

CHAPTER 2

PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Authority

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

Source and Effective Date

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

Chapter Expiration Date

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

Chapter Historical Note

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

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

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

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

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

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

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

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. ADMINISTRATION

- 17:2-1.1 Board meetings
- 17:2-1.2 Fiscal year
- 17:2-1.3 Officers and committees
- 17:2-1.4 Election of member-trustee
- 17:2-1.5 Certifying Officer (employer)
- 17:2-1.6 Records
- 17:2-1.7 Appeal from Board decisions
- 17:2-1.8 Suspension of pension checks
- 17:2-1.9 Verified discrepancy in member's age
- 17:2-1.10 (Reserved)
- 17:2-1.11 Proof of age
- 17:2-1.12 State employees; biweekly salaries
- 17:2-1.13 Nearest attained age; enrollment; retirement

SUBCHAPTER 2. ENROLLMENT

- 17:2-2.1 Social Security coverage
- 17:2-2.2 Multiple employment's
- 17:2-2.3 Ineligible persons
- 17:2-2.4 Enrollment date
- 17:2-2.5 Optional enrollment

- 17:2-2.6 Enrollment eligibility of professors and instructors employed on a temporary, provisional or adjunct basis by public institutions of higher education
- 17:2-2.7 Enrollment following deferred retirement
- 17:2-2.8 Enrollment eligibility of provisional or temporary employees occupying full-time police and fire titles
- 17:2-2.9 Eligibility and enrollment of employees of bi-state and multi-state agencies pursuant to P.L. 2003, c.263 (N.J.S.A. 43:15A-73)
- 17:2-2.10 Enrollment eligibility of on-call employees who have not established membership; including, but not limited to, substitute teachers, replacement teachers, and bedside or home instructors

SUBCHAPTER 3. INSURANCE AND DEATH BENEFITS

- 17:2-3.1 Compulsory and optional enrollment
- 17:2-3.2 Computation of insurance benefits
- 17:2-3.3 Contributory insurance rate
- 17:2-3.4 New enrollments and transfers; contributory insurance premiums
- 17:2-3.5 Leave for illness; life insurance coverage
- 17:2-3.6 Survivor benefits
- 17:2-3.7 Withdrawal application; contributory insurance
- 17:2-3.8 Withdrawal and return; contributory insurance
- 17:2-3.9 Retired life insurance coverage
- 17:2-3.10 Contributory insurance premiums; leave of absence and workers' compensation
- 17:2-3.11 Ten month members
- 17:2-3.12 Beneficiary designation; pension contributions
- 17:2-3.13 Benefits payable under P.L. 1984, c.96, as amended by P.L. 1995, c.221
- 17:2-3.14 Acceptable designation of beneficiaries
- 17:2-3.15 Suspension

SUBCHAPTER 4. MEMBERSHIP

- 17:2-4.1 Creditable compensation
- 17:2-4.2 Leave with pay
- 17:2-4.3 School year members; 10 and 12 months
- 17:2-4.4 Loan tolerance
- 17:2-4.5 Service and salary credit: awards of back pay
- 17:2-4.6 Minimum adjustment
- 17:2-4.7 Part-time hourly, on-call or per diem salary
- 17:2-4.8 Military leave prior to August 1, 1974; employer contributions
- 17:2-4.9 Eligibility for loan
- 17:2-4.10 Waiver of retirement benefits upon withdrawal
- 17:2-4.11 Termination; withdrawal
- 17:2-4.12 Deductions
- 17:2-4.13 Active employment; membership requirement
- 17:2-4.14 Continuance of membership; transfer
- 17:2-4.15 Ineligible service
- 17:2-4.16 Creditable service; Law Enforcement Officers

SUBCHAPTER 5. PURCHASES AND ELIGIBLE SERVICE

- 17:2-5.1 Eligibility for purchase
- 17:2-5.2 New enrollment purchase or rate adjustment
- 17:2-5.3 Reestablishing military leave credit
- 17:2-5.4 Compulsory contributions (back deductions)
- 17:2-5.5 Optional purchases of eligible service
- 17:2-5.6 Methods of payment
- 17:2-5.7 (Reserved)
- 17:2-5.8 Per diem credit
- 17:2-5.9 through 17:2-5.10 (Reserved)
- 17:2-5.11 Service ineligible for purchase
- 17:2-5.12 Correction of errors for prior service credit
- 17:2-5.13 Lump sum purchases

SUBCHAPTER 6. RETIREMENT

- 17:2-6.1 Applications
- 17:2-6.2 Effective date

- 17:2-6.3 Effective dates; change
- 17:2-6.4 Outstanding loan
- 17:2-6.5 Willful negligence
- 17:2-6.6 (Reserved)
- 17:2-6.7 Disability determination
- 17:2-6.8 Option selection; accidental disability denied
- 17:2-6.9 Employer and employee notices
- 17:2-6.10 Involuntary disability application
- 17:2-6.11 Early retirement; reduction
- 17:2-6.12 Service retirement; eligibility
- 17:2-6.13 Disability retiree; annual medical examinations
- 17:2-6.14 Disability retiree; annual report (employment, earnings, test and adjustment)
- 17:2-6.15 Disability retiree; filing after more than two years' discontinuance of service
- 17:2-6.16 Compulsory retirement; Law Enforcement Officers (LEO)
- 17:2-6.17 Approved allowance
- 17:2-6.18 Option 1 benefit
- 17:2-6.19 (Reserved)
- 17:2-6.20 Final compensation; 10 and 12-month members reported monthly
- 17:2-6.21 Determination of last year's salary; veterans paid on a monthly basis
- 17:2-6.22 Waiver
- 17:2-6.23 (Reserved)
- 17:2-6.24 Final compensation; biweekly salary computation for employees reported on a biweekly basis
- 17:2-6.25 Determination of last year's salary; veterans reported on a biweekly basis
- 17:2-6.26 Medical examination; physician
- 17:2-6.27 Work-related travel; accidental disability retirement and accidental death benefit coverage

SUBCHAPTER 7. TRANSFERS

- 17:2-7.1 Honorable services; interfund transfers; State-administered retirement systems
- 17:2-7.2 Intrafund transfers; State-administered retirement systems

SUBCHAPTER 8. PROSECUTORS PART

- 17:2-8.1 Definitions
- 17:2-8.2 Criteria for determining eligibility for enrollment for employees of the Department of Law and Public Safety
- 17:2-8.3 Contribution rate
- 17:2-8.4 Ineligibility for credit in the Prosecutors Part
- 17:2-8.5 Interfund transfers
- 17:2-8.6 Purchase of service
- 17:2-8.7 Eligibility for a loan
- 17:2-8.8 Vesting
- 17:2-8.9 Withdrawal from Prosecutors Part or regular PERS service
- 17:2-8.10 Retirement effective date
- 17:2-8.11 Election of largest possible retirement allowance
- 17:2-8.12 Service retirement
- 17:2-8.13 Eligibility for disability and accidental death retirement benefit
- 17:2-8.14 Retirement date for prosecutors having both regular and Prosecutors Part Public Employees' Retirement System service
- 17:2-8.15 Options at retirement
- 17:2-8.16 Return to employment

SUBCHAPTER 1. ADMINISTRATION

17:2-1.1 Board meetings

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

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

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

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

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

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

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

17:2-1.2 Fiscal year

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

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

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

Rewrote the section.

17:2-1.3 Officers and committees

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

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

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

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

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

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

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

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

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

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

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

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

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

Rewrote the section.

17:2-6.3 Effective dates; change

(a) Except as provided by N.J.A.C. 17:3-6.7, a member shall have the right to withdraw, cancel or change an appli-

cation for retirement at any time before the member's retirement allowance becomes due and payable by sending a written request signed by the member. Thereafter, the retirement shall stand as approved by the Board.

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

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

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

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

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

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

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

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

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

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

(f) added.

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

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

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

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

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

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

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

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

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

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).

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

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

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

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

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

17:2-6.4 Outstanding loan

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

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

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

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

Amended by R.1999 d.409, effective December 6, 1999.

See: 31 N.J.R. 2519(a), 31 N.J.R. 4119(a).

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

Amended by R.2002 d.267, effective August 19, 2002.

See: 34 N.J.R. 1599(a), 34 N.J.R. 2970(b).

In (a), deleted existing 2 and recodified former 3 as 2.

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

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

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

17:2-6.5 Willful negligence

(a) Willful negligence is defined as:

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

17:2-6.6 (Reserved)

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

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

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

17:2-6.7 Disability determination

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

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

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

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

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

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

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

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

Added (b).

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. The member is authorized or required by the member's 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).

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

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

In (a), neutralized a gender reference; and in (c)1, substituted a reference to duties for a reference to dues at the end.

Case Notes

Public prosecutor's conduct in attempting to traverse balconies on eighth floor of building under poor lighting conditions while intoxicated constituted willful negligence precluding award of accidental death benefits. *Estate of Greene*, 96 N.J.A.R.2d (TYP) 215.

Housing inspector's fall while exiting car at end of day not caused by traumatic event, and not in course of regular assigned duties, and thus no eligibility for accidental disability retirement benefits. *Delunas v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 42.

SUBCHAPTER 7. TRANSFERS

17:2-7.1 Honorable services; interfund transfers; State-administered retirement systems

(a) The receipt of a public pension or retirement benefit is expressly conditioned upon the renderings of honorable service by a public officer or employee. Therefore, the Board of Trustees of the new State-administered retirement system shall disallow the transfer of all or a portion of prior service of any member of the former State-administered

retirement system for misconduct occurring during the member's prior public service which renders that prior service, or part thereof, dishonorable.

(b) A member is eligible to transfer the former membership in a State-administered retirement system into the retirement system that covers the new eligible employment, if the member has first ended employment with the former employer, and has not taken another position subject to coverage in the State-administered retirement system of the former account which would have the same effective date as the membership in the new State-administered retirement system.

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

1. A member, desiring to transfer service credit and contributions from one State-administered retirement system to another, must file an "Application for Interfund Transfer" and an "Enrollment Application" in place of the customary "Application for Withdrawal." This application will void all possible claims against the former system when approved and the new membership is commenced in the new system.

2. The member's accumulated contributions, full interest included, less any outstanding loan, shall be transferred to the new system for the account of the respective member. Any outstanding loan, back deductions or arrears obligation will be scheduled for repayment.

3. A statement reflecting the member's status as of the date of transfer shall be prepared by the Withdrawal Section of the Division and a copy forwarded to the former account.

4. The member's service credit established in the former system shall be transferred into the new system.

5. The member is not eligible to transfer service credit if any of the following conditions apply:

i. The member has withdrawn the former membership;

ii. The member has credit in the former system for service earned after the date of enrollment in the new system (concurrent service) unless the member meets the criteria established by P.L. 2001, c.341 (N.J.S.A. 43:15A-14). P.L. 2001, c.341 provides that a member of the Teacher's Pension and Annuity Fund (TPAF) at the time of enrollment in the Public Employees' Retirement System (PERS) may transfer the non-concurrent TPAF service if the member ceased to be an active contributing member of the TPAF three or less years from the date of enrollment in the PERS. The member must apply to transfer this service no more than two years from the date of the last contribution to the TPAF unless the member is vested in the TPAF, or the member's TPAF account has not expired due to the provisions of N.J.S.A. 18A:66-8. A member who trans-

fers service under this provision shall receive credit for the salaries earned in both the TPAF and PERS during the period of concurrent service;

iii. The account has expired; that is, it has been more than two years from the date of the last contribution and the member is not vested, nor has the member's account remained active due to the provisions of N.J.S.A. 43:15A-8.

6. A data sheet shall be created for the member's new account that will indicate an interfund transfer from the member's former retirement system and the service credit transferred into the new membership account.

(d) The reserves accrued in the former system will be valued and compared to the reserves required in the new system.

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

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

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).

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

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

Rewrote the section.

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

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

Rewrote (b)(5)(ii); in (b)(5)(iii), added "the member is not vested, nor has the member's account remained active due to the provisions of N.J.S.A. 43:15A-8" and deleted "there was not enough service credit to be eligible for a deferred retirement".

Amended by R.2002 d.266, effective August 19, 2002.

See: 34 N.J.R. 1366(a), 34 N.J.R. 2972(a).

In (b)5ii, substituted "c.341" for "c. 6" throughout and substituted "three" for "two".

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

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

Rewrote the section.

Cross References

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

Case Notes

Teacher not entitled to reverse withdrawal from pension fund in order to obtain interfund transfer of service time. *Long v. Public Employees' Retirement System Board of Trustees*, 93 N.J.A.R.2d (TYP) 112.

17:2-7.2 Intrafund transfers; State-administered retirement systems

(a) Members who leave one public employer and take a position with another public employer covered by the same pension system are immediately eligible to transfer their membership to their new employers, as long as the following conditions are met:

1. The member has not withdrawn their contributions;

2. The account has not expired; that is, it has not been more than two years between the date of the last contribution, the member is vested, or the member's account has remained active due to the provisions of N.J.S.A. 43:15A-8; and

3. The account has not been canceled due to Board of Trustees action. It is the responsibility of the employer to establish the employee's status. For accounts that are withdrawn, expired or canceled, an enrollment application is needed, and the standard enrollment rules are again in effect.

(b) To transfer the member's account to the new employer, the new employer should file a Report of Transfer with the Division of Pensions and Benefits within 10 working days of the date employment begins. If more than one year elapses between the date that the member was required to contribute to the retirement system and the date contributions were first certified, the employer shall be assessed a late enrollment employer liability penalty plus delayed appropriation costs.

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

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

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

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

In (a), rewrote 2.

SUBCHAPTER 8. PROSECUTORS PART

17:2-8.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Annual salary" means the compensation received by a member of the Prosecutors Part in the last 12 months of creditable service preceding retirement or death.

“Average annual compensation” means the annual salary as defined above.

“Combined service” means service credit in both the regular PERS and in the Prosecutors Part.”

“PERS” means the Public Employees Retirement System.

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

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

1. A county prosecutor, first assistant prosecutor, or assistant prosecutor as defined in N.J.S.A. 2A:158-1 et seq.;
2. The Director of the Division of Criminal Justice in the Department of Law and Public Safety; any assistant

director, deputy director, assistant attorney general or deputy attorney general employed by that department and assigned to that division on or after January 7, 2002;

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

4. A Department of Law and Public Safety employee meeting the criteria set forth in N.J.A.C. 17:2-8.2.

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

17:2-8.2 Criteria for determining eligibility for enrollment for employees of the Department of Law and Public Safety

(a) Employees of the Department of Law and Public Safety who are not assigned to the Division of Criminal Justice shall be eligible for enrollment in the Prosecutors Part provided they satisfy one of the following criteria:

1. The employee is assigned to a unit that has a specific delegation of authority under the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq., and the employee performs law enforcement functions on behalf of the Attorney General as an assistant attorney general, deputy attorney general or investigator. For the purposes of this section an investigator is defined as someone who assists an assistant attorney general or deputy attorney general in the investigation of potential violations of the law. Specifically, an investigator performs functions related to the detection, apprehension, arrest or conviction of persons and entities who violate the law; or

2. The employee is detached from his or her assignment in the Division of Criminal Justice to another division or office within the Department of Law and Public Safety and performs law enforcement functions on behalf of the Attorney General under the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq. Additionally, the employee, prior to being detached from the Division of Criminal Justice, must have been eligible for enrollment in the Prosecutors Part according to P.L. 2001, c.366.

17:2-8.3 Contribution rate

(a) The rate of contribution to the Prosecutors Part of the Public Employees' Retirement System shall be 7.5 percent as established by the Board of Trustees.

(b) The rate of contribution shall be reviewed by the System's actuaries periodically and adjusted by the Board as necessary.

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

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

17:2-8.5 Interfund transfers

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

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

17:2-8.6 Purchase of service

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

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

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

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

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

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

17:2-8.7 Eligibility for a loan

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

17:2-8.8 Vesting

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

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

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

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

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

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

17:2-8.10 Retirement effective date

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

17:2-8.11 Election of largest possible retirement allowance

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

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

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

17:2-8.12 Service retirement

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

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

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

(d) The service retirement allowance shall consist of:

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