for all other duties relating to matters concerning the System.

#### Case Notes

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) 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) All medical testimony obtained in connection with an application for disability retirement shall be restricted for the confidential use of the Board of Trustees.

**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 his legal representative:

"If you disagree with the determination of the Board of Trustees in this matter, you may appeal by sending a written statement to the Board within 45 days from the date of this letter informing the Board of your disagreement and all of the reasons therefor. If no such written statement is received within the 45-day period, this determination shall be considered final."

As amended, R.1971 d.71, eff. May 18, 1971.  
See: 3 N.J.R. 50(a), 3 N.J.R. 117(b).

**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).

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 under age 60 fails to timely file a report with the system of his annual earned income;
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.

As amended, R.1979 d.399, eff. October 9, 1979.  
See: 11 N.J.R. 411(a), 11 N.J.R. 596(b).

**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 Travel**

Travel to and from work when it is to and from the regular place of employment is not considered duty rendered in the course of employment for the purpose of determining eligibility for accidental disability or accidental death benefits.

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

(a) All members may be required to establish proof of their age with the System. A person enrolling at age 45 or older may be required to submit evidence at time of enrollment; under age 45, before a period of five years has elapsed from date of employment.

(b) In the event a member dies before satisfactory evidence of his 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.

**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 period for State employees paid by centralized payroll.

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

R.1974 d.230, eff. August 19, 1974.  
See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).

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

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

(b) Retired members and survivors will have their benefits calculated upon the basis of the factors applicable to their age as set forth in (a) above.

New Rule, R.1991 d.115, effective March 4, 1991.  
See: 22 N.J.R. 3707(a), 23 N.J.R. 712(a).

**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 (dual enrollments), Social Security coverage is prescribed in each position or employment for each to be qualified 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.

### 17:2-2.2 Multiple employments

(a) Any employee who has enrolled in a covered position must also enroll in any other position regardless of his or her employment status in such other position if he or she 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 him or her eligible for membership in that second position, his or her ineligibility for membership in the earlier position is not altered by his or her enrollment in the Public Employees' Retirement System.

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

(c) A LEO member who is also enrolled on the basis of a non-LEO position will contribute at the LEO rate of pension contribution on the base wages he or she receives from all positions.

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.

### 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 employees;
2. Licensing agents of the Fish and Game Division and their 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 he or she 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.

5. 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).

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.

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.

### 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).

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) A new appointee in the classified service shall be considered as beginning his or her service on the date of his or her regular appointment. The compulsory enrollment date shall be fixed as the first of the month for an appointee 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 appointee whose regular appointment date falls between the 17th and the end of the month. If an applicant, an optional enrollee, fails to give the date of his or her enrollment application that he or she desires to enroll in the system, the applicant shall be enrolled as of the first of the month following the receipt of the enrollment application.

(b) An employee in the unclassified service or an elected position shall be considered as beginning service on the date of his original appointment, or the date when he 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. The date of compulsory enrollment shall be fixed as the first of the month for an appointee 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 appointee whose beginning employment date falls between the 17th and the end of the month.

(c) 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 his employer for one-year period following the employee's date of hire, but if his employment continues into his second year, he will be required to enroll immediately; his compulsory enrollment date will be the first of the month following the end of the one-year (12-month) period.

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).

#### 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 (Reserved)

Amended by R.1971 d.71, effective May 18, 1971.  
See: 3 N.J.R. 50(a), 3 N.J.R. 117(b).

#### 17:2-2.7 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. He shall be assigned his original rate of contribution if he resumes service before a period of two years has elapsed since he last made a contribution to his 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 his age as of the date of his original enrollment.

### SUBCHAPTER 3. INSURANCE AND DEATH BENEFITS

#### 17:2-3.1 Compulsory and optional enrollment

(a) For the purpose of contributory insurance, all compulsory enrollees, including veterans, under age 60 at the time their enrollment application is filed, shall be required to participate in the contributory insurance program for one year (12 calendar months) from the date of enrollment, or the effective date of insurance premium deduction, whichever is later. Proof of insurability shall be required for all compulsory and optional enrollees, age 60 or older, in order to qualify for noncontributory and contributory insurance coverage.

(b) Optional enrollees under age 60 may qualify for noncontributory and contributory insurance coverage only if they were actively at work performing all of the duties that the position requires at the time they made application for enrollment, and such application was filed within one year from the date they first became eligible for enrollment in the system. If an application for an optional enrollee is not received within one year after he became eligible for enrollment, evidence of insurability will be required for the non-contributory and contributory coverage.

(c) When proof of insurability is required, the member's opportunity to prove such insurability shall expire one year (12 months) from the date the initial written notice is sent advising him or her that he or she must prove insurability by taking a medical examination.

As amended, R.1979 d.399, eff. 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).  
Deleted (a) and renumbered (d) to (c).

#### Case Notes

Request to permit petitioner to prove insurability for life insurance purposes granted: statute and rule found to set no time limit for furnishing such proof. *Watson v. Bd. of Trustees, Public Employees' Retirement System*, 4 N.J.A.R. 380 (1980).

**17:2-3.2 Computation of insurance benefits**

(a) Any member who is reported on a 10-months basis and who has not resigned or been discharged, shall be covered by his or her insurance benefits for the month or months he or she is on his regular seasonal layoff.

1. The death benefit shall be based upon the base salary upon which contributions to the annuity savings fund were made that are attributable to the 12 months or 26 biweekly pay periods immediately preceding his or her death.

2. The salary, in the month or biweekly pay period in which no salary was paid, shall be counted as zero.

(b) Full salary credit will be given for the month or biweekly pay period in which a member dies, if he was paid salary to date of death and the salary paid was sufficient to permit a full normal month's or biweekly pension and insurance contribution deduction, provided such deduction was made by the employer.

(c) If a member dies during the first year following his date of enrollment, the contributory insurance benefit shall be  $1\frac{1}{2}$  times the member's annual base salary on which he contributed or would have contributed immediately prior to his death. The noncontributory insurance benefit shall be  $1\frac{1}{2}$  times the actual base salary upon which contributions to the annuity savings fund were due from the date of enrollment to the date of death.

(d) For a member dying after the first year following his or her date of compulsory enrollment, both the noncontributory and contributory insurance benefit shall be determined upon the base salary upon which contributions to the annuity savings fund were made, that are attributable to the 12 months or 26 biweekly pay periods preceding death.

(e) If a member has contributed pension contributions for less than a year but his enrollment has been in effect for more than a year, only those wages upon which pension contributions were based can be used as salary to determine the value of the noncontributory insurance benefit, whereas the contributory insurance benefit will be based on the member's annual salary on which he last contributed.

(f) Where a post-audit of insurance claim payments indicates the pension contributions reported by an employer were incorrect and resulted in the overpayment of an insurance claim to a member's designated beneficiary or estate, the employer will be billed for the value of the overpayment of the insurance benefits. Where post-audits establish the insurance benefits were underpaid, an additional check would be sent to the beneficiary for the value of the underpayment.

(g) Refunds of a deceased member's pension contributions will be made to the member's designated beneficiary or the employer after written confirmation is received from the employer setting forth the reason for the refund of pension contributions to either the beneficiary or to the employer.

(h) Members who prove their insurability for the group life insurance benefits shall have their insurance benefit calculated on the basis of the basis of salary they received or salary upon which pension contributions were based during their last year (10 and 12 months) of service prior to death, regardless of their effective date of insurance coverage.

(i) In computing the salary upon which pension contributions were based during a member's last year of service, in the case of a 12-month State employee reported on a biweekly basis, a total of 26 biweekly pays will be used, including any retroactive salary payments made within the prescribed period. The total salary will be adjusted by multiplying the total by the factors supplied by the actuary; such adjustment will compensate for State biweekly payroll schedules.

(j) In computing (i) above in the case of State employees reported on a 10-month basis, the total biweekly pays will include those pay periods in the third quarter of each year in which a member does not receive salary. The adjustment as specified in (i) shall not be made.

(k) If a member was reported on a biweekly basis or any combination of 10 and 12-month contract years, the last year's salary prior to death or retirement shall be determined on a proportional basis. The biweekly pay periods for which no contributions were made shall be counted as zero.

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

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

As amended, R.1978 d.138, effective May 1, 1978.

See: 10 N.J.R. 38(a), 10 N.J.R. 265(c).

Amended by R.1990 d.377, effective August 6, 1990.

See: 22 N.J.R. 1348(a), 22 N.J.R. 2342(c).

Stylistic changes; benefits based on contributions attributable to 12 months preceding death of member.

**17:2-3.3 Contributory insurance rate**

All participating members' contribution rate for contributory group insurance shall be fifty-five one-hundredths of one percent (.0055) of the member's base or contractual salary, effective as of January 1, 1988.

As amended, R.1970 d.133, effective November 2, 1970.

See: 2 N.J.R. 86(d), 2 N.J.R. 102(b).

As amended R.1978 d.139, effective May 1, 1978.

See: 10 N.J.R. 127(b), 10 N.J.R. 265(d).

As amended, R.1982 d.343, effective October 18, 1982.

See: 14 N.J.R. 200(b), 14 N.J.R. 1164(b).

As amended, R.1983 d.7, effective February 7, 1983.

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

Rate change from one-half to three-quarters July 1, 1981.

As amended, R.1984 d.190, effective May 21, 1984.

See: 16 N.J.R. 358(a), 16 N.J.R. 1284(a).



Contribution rate changed from  $\frac{3}{4}$  to  $\frac{5}{10}$  of one percent, effective April 1, 1984.

Amended by R.1987 d.510, effective December 7, 1987.

See: 19 N.J.R. 1636(a), 19 N.J.R. 2373(c).

Contribution rate changed from 6/10 to 55/100 of one percent, effective January 1, 1988.

#### **17:2-3.4 New enrollments and transfers; contributory insurance premiums**

For new enrollees and transferees, contributory insurance premiums will be due from the date insurance is effective as shown on the certification, to the date payroll deductions are certified to begin. In no case will the retroactive premiums for more than 15 months be charged.

#### **17:2-3.5 Leave for illness**

(a) Coverage during a leave of absence due to illness shall apply only to the personal illness of the member.

(b) A leave of absence on account of another person's illness will not entitle the member to continued insurance coverage.

#### **17:2-3.6 Survivor benefits**

(a) Payment of benefits to eligible survivors shall become effective on the first of the month of the member's death and shall terminate as of the month in which the survivor no longer qualifies for such benefits.

(b) In the instance of an active member who dies in the performance of duty (accidental death), the initial pension payment will be for the month following the month in which the member died, and the last payment will cover the month immediately preceding the month the survivor dies or ceases to qualify for the continuance of benefits.

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

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

#### **17:2-3.7 Withdrawal application; contributory insurance**

A properly executed contributory insurance withdrawal application must be in the possession of the Retirement System before termination of the contributory coverage can be effected. Such withdrawal application cannot be retroactive.

Correction: The words "Retirement System" were inadvertently omitted from text.

See: 18 N.J.R. 2391(c).

#### **17:2-3.8 Withdrawal and return; contributory insurance**

Withdrawal from contributory insurance coverage shall apply only to the membership account under which the cancellation was exercised. Any person, who has cancelled his contributory insurance coverage and withdraws from membership in the system, shall, upon his subsequent re-enrollment in the system, be subject to the provisions of N.J.A.C. 17:2-3.1.

#### **17:2-3.9 (Reserved)**

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

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

Amended by R.1983 d.76, effective March 21, 1983.

See: 15 N.J.R. 16(a), 15 N.J.R. 449(a).

The section formerly contained rules on insurance liability for unenrolled members.

#### **17:2-3.10 Contributory insurance premiums; leave of absence**

(a) Contributory insurance coverage will be in effect while a member is on an official leave of absence without pay for the following reasons:

1. To fulfill a residency requirement for an advanced degree;
2. As a full-time student at an institution of higher education; and
3. Up to 93 days on an official leave for any other reason, provided insurance premiums were paid in advance of the date the leave was granted.

#### **17:2-3.11 Ten month members**

A member employed on other than a 12-month contract year will continue to be insured during the summer vacation period provided a bona fide employee-employer relationship exists during this period.

#### **Case Notes**

Part-time adjunct professor who died during summer hiatus was still active member of Public Employees' Retirement System. Estate of Hagel v. Board of Trustees, Public Employees' Retirement System, 226 N.J.Super. 182, 543 A.2d 1010 (A.D.1988).

#### **17:2-3.12 Beneficiary designation; pension contributions**

(a) Only a primary and a contingent designation of beneficiary may be made by the member for the payment of such member's accumulated pension contributions.

(b) Multiple members of a retirement system are required to file new beneficiary forms when the beneficiary nomination on the multiple enrollment forms do not agree.

(c) All beneficiaries must be specifically named. The designation "children," unless otherwise qualified by the member shall mean all individuals, including natural or adopted children, entitled to take from the member by the New Jersey laws of intestate succession, N.J.S.A. 3A:2A-1 et seq., and excludes all persons who are only stepchildren, foster children, grandchildren or anymore remote descendants.

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

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

Amended by R.1983 d.6, effective February 7, 1983.

See: 14 N.J.R. 1151(a), 15 N.J.R. 163(a).

Clarification of "children" as beneficiaries.

## SUBCHAPTER 4. MEMBERSHIP

### 17:2-4.1 Creditable salary

(a) Only a member's base or contractual salary, plus the value of maintenance, if applicable, shall be subject to pension and group life insurance contributions and creditable for retirement and death benefits in the system.

(b) The board shall reserve the right to question any salary to determine its creditability where it is evident from the record that a salary reported for benefits includes extra compensation.

(c) Such extra compensation shall be considered not creditable for benefits and all contributions made thereon shall be returned without interest.

(d) Some of the forms of compensation that have been defined as extra compensation are as follows: overtime, bonus, longevity lump sum payments, individual retroactive salary adjustments or individual adjustments to place a member at maximum in his salary range in the final year of service, increments granted for retirement credit or in recognition of the member's forthcoming retirement or in recognition of the member's years of service in the community.

(e) All claims involving an increase in compensation of more than 15 percent over that of the previous year, as reported to the retirement system, shall be investigated. Those cases where a violation of the statute is suspect shall be referred to the Board.

Amended by R.1971 d.71, effective May 18, 1971.  
See: 3 N.J.R. 50(a), 3 N.J.R. 117(b).

#### Case Notes

Income received by school employee for duties as clerk was pension creditable. *Chapel v. Board of Trustees of Public Employees' Retirement System, Div. of Pensions*, 258 N.J.Super. 389, 609 A.2d 1294 (A.D.1992).

Municipal court judge's salary paid for service as presiding judge was creditable compensation. *Rokos v. State, Dept. of Treasury, Div. of Pensions, Public Employees' Retirement System*, 236 N.J.Super. 174, 564 A.2d 1217 (A.D.1989).

Municipal court judge serving as presiding judge was employee, not independent contractor. *Rokos v. State, Dept. of Treasury, Div. of Pensions, Public Employees' Retirement System*, 236 N.J.Super. 174, 564 A.2d 1217 (A.D.1989).

Municipal court judge's duties as presiding judge were neither temporary nor extracurricular. *Rokos v. State, Dept. of Treasury, Div. of Pensions, Public Employees' Retirement System*, 236 N.J.Super. 174, 564 A.2d 1217 (A.D.1989).

Municipal court judge's position as presiding judge even if temporary was not disqualification from pension creditability for presiding judge salary. *Rokos v. State, Dept. of Treasury, Div. of Pensions, Public Employees' Retirement System*, 236 N.J.Super. 174, 564 A.2d 1217 (A.D.1989).

Action of utilities authority and borough in creating positions, respectively, of general counsel and municipal prosecutor, and in appointing person to those positions, held not to constitute salary adjustments within the meaning of public employees' pension law excluding salary adjustments from compensation to be used as the basis for computing retirement pay. *Hiering v. Bd. of Trustees, Public Employees' Retirement System*, 197 N.J.Super. 14, 484 A.2d 20 (App.Div.1984).

Salary creditable; pension and veteran retirement benefits. *Berger v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 187.

Termination of fixed term position does not constitute discontinuation from service through no fault of employee within meaning of statute providing for extension of membership in retirement system. *D'Alessio v. board of Trustees of the Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 100.

Salary paid township counsel during three years before retirement was paid primarily in anticipation of retirement, and thus ineligible compensation for pension purposes. *Mangini v. Trustees of Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 43.

Petitioner's claim for inclusion for pension calculation of salary received as town sewer attorney denied as services rendered were of the type usually rendered by an independent contractor rather than an employee: claim for inclusion for pension calculation of vouchered fees received as town sewer attorney denied as such fees are outside the statutory definition of compensation (Board's Final Decision). *Fasolo v. Bd. of Trustees, Public Employees' Retirement System*, 6 N.J.A.R. 4 (1980), affirmed in part and reversed in part and remanded 181 N.J.Super. 434, 438 A.2d 328 (App.Div.1981).

### 17:2-4.2 Leave with pay

(a) If a member is granted a leave of absence with sufficient salary to cover a full normal contribution, including any arrears or loan payments, the privilege of the member to obtain credit on the basis of such salary shall not extend beyond six months from the date of the leave.

(b) If the leave with pay extends beyond six months, the member will be required to make contributions only if he is receiving 50 percent or more of his regular base salary.

#### Case Notes

Salary paid township counsel during three years before retirement was paid primarily in anticipation of retirement, and thus ineligible compensation for pension purposes. *Mangini v. Trustees of Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 43.

### 17:2-4.3 School year members; 10 and 12 months

(a) Ten month members who are employed and are compensated for employment for the full normal school year by the board of education are entitled to receive 12 months of service credit. Members will not receive service credit for months during the normal school year when they are not actively employed and did not receive salary.

(b) A 12 month member is presumed to work each month of the fiscal year.

(c) Not more than one year's service credit will be given during any period of 12 consecutive months.

(d) If a member terminates a position that requires less than 12 months to constitute one full year of service at the end of the normal academic school year and accepts a 12 month position with the same employer or another employer that participates in the Public Employees' Retirement System and begins employment on or before the date that was established by the previous year's contract position, such member will receive service credit within the Public Employees' Retirement System for the period between the end of the previous contract and the new 12 month position.

Amended by R.1989 d.423, effective August 7, 1989.

See: 21 N.J.R. 979(a), 21 N.J.R. 2300(a).

Reference to 10-month employment as a minimum deleted.

Amended by R.1993 d.296, effective June 21, 1993.

See: 25 N.J.R. 908(a), 25 N.J.R. 2701(a).

Amended by R.1994 d.162, effective April 4, 1994.

See: 26 N.J.R. 108(a), 26 N.J.R. 1537(c).

Amended by R.1995 d.61, effective February 21, 1995.

See: 26 N.J.R. 3823(a), 27 N.J.R. 754(b).

#### 17:2-4.4 Loan tolerance

Interest will be calculated on a periodic basis on the unpaid loan balance. If scheduled payments are not paid timely, interest will be accrued and added to the remaining outstanding loan balance. If, at the end of the loan schedule, there is a balance of less than \$10.00, it will be written off. If the balance is equal to or greater than \$10.00, the member will be assessed.

New Rule, R.1987 d.511, effective December 7, 1987.

See: 19 N.J.R. 194(a), 19 N.J.R. 2303(d).

Old rule was loan revaluation.

#### 17:2-4.5 Approved leave

When benefits are payable involving approved leaves of absence or when a purchase of credit is to be processed involving such leaves, a certified copy of the employer's resolution, or approved CS-21 form, granting such approved leave must be available in the file or must be confirmed before processing can be completed.

#### 17:2-4.6 Minimum adjustment

In order to facilitate the reconciliation of a member's account no rebates or additional contributions shall be made where an adjustment involves an amount of \$3.00 or less.

#### 17:2-4.7 Hourly or per diem salary

Deductions from the salary of a member who is paid on an hourly or per diem basis shall be calculated on an average monthly or biweekly salary, which shall be certified to the system. This salary will continue for deduction purposes but will be subject to annual revision.

As amended by R.1974 d.230, eff. August 19, 1974.

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

#### 17:2-4.8 Military leave

(a) Military leave contributions remitted by an employer on behalf of an employee, who does not return to the

payroll for the minimum 90-day period required by N.J.S.A. 43:15A-41a, shall be retained by the System. Such contributions shall be transferred from the annuity savings fund to the contingent reserve fund.

(b) Military leave contributions remitted by an employer shall be based on the employee's salary at the time he entered military service.

(c) Payroll as referred to above shall be interpreted to mean any public payroll in New Jersey, not necessarily the payroll of the employer where the member was employed when he entered military service.

#### 17:2-4.9 Eligibility for loan

Only active contributing members of the System may exercise the privilege of obtaining a loan and the maximum loan shall be 50 per cent of the accumulated deductions posted to the member's account.

#### 17:2-4.10 Waiver required

Any member, who makes application for withdrawal from the system, who may otherwise be eligible to make application for a retirement benefit, shall be required to execute and file a statement with the System setting forth the benefits he is waiving in favor of withdrawal, before his application for withdrawal may be processed.

#### 17:2-4.11 Termination; withdrawal

(a) Under the terms of the statutes a member may withdraw from the system only if he terminates all employment.

(b) No application shall be approved, if:

1. The member is on official leave of absence.
2. The member certifies that his employment has not ended or that he has taken another position subject to coverage.
3. The member has been dismissed or suspended from employment. In this event, such a member will be eligible to withdraw if he has formally resigned from his position or there is no legal action contemplated or pending and the dismissal has been adjudged final.
4. A multiple member has not terminated employment in all covered positions.
5. The member has a claim pending for Workers' Compensation benefits.

As amended by R.1979 d.399, eff. October 9, 1979.

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

#### Case Notes

Division of Unemployment and Disability Insurance Director held not to have surrendered his position in classified service when he was granted an unpaid leave of absence to serve an unclassified appointment as assistant commissioner, income security; demotion and layoff

rules found not to adequately recognize rights inherent in a leave of absence; doctrine of incompatible offices held not to mandate loss of classified position, since there was no dual office holding. In re Viviani, 184 N.J.Super. 582, 446 A.2d 1239 (App.Div.1982), certification denied 91 N.J. 533, 453 A.2d 854 (1982).

Held that where State employee did not discontinue employment or terminate service until her resignation, which coincided with terminal date of her leave of absence, and where she was reemployed by State less than two consecutive years following her resignation, her membership in the State pension system never ceased. Blinn v. Bd. of Trustees, Public Employees' Retirement System, 173 N.J.Super. 277, 414 A.2d 263 (App.Div.1980).

Proceeds of group life insurance; deceased not active member of retirement system on date of death. Johnson v. Public Employees' Retirement System, 94 N.J.A.R.2d (TYP) 204.

Application for veteran retirement benefits invalid as result of continued employment as municipal attorney, despite change in method of compensation. Mastro v. Board of Trustees, Public Employees' Retirement System, 92 N.J.A.R.2d (TYP) 123.

Former member of retirement system not eligible for ordinary disability retirement benefits more than two years after he discontinued his employment. Cartagena v. Public Employees' Retirement System, 92 N.J.A.R.2d (TYP) 12.

#### 17:2-4.12 Deductions

(a) A full deduction shall be taken for the Public Employees' Retirement System in any payroll period in which the member is paid a sufficient amount to make a full normal deduction, plus any other arrears or loan deductions then in effect.

(b) No deduction shall be taken in any pay period in which the employee's salary is not sufficient to cover the required deductions for the Public Employees' Retirement System.

##### Case Notes

Held that where State employee did not discontinue employment or terminate service until her resignation, which coincided with terminal date of her leave of absence, and where she was reemployed by State less than two consecutive years following her resignation, her membership in the State pension system never ceased. Blinn v. Bd. of Trustees, Public Employees' Retirement System, 173 N.J.Super. 277, 414 A.2d 263 (App.Div.1980).

#### 17:2-4.13 Active employment; membership requirement

All employees, otherwise eligible, who are not actively employed on the date of their enrollment will not be covered by the group life insurance program until they return to service.

R.1974 d.230, eff. August 19, 1974.  
See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).

##### Case Notes

Held that no group life insurance death benefits were payable to deceased county employee's beneficiaries where employee was on leave without pay when PERS enrollment was to commence and employee died before going back on payroll. Burns v. Div. of Pensions, Public Employees' Retirement System, 180 N.J.Super. 1, 433 A.2d 778 (App. Div.1981).

#### 17:2-4.14 Continuance of membership; transfer

Once an employee establishes membership in the retirement system, he is eligible to continue such membership should he be temporarily employed in a position covered by the system.

R.1979 d.399, eff. October 9, 1979.  
See: 11 N.J.R. 411(a), 11 N.J.R. 596(b).

### SUBCHAPTER 5. PURCHASES AND ELIGIBLE SERVICE

#### 17:2-5.1 Eligibility for purchase

(a) Only active contributing members of the system shall be eligible to make application for purchase of credit.

(b) In order to be eligible to purchase temporary service, a member must submit a written request to purchase service within one year from the date his or her initial pension contributions are certified to begin and such purchase must be authorized by the member before the expiration date indicated on the quotation letter.

##### Case Notes

Employee's request for information regarding purchase of temporary service credit made within one year period following commencement of pension contributions, which resulted in receipt of requested information by employee and timely submission of purchase request denied by Trustees, held to provide Trustees with the opportunity to exercise discretion as to whether to permit purchase of credit. Handelson v. Bd. of Trustees, Public Employees' Retirement System, 193 N.J.Super. 223, 473 A.2d 104 (App.Div.1984).

Hospital cook was denied his request to purchase an additional year of service credit. Long v. Employees' Retirement System, 94 N.J.A.R.2d (TYP) 184.

Retiree was not entitled to purchase additional months of temporary service in order to qualify for health care coverage. Donofrio v. Public Employees' Retirement System, 93 N.J.A.R.2d (TYP) 336.

Employee was not eligible to purchase any portion of his former PERS membership service that arose with his employment at vocational school. Smollok v. Public Employees' Retirement System, 93 N.J.A.R.2d (TYP) 340.

Doctrine of substantial compliance with statutory and regulatory requirements invoked to allow petitioner to purchase pension credits for time served out-of-state even though purchase not completed prior to retirement date. White v. Bd. of Trustees, Public Employees' Retirement System, 1 N.J.A.R. 334 (1980).

#### 17:2-5.2 New enrollment purchase or rate adjustment

Upon enrollment or reenrollment, a veteran shall contribute at the percent rate applicable to the age resulting from the subtraction of his or her years of prior service (pre-1955) from the date he or she began his or her present employment or the date of enrollment, whichever is later, provided that the member submits satisfactory evidence of prior public employment in New Jersey.

Amended by R.1987 d.144, effective April 6, 1987.  
See: 18 N.J.R. 2320(b), 19 N.J.R. 565(a).  
Deleted (a).

### 17:2-5.3 Reestablishing military leave credit

Any veteran who terminated membership before January 1, 1955, and whose withdrawal of contributions included contributions paid by his or her employer during a period of military leave, shall receive veteran prior service credit for only the period during which he or she actually contributed. He or she can receive additional membership credit for the period of military leave if he or she redeposits the amount of employer contributions, plus regular interest to the date of his or her authorization of such purchase.

### 17:2-5.4 Compulsory purchase

(a) An employee who was required to enroll and whose application was filed beyond his or her compulsory date of enrollment, will be required to purchase membership credit retroactive to the date of compulsory enrollment. Purchases will be calculated on the basis of the member's current salary at the full pension rate of contribution assigned as of his or her compulsory date of enrollment with regular interest.

(b) Veterans, who were ineligible to establish membership in a local contributory pension fund and who elect to enroll in accordance with the provisions of Chapter 71, P.L. 1966, must agree, prior to their enrollment, to purchase all continuous public employment with the same employer since January 1, 1955, or the date of their regular appointment. The purchase of service will be calculated on the basis of their current salary multiplied by the actuarial factor established for the member's age at the time of purchases.

#### 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) Members, who purchase temporary service, must purchase all such service immediately preceding enrollment. The purchase will be calculated on the basis of the member's current salary times the full percentage rate of contribution assigned at enrollment.

(b) The types of purchases indicated below will be calculated on the basis of the actuarial factor established for the member's age at the time of the purchase times his or her current salary:

1. All former membership credit with another State-administered retirement system;
2. All former service with any other employer which was not certified for membership but which would have qualified on a compulsory basis at the time the service was rendered;

### 3. Leaves of absence:

- i. All of the period of the leave for personal reasons which does not exceed two months;
- ii. All of the period of the leave up to two years for personal illness or maternity.

4. Non-veterans may purchase all 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;

5. Non-veterans, hired prior to July 1, 1966, whose employers have not adopted the retirement system, may enroll any time and purchase all continuous service retroactive to July 1, 1966, provided the service was with the same employer to the date of enrollment;

6. Members who purchase all or a portion of their eligible out-of-state service.

(c) 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 multiplied by the actuarial factor for the member's age at the time of purchase with regular interest.

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

#### Case Notes

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 of \$250.00 or more; 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.

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.

**17:2-5.7 Military leave**

Any active member purchasing credit for out-of-state public employment, may include in the maximum of 10 years credit to be purchased, his or her leave of absence for military service, provided he or she received credit for such leave in the State or local public retirement system, in which he or she was participating at the time he or she was in military service.

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

For the purpose of granting prior service credit for service performed on a per diem basis, credit shall be prorated and granted on the basis of 20 days equal one month of credit.

**17:2-5.9 Ineligible service**

(a) Members will not be granted prior service or membership credit for the following employment:

1. Honorary positions, without salary;
2. Leaves of absence without pay, except military leave;
3. Motor Vehicle Agents or as employees of the agent;
4. Licensing Agent of the Division of Fish, Game and Shellfisheries or as employee of the agent.

**17:2-5.10 Creditable service; law enforcement officers**

Two percent service credit for Law Enforcement Officer members is that service rendered in the capacity of a Law Enforcement Officer, for which the member has paid at the Law Enforcement Officer rate of contribution unless as otherwise provided by the statute.

**17:2-5.11 Eligible credit**

(a) An active, contributing member may purchase credit for up to 10 years of out-of-state public employment provided the member is not receiving nor is entitled to receive a retirement allowance for such service from any other public retirement system and proof is received that he or she has withdrawn from such other system.

(b) Federal service and 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, D.C. and the Canal Zone, is not creditable.

**17:2-5.12 Correction of errors**

Credit for all previous service established under the provisions of Chapter 104, P.L. 1974, shall be calculated on the basis of salaries received during the period of such service. The pension rate of contribution will be determined as of the member's compulsory date of enrollment. The members shall pay on the basis of his or her current salary at the full pension rate of contribution with regular interest.

**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 purpose 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).

**SUBCHAPTER 6. RETIREMENT****17:2-6.1 Applications**

(a) Applications for retirement must be made on forms prescribed by the system. Such forms must be completed in all respects and filed with the system before the requested date of retirement.

(b) In the event a member files an incomplete application, the deficiencies shall be brought to his or her attention and he will or she will be required to file a completed application with the system to enable acceptance for processing.

(c) Before an application for retirement may be accepted for processing it must be supported by a certificate from the employer setting forth the employment termination date, the salaries reported for contributions in the member's final years of employment and proof of age, if none is already in the member's record.

(d) In addition to the foregoing requirement an application for disability retirement must be supported by a report of the member's personal or attending physician and a statement from the employer regarding the member's incapacity for further duty.

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".

**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).

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.

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.

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 dates; change

(a) A member shall have the right to withdraw, cancel or change an application for retirement at any time before his retirement allowance becomes due and payable; thereafter the retirement shall stand as approved by the board.

(b) Except in the event of deferred retirement, if a member requests a change in his retirement application before his 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) If the applicant should die within 30 days following the date the Board of Trustees approved the revised application, the member shall be considered to be retired on the basis of the originally approved application for retirement, provided that the initial 30-day requirement was satisfied.

(d) A deferred retirement shall become effective on the first of the month following the member's 60th birthday.

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

(f) Should the member continue to receive a salary beyond the effective date of retirement after approval of the retirement by the Board of Trustees, 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 approved 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.

#### Case Notes

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).

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).

#### 17:2-6.3 Effective date; death prior thereto

(a) 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.

(b) A member who files an application for retirement and whose insurance coverage has not lapsed prior to filing the retirement application is covered under the insurance program as an active member in the event of death prior to the date the retirement allowance becomes due and payable.

#### Case Notes

Disability retirement not effective where applicant died within 30 days of application filing. *Estate of Petrillo v. Board of Trustees of the Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 111.

Decedent's signing of application for retirement and filing of supporting 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).

#### 17:2-6.4 Outstanding loan

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

1. In full before the retirement allowance becomes due and payable as provided in N.J.A.C. 17:2-6.3; or
2. By retention of retirement benefit payments, excluding authorized deductions, by the retirement system until the loan balance, with interest, is repaid.
  - i. Authorized deductions include Federal tax liens, health benefit premiums, and Federal income tax withholding. If the member does not request repayment in full, repayment is by retention of retirement benefits.

(b) A member who retires on a disability pension or because of medical illness or disability as determined by the board of trustees with an outstanding loan balance may repay the balance as follows:

1. In the manner prescribed in (a) above; 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 interest, is repaid.

i. If a member who retires on a disability pension does not request another repayment option, repayment is by deductions in the same monthly amount deducted from the member's compensation immediately preceding retirement.

(c) A member whose retirement is other than a disability retirement and who wants to establish that the retirement is necessitated by medical illness or disability shall submit an application acceptable to the retirement system together with a report of the member's personal or attending physician and all other physician's reports, hospital records or other medical evidence which the member can supply pertaining to the illness or disability. The medical evidence shall be sufficient to show to the satisfaction of the board of trustees that the member is totally and permanently disabled and would qualify on a medical basis for ordinary disability retirement. The board may require the member to be examined by a physician designated by the retirement system, and may refer the medical evidence to the medical panel for its report on whether the member is totally and permanently disabled and retirement is necessitated by medical illness or disability.

(d) If a retirant dies before the loan balance, with 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 I 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 receive these benefits, each beneficiary shares in repaying the remaining balance in the same proportion in which they are entitled to the benefits.

As amended, R.1981 d.303, effective September 10, 1981.  
See: 13 N.J.R. 375(a), 13 N.J.R. 618(a).

Old text deleted, new text substituted therefor.  
Amended by R.1989 d.313, effective June 19, 1989.  
See: 21 N.J.R. 437(b), 21 N.J.R. 1743(b).

Repayment options clarified. Provisions of (a) deleted. New (a) added to permit repayment in full before retirement allowance is drawn, or repayment by retention of the benefits until the balance with interest is paid. New (b) added to permit members retiring on disability to follow (a) or continue the deductions in effect immediately before retirement. New (c) added, with conditions, to permit members to convert to disability retirement. Old (b) recodified to (d) and amended to clarify repayment upon death of retiree.

#### 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 Retirement credit

(a) A member shall receive credit toward retirement for any month or biweekly pay period in which a full normal deduction is received by the system.

(b) A member who appeals the suspension or termination of his or her employment and is awarded back pay for all or a portion of his or her employment for the period of such suspension or termination shall receive retirement credit for the period covered by the award, regardless of the amount of the back pay awarded, provided a full normal pension contribution is received from the member or deducted from the value of the award. The amount of the pension contribution will be determined by the provisions of the award. If the member receives full back pay, including normal salary increases, then the contribution will be computed on the base salaries that the employee would have earned for the reinstated suspended or terminated period. When the settlement is less than the full back pay, the pension contribution will be based upon the salary that the member was receiving for pension purposes prior to the suspension or termination of employment. In the event that the amount of back payment is insufficient to deduct the value of the normal pension contributions due, such contribution shall be paid by the member.

(c) It is the responsibility of the certifying officer to provide a letter attesting to the base salary or salaries to be used to compute pension contributions and to provide a copy of the resolution or legal document that details the terms of the settlement.

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

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

As amended, R.1981 d.274, effective August 6, 1981.

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

(b) added.

Amended by R.1991 d.98, effective February 19, 1991.

See: 22 N.J.R. 3321(a), 23 N.J.R. 417(a).

Amount of pension contribution clarified.

#### Case Notes

Pension credit; time of dishonorable employment with county. *Calvaliere v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 178.

#### 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 member was under the age of 60 at the time of filing application for a disability retirement allowance; and



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 his regular or assigned duties; and

4. The member meets the service requirement for ordinary disability.

#### 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).

Clerk typist who failed to prove that she was unemployable due to carpal tunnel impairment was denied ordinary disability retirement. *Morgan v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 212.

Failure to show that injuries were work related. *Catrambone v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 199.

Failure to prove chemical fumes at work place; accidental disability retirement. *Boychuk v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 193.

Denial of petitioner's application for accidental disability retirement allowance was appropriate. *Post v. Public Employees' Retirement System, Board of Trustees*, 94 N.J.A.R.2d (TYP) 122.

Diabetic employee was not entitled to accidental disability retirement benefits. *Morgan v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 95.

Epileptic employee suffering from recurrent; accidental disability retirement allowance. *Lojik v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 91.

Request for accidental disability retirement benefits; traumatic event. *Gilmore v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 89.

Disability benefits approved for school matron suffering arthritic changes. *Mirra v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 78.

Accidental disability retirement denied; "traumatic event". *Cook v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 76.

Employee failed to establish that he was permanently and totally disabled from performance of duties. *Weldon v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 68.

Accidental disability benefits; fall on staircase was not caused by a great rush of force or uncontrollable power. *Zech v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 45.

Back injury did not result from a traumatic event. *Ferro v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 42.

Rheumatoid arthritis; ordinary disability retirement. *Daggs v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 39.

Accidental disability retirement benefits were properly denied; "traumatic event". *Snead v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 36.

Petitioner who fell from a height of less than two feet was not eligible for accidental disability pension. *Snead v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 36.

Fall of less than two feet from a chair; accidental disability pension. *Snead v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 36.

Accidental disability retirement benefits properly denied; membership. *Donovan v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 33.

Denial of accidental disability retirement benefits was appropriate; employee was not member of PERS at time of accident. *Donovan v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 33.

Accidental disability retirement benefits denied; not member in Public Employees' Retirement System at time of accident. *Donovan v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 33.

Wilful negligence precluded award of accidental disability pension benefits. *DeInnocentes v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 26.

Disability pension was properly denied. *Barnes v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 22.

Accidental disability retirement; injury not result from traumatic event. *Pannone v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 18.

Claim for accidental disability retirement did not involve "a great rush of force or uncontrollable power," and therefore was not a traumatic event. *Morgillo v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 13.

Claim for accidental disability retirement properly denied. *Hanuszak v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 10.

Ordinary disability retirement benefits denied. *Carcich v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 6.

Claim for accidental disability retirement benefits based on post-traumatic stress disorder properly denied. *Birch v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 1.

Employee's slip and fall did not constitute a "traumatic event". *Moore v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 338.

Worker who slipped and fell not entitled to accidental disability retirement benefits. *Collins v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 334.

Eligibility for ordinary disability retirement benefits as result of psychiatric disability. *Kenerley v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 185.

An X-ray technician injured by sudden movement of low-functioning patient was not entitled to accidental disability pension. *Peters v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 159.

Falling off ladder not direct cause of injury; thus, no eligibility for accidental disability retirement benefits. *Rinaldis v. Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 105.

Security guard with coronary heart disease not entitled to accidental disability retirement benefits; insufficient causality between traumatic event and subsequent heart attack. *Zaharioudakis v. Board of Trustees, Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 93.

Worker's injuries induced by stress and strain of normal work effort, and not result of traumatic event qualifying him for accidental disability retirement benefits. *Rinaldis v. Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 88.

Ground level fall not traumatic event qualifying hospital worker for accidental disability retirement benefits. *Evans v. Board of Trustees, Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 85.

Road construction worker who inhaled fumes from new blacktop mixture was not injured as result of traumatic event entitling him to accidental disability retirement benefits. *Beverly v. Public Employee's Retirement System*, 92 N.J.A.R.2d (TYP) 41.

Fall from ground level cannot constitute great rush of force necessary to find traumatic event entitling claimant to accidental disability retirement benefits. *Keaton v. Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 37.

Hospital attendant's injury while assisting patient from bed to chair did not result from traumatic event qualifying her for accidental disability retirement benefits. *Siniscalchi v. Board of Trustees of the Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 30.

Supervisor's transfer threats did not constitute a traumatic event qualifying employee for accidental disability retirement benefits. *Fay v. Board of Trustees of the Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 27.

Maintenance worker's fall from three foot scaffolding was not traumatic event entitling him to accidental disability retirement benefits. *Minkus v. Board of Trustees of the Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 19.

School crossing guard's fall on sidewalk was not traumatic event in course of employment entitling her to accidental disability retirement benefits. *Osinga v. Board of Trustees, Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 16.

### 17:2-6.8 Option selection

If an applicant for an accidental disability retirement benefit is rejected for an accidental disability benefit but is approved by the board for retirement, in accordance with N.J.A.C. 17:2-6.7, he will be permitted within 30 days following board approval of his retirement, to amend the option selection which he made on the original accidental disability retirement application.

As amended, R.1971 d.71, effective May 18, 1971.  
See: 3 N.J.R. 50(a), 3 N.J.R. 117(b).

### 17:2-6.9 Employer and employee notices

If an applicant for accidental disability retirement is found to be physically or mentally incapacitated for the performance of duty but is rejected for accidental disability retirement because the board finds that the disability was not a direct result of a traumatic event occurring during and as a result of the performance of his regular or assigned duties and, if the applicant does not meet the minimum statutory requirements for any other type of retirement allowance, the system will notify both the member and his employer that the member was found to be physically or mentally incapacitated for the continued performance of duty, as was previously certified to the system by both the employee and his employer. Both the employer and the employee will also be advised that a copy of such notice will be placed in the member's file and will be given full consideration in any future claim for disability retirement benefits.

### 17:2-6.10 Employer application; employee notice

(a) If an application for an accidental disability retirement benefit or for an ordinary disability retirement benefit is filed by an employer for one of his employees, the member will be promptly notified by letter that:

1. His employer has initiated a disability application, on the member's behalf; and
2. His employer has certified that the member is permanently and totally disabled for the continued performance of duty; and, if appropriate,
3. His employer has certified that the member should be retired as a direct result of a traumatic event occurring during and as a result of the performance of his regular or assigned duties; and
4. He has a period of 30 days to contest his involuntary retirement before the board acts on his employer's application;
5. He will be required to appear for an examination before a physician designated to conduct such an examination for the retirement system; and
6. In the event the board finds that he is totally and permanently incapacitated for the performance of duty, he shall be granted the maximum retirement allowance, (without option) payable under the statute, if he (the member) does not file a completed "Application for Disability Retirement Allowance" setting forth the type of allowance he desires, before his retirement goes into effect; and
7. In the event the board finds that he is not totally and permanently incapacitated for the performance of duty, the employer's application shall be disallowed and the employer shall be informed that the member should be returned to duty.

### 17:2-6.11 Early retirement benefits

(a) The statutory reduction of one quarter of one percent applies to each month prior to the month in which the member attains age 55 and for the month in which the member attains age 55 if his 55th birthday occurs on or after the 15th day of the month.

(b) Retirement on the first of the month in which a member attains age 55 shall be classed as "early" retirement, although a reduction is not applied if his 55th birthday occurs before the middle of such month.

Amended by R.1974 d.230, effective August 19, 1974.  
See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).

### 17:2-6.12 Service retirement; eligibility

A member becomes eligible for "Service" retirement on the 1st of the month following his 60th birthday.

#### Case Notes

Denial of petitioner's request for additional four years of creditable service was appropriate. *Alcaro v. Division of Pensions, the Alternate Benefit Program*, 94 N.J.A.R.2d (TYP) 124.

**17:2-6.13 Disability retiree; annual medical examinations**

(a) All disability retirees, under age 60, may be required to undergo a medical examination each year for a maximum period of five years by a physician designated by the System as of the anniversary date of their retirement, unless such examination requirement has been waived by the Board.

(b) Failure on the part of a retiree to submit to the required medical examination shall result in the automatic suspension of his retirement allowance until he submits to a medical examination.

**Case Notes**

Township not required to reinstate formerly disabled employee who resigned before applying for disability benefits. *Township of Dover v. Board of Trustees, Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 83.

**17:2-6.14 Disability retiree; annual report (employment, earnings, test and adjustment)**

(a) All disability retirees, under age 60, shall be required to file a report with the System indicating the type of employment they are engaged in, if any, and the gross earned income realized therefrom as of December 31 of each year.

1. Such report must be filed with the System before the following February 15th.

2. Failure on the part of the retiree to file a completed report with the System before February 15 shall result in the automatic suspension of the retiree's retirement allowance for the period the report is in default.

(b) If a retiree reports employment and earnings, then the following tests shall be made by the System to ascertain:

1. If the retiree is engaged in a position subject to coverage by the System, his retirement allowance shall be cancelled and he shall be reenrolled in the system pursuant to N.J.S.A. 43:15A-44, effective as of the date of his appointment to such position.

2. If the retiree is engaged in employment and he estimates that his gross earned income for the present calendar year will exceed the difference between his pension and the salary he would have been receiving had he continued to work for his former employer (normal increment steps and salary range revisions will be considered but no promotional assumptions will be made) his pension for the period may be adjusted by such difference. If, at the close of the calendar year it is found that his earnings differ from his estimate, an appropriate adjustment will be made.

3. If such a retiree has not properly estimated his gross earned income for the calendar year and it is found at the close of the calendar year it exceeded the difference between his pension and the salary of his former

position and if he does not refund the excess pension to the system within 30 days, effective April 1, his pension for the succeeding 12-month period will be reduced by the excess pension he received in the preceding calendar year.

**17:2-6.15 (Reserved)**

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.1977 d.148, effective April 27, 1977.

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

Repealed by R.1989 d.597, effective December 4, 1989.

See: 21 N.J.R. 3265(a), 21 N.J.R. 3929(c).

**Case Notes**

Presiding judge of county district court held the appointing authority for the district court clerk; clerk, upon reaching retirement age, and being notified by appointing authority that he may no longer continue in position, must retire. In re Brennan, 126 N.J.Super. 368, 314 A.2d 610 (App.Div.1974).

**17:2-6.16 Compulsory retirement; law enforcement officers**

(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 law enforcement officer fail to file application with the system before his compulsory retirement date, he shall be granted the maximum allowance payable on his account; however, no retirement checks will be disbursed until he files the required application.

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

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

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

(f) An LEO member who is also enrolled as a non-LEO member cannot continue his LEO membership or employment in his LEO capacity beyond age 65 should he continue his membership on the basis of his non-LEO position.

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

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

#### 17:2-6.17 Approved allowance

When a retirement allowance becomes effective, the type of allowance (maximum or option) elected shall stand as approved.

#### 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 retiree's monthly allowance, whether received or not, for each month that he survives after the effective date of his retirement.

#### 17:2-6.19 Maximum allowance prescribed

Where someone, other than a legal guardian, acting in behalf of a member makes application for a retirement allowance, such individual may not elect other than the maximum allowance for the member and the member's estate must be designated as the beneficiary for all death benefits payable on the member's account.

Amended by R.1979 d.399, effective October 9, 1979.  
See: 11 N.J.R. 411(a), 11 N.J.R. 596(b).

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

(a) In order to determine the final compensation (three-year average) for benefits on a:

1. Member reported on a monthly basis under a ten-month contract, use the creditable salaries upon which contributions were made to the system for his final 30 months of service.

2. Member reported on a monthly basis under a 12-month contract, use the creditable salaries upon which contributions were made to the system for his last 36 months of service.

(b) 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.

(c) The months for which no contributions were made shall be counted as zero.

Amended by R.1974 d.230, effective August 19, 1974.  
See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).

#### 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 (veteran one-half pay retirement)

For a member reported on a monthly basis under a ten-month contract, use the creditable salaries upon which contributions were made in the member's final 10 months of service preceding retirement; on a 12-month contract basis, his final 12 months of service; combination of 10 and 12-month contracts, on a proportional basis. The months for which no contributions were made shall be counted as zero.

Amended by R.1974 d.230, effective August 19, 1974.  
See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).

#### 17:2-6.22 Waiver

(a) If for any reason a retirement allowance or portion thereof has been waived by a retired member or beneficiary, the benefit waived shall remain in the retirement reserve fund.

(b) Such person may cancel the waiver effective as of the first day of any month subsequent to the receipt of the notice of cancellation; however, he may not make a claim for payment of any benefits waived prior thereto.

#### 17:2-6.23 Additional contributions

The additional contributions made under N.J.S.A. 43:14-17 as elected by the member, shall be credited for the purpose of retirement, with interest in the same manner as employed in the calculation of the regular retirement allowance.

Amended by R.1971 d.71, effective May 18, 1971.  
See: 3 N.J.R. 50(a), 3 N.J.R. 117(b).

#### 17:2-6.24 Final compensation; biweekly salary computation for State employees reported by centralized payroll

(a) In computing "final compensation" upon which pension contributions were based, in the case of a 12-month State employee reported on a biweekly basis, a total of 78 biweekly pays will be used, including any retroactive salary payments that are attributable to the prescribed period.

(b) In computing (a) above, the total salary will be adjusted by the factors supplied by the actuary to convert biweekly salaries to compensate for State biweekly payroll schedules. Application of the factors to the salaries reported for pension purposes will develop "final compensation".

(c) In computing (a) above in the case of State employees reported on a 10-month basis, the total biweekly pays will include those pay periods in the third quarter of each year in which the member does not receive a salary. The adjustment as specified in (b) above shall not be made.

(d) If a member was reported on a biweekly basis on any combination of 10 and 12-month contract years, the final average compensation prior to retirement shall be determined on a proportional basis. The biweekly pay periods for which no contributions were made shall be counted as zero.

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

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

Amended by R.1978 d.138, effective May 1, 1978.

See: 10 N.J.R. 38(a), 10 N.J.R. 265(c).

Amended by R.1990 d.377, effective August 6, 1990.

See: 22 N.J.R. 1348(a), 22 N.J.R. 2342(c).

Benefits based on salary attributable to the prescribed period.

#### **17:2-6.25 Determination of last year's salary; State employee veterans reported by centralized payroll**

(a) In computing the salary upon which pension contributions were based during a member's last year of service, in the case of a 12-month State employee reported on a biweekly basis, a total of 26 biweekly pays will be used, including any retroactive salary payments made within the prescribed period. The total salary will be adjusted by factors supplied by the actuary to compensate for State biweekly payroll schedules.

(b) In computing (a) above, in the case of State employees reported on a 10-month basis, the total biweekly pays will include those pay periods in the third quarter of each year in which the member does not receive salary. The adjustment as specified in (a) above shall not be made.

(c) If a member was reported on a biweekly basis on any combination of 10 and 12-month contract years, the last year's salary prior to death or retirement shall be determined on a proportional basis. The biweekly pay periods for which no contributions were made shall be counted as zero.

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

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

Amended by R.1978 d.138, effective May 1, 1978.

See: 10 N.J.R. 38(a), 10 N.J.R. 265(c).

#### **17:2-6.26 Medical examination; physician**

Where the statute prescribes that a physician be designated by the retirement system to perform a medical examination, such physician shall be selected from the current membership directory of the Medical Society of New Jersey and the New Jersey Association of Osteopathic Physicians and Surgeons; however, in the cases of those members whose personal physician has identified them as having a probable abbreviated life expectancy, such "imminent death" cases may be processed without the necessity of an examination by a physician designated by the Fund if corroborating medical evidence of the diagnosis can be obtained.

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

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

Amended by R.1981 d.515, effective January 18, 1982.

See: 13 N.J.R. 748(a), 14 N.J.R. 105(a).

Deleted "in order to ... fund" and substituted therefor "in the cases ... obtained."

#### **17:2-6.27 Work-related travel; accidental disability retirement and accidental death benefit coverage**

(a) A member whose duties include regular or occasional travel in the course of employment will be considered in the "performance of his regular or assigned duties" for the purposes of accidental disability retirement or "in the actual performance of duty" for the purposes of accidental death benefits during employment-related travel as provided in this section. For the purposes of this section, "in performance of duty" means and includes both "performance of regular or assigned duties" and "in the actual performance of duty."

(b) If a member's duties require or authorize the member to travel between a regularly assigned office or workplace and other locations, or among other locations, the member is in performance of duty during travel between a regularly assigned office or workplace and other locations, or among other locations.

(c) If a member's duties require or authorize the member to travel between his or her place of residence and a location other than an office or workplace of the employer to which the member is regularly assigned or near to the regularly assigned office or workplace to perform the duties of the employment, the member is in performance of duty when he or she completely leaves the property of his or her residence and begins to travel to the other location, or until he or she begins entry to the property of residence after travel from the other location, and all expenses of the travel are paid for by the employer. A member's duties are considered to authorize or require travel from the place of residence to a location other than a regularly assigned office or workplace of the employer in the following situations:

1. The member's regular or assigned duties involve field work which requires or authorizes the member to travel to locations other than a regularly assigned office or workplace of the employer to perform his or her duties and do not require the member to report to a regularly assigned office or workplace before or after traveling to other locations. Travel by the member between a regularly assigned office or workplace of the employer and the place of residence of the member is not considered part of the member's dues.

2. The member's regular or assigned duties are usually performed at an office or workplace of the employer to which the member is regularly assigned but occasionally require or authorize travel to other locations.

3. The member is authorized or required by his or her employer to respond to an emergency situation outside of the member's regularly scheduled work hours, regardless of whether the member goes to a regularly assigned office

or workplace or another location, or whether the expenses of the travel are paid for by the employer or the member.

4. The member is attending a meeting, seminar, convention or a similar type of work-related activity as authorized or required by the employer at a location other than a regularly assigned office or workplace, regardless of whether the expenses of the travel are paid for by the employer or the member. Where there are social or recreational activities associated with the work-related activity or attendance requires living accommodations, only travel to and from the general activity and participation in and travel to and from the work-related functions of the activity are considered part of the duties of the member. Activities related to social or recreational functions or living accommodations are not considered part of the duties of the member.

(d) In all cases, a certification from the employer is required and must include a copy of the member's job description, a statement of the member's work schedule on the day of the travel in question, and proof of or a statement by the employer that the travel was authorized or required by the employer and was paid for by the employer.

New Rule, R.1989 d.422, effective August 7, 1989.  
See: 21 N.J.R. 1285(a), 21 N.J.R. 2300(b).

## SUBCHAPTER 7. TRANSFERS

### 17:2-7.1 Interfund transfers; State-administered retirement systems

(a) The system will transfer membership to any State-administered retirement system as follows:

1. A member, desiring to transfer his or her credits to any State-administered retirement system, must file an application for "Transfer of Membership Credit" in place of the customary application for withdrawal of accumulated contributions. This application will void all possible claims against the present system when approved and the new membership is commenced in the new system.

2. A check covering the member's accumulated contributions, full interest included, less any outstanding loan, shall be drawn payable to the new system for the account of the respective member. Any outstanding loan or arrears obligation will be scheduled for repayment.

3. A statement reflecting the member's status as of the date of transfer shall accompany the check.

4. The member shall enjoy the same rate of contribution and service credits established in the present system, subject to the provisions of the new system.

5. This procedure would not apply where a member has credit in the present system for service after the date of enrollment in the new system or where a person has ceased to be a member of the present system before establishing sufficient service credit to be eligible for a deferred retirement.

6. A copy of the transfer application, together with a check covering the withdrawal value and a statement of the service credits being transferred, is to be forwarded to the new system.

(b) The new system will cause to be valued the reserves accrued for such employee as compared to the reserves required in the second system.

1. If the reserves accumulated or provided for in the present system are less than those required in the new system, the full reserve will be transferred.

2. If the reserves accumulated or provided for in the present system are more than those required in the new system, only the amount required to establish the credit will be transferred.

(c) Years of credit will be subject to the benefit formula of the new system after transfer.

(d) A member who makes a timely transfer in accordance with N.J.S.A. 43:2-1 et seq. will contribute to the new system at a rate based on his or her age at the time of enrollment in the present system and no refund of pension contributions will be made except for those contributions made by veterans covering service prior to January 1, 1955, where applicable. The contribution rate for a member granted a deferred retirement in the present system who makes a timely transfer at the time of enrollment in the new system will be determined in accordance with the rules concerning enrollment after deferred retirement in the new system. A member who does not make a timely transfer will contribute to the new system at a rate based on his or her age at the time of enrollment in the new system.

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

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

As amended, R.1983 d.7, effective February 7, 1983.

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

Subsection 17:2-7.2 deleted, combined with 7.1, language added.

Amended by R.1988 d.141, effective April 4, 1988.

See: 19 N.J.R. 2386(a), 20 N.J.R. 812(a).

Substantially amended (a)5 and (d).

### Cross References

Interfund transfers, accumulated interest, see N.J.A.C. 17:1-12.5.

### 17:2-7.2 (Reserved)

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.1979 d.399, effective October 9, 1979.

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

R.1983 d.7, effective January 7, 1983.

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

Section deleted.