

service and is included in the member's base salary upon attainment of a specified number of years of service.

(b) The Board may question the compensation of any member or retiree to determine its credibility where there is evidence that compensation reported as base salary may include extra compensation.

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

(d) With respect to all claims for benefits, the Division of Pensions and Benefits shall investigate increases in compensation reported for credit which exceed reasonably anticipated annual compensation increases for members of the retirement system based upon consideration of the Consumer Price Index for the time period of the increases, the table of assumed salary increases recommended by the actuary and adopted by the Board, and the annual percentage increases of salaries as indicated in data from the Public Employment Relations Commission, or through other reliable industry sources of information regarding average annual salary increases. Those cases where a violation of the statute or rules is suspected shall be referred to the Board.

(e) In connection with an investigation of an increase in compensation, the Board:

1. May require that a notarized statement under oath be obtained from the member's employer that the reported compensation was not granted primarily in anticipation of retirement, and conforms with the statutes and rules governing the retirement system;

2. May require an employer to provide any record or information it deems necessary for the investigation, including, but not limited to, collective bargaining agreements, employment contracts, ordinances, resolutions, minutes of public meetings (closed or open), or any other record or information related to the increase in compensation; and

3. May refer any suspected submission of false information in violation of N.J.S.A. 43:16A-18, these rules, or other laws of the State of New Jersey to the Attorney General for review and initiation of criminal proceedings, if warranted.

(f) Failure to satisfactorily respond to a request by the Board for documents or information related to an increase in compensation may result in the denial of credit for the increase in compensation.

(g) A determination by the Board that a member's compensation for pension purposes includes extra compensation may result in:

1. A denial of credit for the extra compensation;

2. An audit of the retirees and the active employees of the employer to identify any additional cases of such extra compensation;

3. A return of contributions to the active members and retirees on the extra compensation without interest;

4. A recalculation of the retirement benefits of retirees to eliminate benefits based upon the extra compensation; and

5. Repayment to the system by the retiree of any benefits received based upon the extra compensation.

(h) Employer contributions shall not be revised or refunded because of a determination by the Board that a denial of credit for increases in compensation is warranted under this section.

(i) This section shall not be applicable to longevity pay, holiday pay, or education pay which is included in the creditable compensation of a retiree or member on a mandatory basis in accordance with the provisions of a collective negotiations agreement or employment policy of an employer approved and executed on or before January 1, 2000, until the termination date of the collective negotiations agreement or employment policy, or December 31, 2001, whichever occurs first.

Repeal and New Rule, R.2000 d.141, effective April 3, 2000.

See: 31 N.J.R. 3930(a), 32 N.J.R. 1246(a).

Section was "Creditable salary".

#### Case Notes

Police officers' base salary increase based on "senior status," occurring after 22 years of service and which was given in exchange for cessation of longevity pay and of vacation day accruals, was granted primarily in anticipation of officers' retirement and was disruptive to actuarial soundness of pension system, thus such salary increase was not creditable for retirement benefits. *Fraternal Order of Police v. Board of Trustees of the Police and Firemen's Retirement System*, 774 A.2d 680 (2001).

Police officers did not detrimentally rely on previous approval by Board of Trustees of the Police and Firemen's Retirement System of officers' increased "senior status" pay, and thus Board was not estopped from determining that "senior status" pay was not creditable for pension benefits, where most of the officers had not yet retired, sole officer who had retired was receiving pension credit under grandfathering provision, union had opportunity to bargain for other creditable salary increases, and "senior status" pay would not have been creditable under prior rule. *Fraternal Order of Police v. Board of Trustees of the Police and Firemen's Retirement System*, 774 A.2d 680 (2001).

#### 17:4-4.2 Prior service

(a) Any period of prior service credit paid for by an employer at the adoption of the system will reflect identical credit when calculating membership credit.

(b) Prior service credits are limited to service rendered on a full-time basis.

**17:4-4.3 Continuance of membership; transfer**

Once an employee establishes membership in the Retirement System, the member is eligible to continue such membership should the member be temporarily employed in a position covered by the Retirement System.

Amended by R.2001 d.66, effective February 20, 2001.  
See: 32 N.J.R. 4060(a), 33 N.J.R. 684(a).

Created gender neutral references.

Amended by R.2006 d.130, effective April 3, 2006.

See: 37 N.J.R. 4521(a), 38 N.J.R. 1578(a).

Capitalized "retirement system"; and at the end of the sentence, substituted "Retirement System" for "system".

**17:4-4.4 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 \$50.00, it will be written off. If the balance is equal to or greater than \$50.00, the member will be assessed.

Amended by R.2006 d.130, effective April 3, 2006.

See: 37 N.J.R. 4521(a), 38 N.J.R. 1578(a).

Increased balance amount from \$10.00 to \$50.00 throughout.

**17:4-4.5 Deductions**

(a) A full deduction shall be taken for the Police and Firemen's Retirement System in any payroll period in which the member is paid a sufficient amount to make a full normal deduction. If wages are sufficient, deductions should also be made for any arrears or loan deductions then in effect.

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

Amended by R.2001 d.66, effective February 20, 2001.

See: 32 N.J.R. 4060(a), 33 N.J.R. 684(a).

Substituted ". If wages are sufficient, deductions should also be made for any" for ", plus any other" following "full normal deduction".

**17:4-4.6 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 \$2.00 or less during a calendar quarter.

Amended by R.2001 d.66, effective February 20, 2001.

See: 32 N.J.R. 4060(a), 33 N.J.R. 684(a).

Substituted "\$2.00" for "\$3.00" following "involves an amount of" and inserted "during a calendar quarter" following "or less".

**17:4-4.7 Suspension**

(a) A member suspended without pay will have insurance coverage continued for a period of 93 days following the effective date of such suspension.

(b) No deductions will be made during such a break in service, nor will any service credit accrue.

(c) If during the period of suspension or at the conclusion of the penalty period adjustment is made in favor of the member, the Board may allow the payment of pension deductions to reflect the lesser penalty or the elimination of the entire suspension.

Amended by R.2001 d.66, effective February 20, 2001.

See: 32 N.J.R. 4060(a), 33 N.J.R. 684(a).

In (b), substituted "deductions" for "retirement deductions" and substituted "service credit" for "retirement credit".

**17:4-4.8 Service and salary credit: awards of back pay**

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

(b) A member who appeals the suspension or termination of the member's employment and who, by award or settlement, becomes entitled to back pay for all or a portion of that employment for the period of such suspension or termination shall receive service credit for the period covered by the award or settlement 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 or settlement. If the member receives full back pay, including normal salary increases before mitigation, 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 award or 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, after mitigation, is insufficient to deduct the value of the normal pension contributions due, such contributions shall be paid by the member.

(c) In no case shall service or salary credit be given if the award of back pay, before mitigation, is less than the value of the normal pension contributions due. If a member waives an award of back pay, then the member cannot receive service or salary credit for the period of the award.

(d) If the award or settlement is structured in such a way as to provide the member with a substantial increase of creditable salary at or near the end of the member's service, or a substantial increase in retirement benefits, the award or settlement shall be reviewed by the Board of Trustees. If the Board determines that the pension benefit was part of the negotiations for the award or settlement, or if the award or settlement includes extra compensation as defined by N.J.A.C. 17:4-4.1, the Board shall determine the compensation to be used to calculate the retirement allowance and the member shall have the pension contributions for the salaries found not to be creditable refunded without interest.