

TITLE 17

TREASURY—GENERAL

CHAPTER 1

GENERAL ADMINISTRATION

Authority

N.J.S.A. 52:14-15.1a (P.L. 1996, c. 8) and 52:18A-96 et seq.

Source and Effective Date

R.2009 d.25, effective December 10, 2008.
See: 40 N.J.R. 4928(a), 41 N.J.R. 277(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1.c(2), Chapter 1, General Administration, expires on June 7, 2016. See: 48 N.J.R. 119(a).

Chapter Historical Note

Chapter 1, General Administration, was adopted and became effective prior to September 1, 1969.

Subchapter 6, Judicial Pension Fund, was repealed by R.1973 d.258, effective September 12, 1973. See: 5 N.J.R. 292(d), 5 N.J.R. 358(b).

Subchapter 10, Prescription Drug Program, was adopted as R.1977 d.117, effective April 1, 1977. See: 9 N.J.R. 142(c), 9 N.J.R. 243(a).

Subchapter 11, Dental Expense Program, was adopted as R.1978 d.99, effective March 15, 1978. See: 10 N.J.R. 38(b), 10 N.J.R. 175(d).

Subchapter 12, Administrative Practices, was adopted as R.1982 d.350, effective October 18, 1982. See: 14 N.J.R. 329(a), 14 N.J.R. 1164(a).

Pursuant to Executive Order 66(1978), Chapter 1, General Administration, was readopted as R.1983 d.174, effective May 16, 1983. See: 15 N.J.R. 523(a), 15 N.J.R. 930(b).

Pursuant to Executive Order No. 66(1978), Chapter 1, General Administration, was readopted as R.1988 d.243, effective May 6, 1988. See: 20 N.J.R. 636(a), 20 N.J.R. 1208(a). Pursuant to Executive Order No. 66(1978), Chapter 1, General Administration, expired on May 6, 1993.

Pursuant to Executive Order No. 66(1978), Chapter 1, General Administration, was adopted as new rules by R.1993 d.376, effective August 2, 1993. See: 25 N.J.R. 1955(a), 25 N.J.R. 3506(a).

Subchapter 13, New Jersey State Employees Cafeteria Plan, was adopted as R.1996 d.345, effective August 5, 1996. See: 28 N.J.R. 1942(a), 28 N.J.R. 3808(b).

Pursuant to Executive Order No. 66(1978), Chapter 1, General Administration, was readopted as R.1998 d.240, effective April 22, 1998. See: 30 N.J.R. 1023(a), 30 N.J.R. 1847(a).

Subchapter 2, Alternate Benefit Program, was recodified as N.J.A.C. 17:7 by R.2001 d.159, effective May 21, 2001. See: 33 N.J.R. 988(a), 33 N.J.R. 1601(a).

Chapter 1, General Administration, was repealed and adopted as new rules by R.2003 d.323, effective August 4, 2003. See: 35 N.J.R. 1854(a), 35 N.J.R. 3594(a).

Subchapter 11, Volunteer Emergency-Workers Survivors Pension, was adopted as R.2003 d.396, effective October 6, 2003. See: 35 N.J.R. 2790(a), 35 N.J.R. 4733(a).

Subchapter 14, New Jersey State Employees Commuter Tax Savings Program (Commuter Tax\$ave Program), was adopted as R.2004 d.267, effective July 19, 2004. See: 36 N.J.R. 1735(a), 36 N.J.R. 3414(b).

Subchapter 16, Implementation of State Early Retirement Incentive Program (P.L. 2008, c. 21), was adopted as special new rules by R.2008 d.233, effective July 11, 2008. See: 40 N.J.R. 4625(a). Subchapter 16, Implementation of State Early Retirement Incentive Program (P.L. 2008, c. 21), expired on March 21, 2009.

Chapter 1, General Administration, Subchapters 1 through 14, were readopted as R.2009 d.25, effective December 10, 2008. As a part of R.2009 d.25, Subchapter 15, The New Jersey School Employees' Health Benefits Program, was adopted as new rules, effective January 5, 2009. See: 40 N.J.R. 4928(a), 41 N.J.R. 277(a).

Subchapter 17, Compliance with Internal Revenue Code, was adopted as special new rules by R.2012 d.073, effective March 9, 2012. See: 44 N.J.R. 1157(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 1, General Administration, was scheduled to expire on December 10, 2015. See: 43 N.J.R. 1203(a).

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SUBCHAPTER 1. ADMINISTRATIVE PRACTICES

17:1-1.1 Description of the Division of Pensions and Benefits

(a) The Division is the successor to the former Bureau of Public Employees' Pensions created in June 1952. Under the general reorganization acts of 1948, the pension funds were located within the State Division of Budget and Accounting. In 1950 they were transferred to the Division of Investment under the statute creating that division.

(b) The Division, under the Department of the Treasury, was created by P.L. 1955 c. 70. All administrative functions of the State pension funds, except for the investment of the assets retained in the Division of Investment, were assigned to the Division.

(c) The Division is responsible for one of the largest public employee benefits program in the nation. It administers a comprehensive benefit program that enables public employers throughout the State to attract and retain skilled and talented employees. These include State employees, teachers, police officers, fire fighters, correction officers, judges, and many other local employees whose jobs are fundamental to the safety and well being of all New Jersey residents. The Division administers 10 separate pension systems.

(d) The Division also administers the State Health Benefits Program (SHBP) that includes health plans, dental plans, and a prescription drug plan. This program provides coverage for employees, retirees, and their dependents, of the State and participating local employers. The enactment of N.J.S.A. 52:14-17.46 et seq., creates the School Employees' Health Benefits Program, which will be administered by the Division.

(e) The Division's benefits programs include the following three supplemental retirement savings programs; the New Jersey State Employees Deferred Compensation Plan, Supplemental Annuity Collective Trust (SACT) and the Additional Contributions Tax Sheltered Program (ACTS). The Division also administers the IRC Section 125 program, termed Tax\$ave, for State employees.

(f) The following Boards and Commissions provide oversight and direction to the benefits programs:

1. Public Employees' Retirement System Board;
2. Teachers' Pensions and Annuity Fund Board;
3. Police and Firemen's Retirement System Board;
4. State Police Retirement System Board;
5. Consolidated Police and Firemen's Pension Fund Commission;
6. State House Commission for the Judicial Retirement System;

7. Defined Contribution Retirement Program Commission;

8. State Health Benefits Commission;

9. School Employees' Health Benefits Commission;

10. New Jersey State Employees Deferred Compensation Board;

11. Supplemental Annuity Collective Trust Council;

12. Pension and Health Benefits Review Commission; and

13. The State Investment Council.

(g) The Director is responsible for the coordination of the functions of the Division, the development of the Division budget and communication with other branches of State government, local government and the public. The Director serves as the Secretary to the Supplemental Annuity Collective Trust Council, the State Health Benefits Commission, the School Employees' Health Benefits Commission and the State House Commission in its capacity as the Board of Trustees for the Judicial Retirement System. The Director is responsible to oversee the Division's operations and the Board of Trustees administration in accordance with statute and rules. In addition, the Treasurer has delegated the responsibility of maintaining the Federal-State Agreement for Social Security to the Director.

(h) The Division falls under the jurisdiction of the New Jersey Department of Treasury. The Director reports directly to the State Treasurer. The Treasurer is an ex-officio member of all State pension boards and commissions.

(i) The administrative rules that apply generally to all of the retirement systems and benefit plans that the Division administers may be found in this chapter. The administrative rules of the various retirement systems and benefit plans may be found in N.J.A.C. 17:2 through 17:10.

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

In (a), (c), (h) and (i), deleted "of Pensions and Benefits" following the first occurrence of "Division"; in (b), deleted "of Pensions and Benefits" following the first and last occurrences of "Division" and "Chapter 70," preceding "P.L. 1955", and inserted "c. 70"; in (c), substituted "10" for "nine"; in (d), deleted "card" preceding "plan" and inserted the last sentence; added new (f)7 and (f)9; recodified former (f)7 as (f)8 and former (f)8 through (f)11 as (f)10 through (f)13; in (f)13, inserted "State"; in (g), inserted ", the School Employees' Health Benefits Commission", and "in accordance with statute and rules", substituted "responsible to oversee the Division's operations and the" for "also responsible for legal and legislative matters and", and deleted "of the Division of Pensions and Benefits" from the end; and in (h), deleted "the" preceding "Treasury" and "of the Division of Pensions and Benefits" following "Director".

17:1-1.1A Election of representative to the State Investment Council

(a) Pursuant to N.J.S.A. 52:18A-83a.(1), the Board of Trustees of the Public Employees' Retirement System

(PERS), the Board of Trustees of the State Police Retirement System (SPRS), the Board of Trustees of the Teachers' Pension and Annuity Fund (TPAF) and the Board of Trustees of the Police and Firemen's Retirement System (PFRS) of New Jersey shall elect one of the active members of its retirement system, or one of the retirees of its retirement system who is receiving a retirement allowance, to serve as a member of the State Investment Council at its regular meetings for a three-year term commencing on July 1.

(b) Pursuant to N.J.S.A. 52:18A-83b., an active or retired member of the PERS, SPRS, TPAF, and PFRS may apply to serve as a member of the State Investment Council provided that the applicant does not hold any office, position or employment in any political party and does not benefit directly or indirectly from any transaction made by the Director of the Division of Investment.

(c) The Division will be required to provide a timely general notice of vacancy of a State Investment Council position to the active and retired members of the PERS, SPRS, TPAF, and PFRS prior to the expiration of the term. Such notice shall provide information regarding the term of office, description and/or requirements for the position, and the application process.

1. The notice to active members of the PERS, SPRS, TPAF, and PFRS, will be prepared by the Secretary of the Board and forwarded to the certifying officers of the employing locations. It will be the responsibility of each certifying officer to post the notice in a public area at the workplace.

2. A timely notice to the retired members of the PERS, SPRS, TPAF, and PFRS will be prepared by the Secretary of the Board and published in the Division's semiannual newsletter to retired members, prior to the expiration of the term.

3. Such notice will also be posted on the Division's public website during the election period.

(d) Any active or retired member of the system who is interested in applying for the position of State Investment Council representative will be required to submit a letter of interest, which shall include a resume of the member's education and experience, directly to the attention of the Secretary of the Board at the Division of Pensions and Benefits within the requisite timeframe provided in the notice.

(e) As stipulated in N.J.S.A. 52:18A-83a.(1), the Board of Trustees of the PERS, SPRS, TPAF and PFRS will elect one of the active members of its retirement system, or one of the retirees of its retirement system who is receiving a retirement allowance, to serve as a member of the State Investment Council. However, depending on the number of responses submitted, the Board of Trustees may seek assistance from individuals outside the Division of Pensions and Benefits in the review and recommendation process, or may elect to form

a subcommittee to assist the Board of Trustees in reviewing the candidates applications.

1. Any active or retired member elected by the Board of Trustees of the PERS, SPRS, TPAF and PFRS to serve as the State Investment Council representative shall be required to comply with the requirements provided in N.J.S.A. 52:18A-83. Any elected member who fails to comply with the requirements stipulated in the law will be automatically disqualified as a representative.

2. A vacancy in the membership of the council occurring other than by expiration of the term, shall be filled in the same manner as provided in the original appointment, but for the remaining term only.

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

17:1-1.2 Records

(a) The records of all employee benefit programs administered by the Division are public records and may be requested through the Treasury Government Records Unit. Records shall be provided during regular business hours.

(b) Records considered confidential include protected health information (PHI) as defined by the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104-191, Social Security numbers, pension membership numbers, medical information submitted for any purpose, mailing addresses of active and retired members, individual files pertaining to beneficiary designation and any proprietary information provided to the Division from another source. Further records considered to be confidential may be found at N.J.S.A. 47:1A-10.

(c) All medical records obtained in connection with an application for disability retirement shall be restricted for the confidential use of the Boards of Trustees. Upon request, the Division shall release a copy of the examining physician's medical report to the member, the member's attorney or any person authorized by the member in writing to receive a copy of such report after the Board's initial decision is rendered. In no event shall the report be released to any individual not authorized by the member in writing to receive the report.

(d) Charges for copies of pension records that have been deemed to be public information will be made in accordance with the provisions of N.J.S.A. 47:1A-5.

(e) Requests for access to government records must be in accordance with the Department of Treasury's procedures as provided by the Open Public Records Act.

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

In (a), deleted "of Pensions and Benefits" following "Division", substituted "requested through the Treasury Government Records Unit" for "inspected during regular business hours at the office of the respective bureau, and under supervision of the Bureau Chief or other representatives of the office" and inserted the last sentence; in (b), inserted "Social Security numbers, pension membership numbers," and

substituted "information" for "reports", "proprietary information provided to the Division from another source" for "other matters pertaining to individual accounts where no official purpose or reason is indicated for inspection" and "N.J.S.A. 47:1A-10" for "N.J.A.C. 17:44-2"; in (c), substituted "records" for "testimony" and "Upon request, the" for "The", and inserted "after the Board's initial decision is rendered"; in (d), substituted "that" for "which" and updated the N.J.S.A. reference; and in (e), substituted "the Open Public Records Act" for "N.J.A.C. 17:44".

17:1-1.3 Hearing request

(a) The applicant will be given written notice of any decision by the Division, Board or Commission. Said notice shall inform the applicant of the appeal process available in the event the applicant disagrees with the decision of the Division, Board or Commission, including the proper procedure for requesting a hearing.

(b) The decision by the agency shall be final unless the applicant shall file a request for a hearing within 45 days after the date of the written notice of the decision.

(c) Administrative hearings will be conducted by the Office of Administrative Law pursuant to the provisions of N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1.

(d) The following statement shall be incorporated in every written notice setting forth the Division, Board or Commission's determination in a matter where such determination is contrary to the claim made by the claimant or the claimant's legal representative: If you disagree with the determination of the Board, Commission or Division, you may appeal by submitting a written statement to the Board, Commission or Division Director within 45 days after the date of written notice of the determination. The statement shall set forth in detail the reasons for your disagreement with the Board, Commission or Division's determination and shall include any relevant documentation supporting your claim. If no such written statement is received within the 45-day period, the determination by the Board, Commission or Division shall be final.

(e) The Board, Commission or Division Director shall determine whether to grant an administrative hearing based upon the standards for a contested case hearing set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(f) Administrative hearings shall be conducted by the Office of Administrative Law pursuant to the provisions of N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1.

(g) If the granted appeal involves solely a question of law, the Board, Commission or Division Director may retain the matter and issue a final determination, which shall include detailed findings of fact and conclusions of law, based upon the documents, submissions and legal arguments of the parties. The Board's, Commission's or Division Director's final determination may be appealed to the Superior Court, Appellate Division.

(h) If the granted appeal involves a question of facts, the Board, Commission or Division Director shall submit the matter to the Office of Administrative Law.

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

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

Rewrote (a); incorporated former (d)(1) into (d); recodified former (d)(2) through (d)(5) as (e) through (h); in (d), substituted "Board, Commission or Division," for the first and third occurrences of "Board (Commission)", "Board, Commission or Division Director" for the second occurrence of "Board (Commission)" and "Board, Commission or Division's" for "Board (Commission's)"; in (e) and (f), deleted "-1 et seq" from the end; in (e), (g) and (h), substituted "Board, Commission or Division Director" for "Board (Commission)"; in (g), substituted "Board's, Commission's or Division Director's" for "Board's (Commission's)"; and in (h), deleted the quotation mark from the end.

17:1-1.4 Mail distribution

(a) All mail sent to the Division will be received, opened and sorted by the mail section, with the exception of registered or certified mail, which will be sent directly to the addressee.

(b) The mail section will send all correspondence to the appropriate administrative bureau in the Division, where the correspondence should be acknowledged or answered in a timely manner.

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

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

In (a), deleted "of Pensions and Benefits" following "Division" and inserted a comma following the second occurrence of "mail".

17:1-1.5 Annual statements; retirement system

(a) Statements of members' accounts are mailed annually to employers after the fourth quarter of the calendar year is complete for the following active members:

1. Public Employees' Retirement System – State and local employers;
2. Teachers' Pension and Annuity Fund – State employers;
3. Police and Firemen's Retirement System – State and local employers;
4. State Police Retirement System; and
5. Alternate Benefit Program.

(b) Statements of members' accounts are mailed annually to employers after the employer reporting for the second quarter of the calendar year is complete for the following active members:

1. Legislative part of the Public Employees' Retirement System;
2. Prosecutor Part of the Public Employees' Retirement System;
3. Workers Compensation Judge part of the Public Employees' Retirement System;

4. Judicial Retirement System; and

5. Teachers' Pension and Annuity Fund – local employers.

(c) Interim statements will not be supplied except upon request for good cause.

(d) It is the responsibility of the employer to direct all statements to the appropriate party when a disputed address is involved. Employers will mail statements for transferred employees to the new employer for distribution. Employers will mail statements to the employee's home address for any situation where the employee is not available for statement distribution at the employer's location.

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

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

Rewrote (a) and (b); and added (d).

17:1-1.6 Quarterly statements; supplemental annuity

Statements of members' accounts are mailed quarterly to participants of the tax sheltered and nontax sheltered Supplemental Annuity Collective Trust.

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

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

Section was "Annual statements; supplemental annuity". Deleted "employers for" preceding "participants".

17:1-1.7 Endorsements

(a) In cases where incapacity prevents a complete personal endorsement, but the member or beneficiary is able to make his or her mark, this is acceptable providing the signature of two witnesses appear on the check. Such witnesses' signatures and the member's mark must be registered with the Division on a signature card. In addition, a doctor's certificate shall be filed with the Division indicating that the member or beneficiary is physically but not mentally incapable of endorsing the check.

(b) In cases where a member or beneficiary is mentally or physically incompetent, the appointment of a legal guardian, conservator or committee will be required. The Division must be supplied with a copy of the legal document and the guardian's signature must be registered with the Division on a signature card. In cases where an incompetent retired member or beneficiary is confined to a State institution in New Jersey in lieu of guardianship, his or her retirement allowance may be continued upon court order directing the retirement system to make payment to the chief administrative officer for the use and care of said member or beneficiary during the period of confinement.

(c) Under certain conditions, the Division will honor an agreement executed between a retiree or beneficiary and a bank, savings and loan association, insured Federal credit union or insured State chartered credit union, with such institution assuming full responsibility for the receipt and collection of the pension checks in the absence of the

personal endorsement of the retiree or beneficiary. The agreement must be consummated on the appropriate approved form which will be provided for this purpose by the retirement system. The agreement cannot be executed where a retiree or beneficiary is mentally or physically incompetent, or where the allowance will be deposited in an account other than the retiree's personal account.

(d) A person holding a power of attorney will be permitted to endorse a check payable to such person as attorney for the retiree or beneficiary. A power of attorney form will specify the authority of the person to endorse a check issued to the retiree or beneficiary.

(e) Retirees and beneficiaries may periodically be requested to complete a card, requiring notarization, which indicates their social security number, date of birth, and signature; if circumstances prevent notarization, two witnesses may be accepted in lieu of notarization. In the event the Division does not receive the notarized signature card within 45 days, a final request will be sent to the retiree or beneficiary, advising him or her that if it is not returned within 30 days, the monthly benefits will be suspended until a personally endorsed, notarized card has been received.

(f) When an individual holding a power of attorney specifying the authority of the person to endorse a check and acting on behalf of a member makes application for a retirement allowance, the power of attorney may choose any option available and may designate the individual to receive a monthly retirement allowance under the options that provide for a survivor's benefit.

(g) An individual holding a power of attorney and acting on behalf of a member shall designate the member's estate as the beneficiary for all life insurance benefits and any other benefits payable, which are not covered by (f) above, on the member's account unless the power of attorney form specifically grants the individual the right to designate others as beneficiaries or specifically grants them the right to name themselves.

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

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

In (b), deleted "(under Department of Human Services)" following "New Jersey" and "(N.J.S.A. 30:4-67.1)" following "court order"; in (d), substituted "A" for "However, a" preceding "power" and "will specify the authority of the person to endorse" for "prescribed by the Division must be duly executed and filed with the Division before the attorney's signature will be accepted as a proper endorsement on"; in (f), inserted "specifying the authority of the person to endorse a check"; and in (g), inserted a comma following "payable", and inserted "others as" and "or specifically grants them the right to name themselves".

17:1-1.8 Priorities

(a) In the event the Division is required to establish priorities for the performance of a particular obligation, such priorities shall be made known to all members involved and shall be established in the following order:

1. Those who are retiring or who contemplate retirement within the year;
2. Those who are at or beyond the normal retirement age; and
3. All other members.

(b) The priority of deductions from the monthly retirement allowance shall be the following:

1. Internal Revenue Service tax levy;
2. Federal tax;
3. Loan and various other deductions owed to the Division;
4. State Health Benefits Program and the School Employees' Health Benefits medical plan deductions;
5. State tax;
6. Dental Plan deductions; and
7. Other.

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

In the introductory paragraph of (a), deleted "of Pensions and Benefits" following "Division"; rewrote (b)1; deleted (b)3; recodified former (b)4 as (b)3 and former (b)6 as (b)7; added new (b)4 and (b)6; in (b)3, substituted "and various other deductions owed to the Division" for "deduction"; and in (b)5, deleted "and" from the end.

17:1-1.9 Bankruptcy; subsequent loans

(a) Any member of a State-administered retirement system, which permits loans to its members, who has payroll deductions for an outstanding loan balance in suspense as a result of bankruptcy proceedings prior to October 31, 2008, will not be permitted to obtain another loan from that retirement system during the pendency of the suspended original loan.

(b) A member or retired member's outstanding loan balance is not discharged by bankruptcy.

(c) A review of all existing suspended loans will be conducted by the Division and those members with a suspended loan balance will have their loan recalculated with accrued interest. For those members whose loans were suspended prior to October 31, 2008, pursuant to a bankruptcy filing, a written notice of the continued pendency of the bankruptcy action shall be submitted to the Division. The loan deductions will resume unless the member whose loan was suspended prior to October 31, 2008 informs the Division of the continued pendency of the bankruptcy action by providing an official document from the courts. Until the member's loan deductions are reinstated, no additional pension loans are permitted.

(d) No loans will be suspended due to bankruptcy.

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

In (b), deleted the last two sentences.

Amended by R.2011 d.257, effective October 17, 2011.
See: 43 N.J.R. 1509(a), 43 N.J.R. 2672(a).

Rewrote (a) and (c); and added (d).

17:1-1.10 Survivor certifications

Widows, widowers, parents and guardians of minor children receiving pension checks may be contacted annually by letter or certificate of eligibility to determine eligibility for the continuation of monthly benefits.

17:1-1.11 Leaves of absence for maternity; benefits; nondiscrimination

In accordance with the Attorney General's opinion AAA M79-4158, rendered in January, 1981, public employees, who are on authorized leaves of absence for maternity, will not be treated any differently from other public employees, who are on authorized leaves of absence for personal illness, concerning their rights, duties and obligations regarding their pension or other related employee benefit programs.

17:1-1.12 Domestic relations orders

(a) The Division will honor court orders for child support, alimony or equitable distribution. The matrimonial order must require the Division to withhold the specified amounts. The matrimonial order must also designate a specific dollar amount, a specific percentage of the gross monthly retirement benefit, or a percentage of the gross monthly retirement benefit the member will receive based on the specific number of years and months of service the member accrued while married.

(b) Payment of benefits to an alternate payee cannot begin until the member either retires and begins receiving a monthly retirement allowance or withdraws their contributions from the retirement system.

(c) All withholdings mandated under a matrimonial order shall cease upon the death of either the retired member or the alternate payee.

(d) The Division cannot guarantee the implementation of any irrevocable designation of death benefits or selection of retirement option. It is the responsibility of the member to inform the Division of the existence of any court order or domestic relations order, as well as, to comply with the contents of same.

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

In (a) and (d), deleted "of Pensions and Benefits" following "Division" throughout.

Amended by R.2012 d.143, effective August 6, 2012.
See: 44 N.J.R. 1316(a), 44 N.J.R. 2062(a).

In (d), rewrote the last sentence.

17:1-1.13 Suspension of pension checks

(a) The disbursement of pension checks shall be suspended under the following circumstances:

1. If a disability retirant fails to appear for a medical examination scheduled by the Division;
2. If a widow, widower, parent or guardian of minor child(ren) fails to file a certificate of eligibility, which is normally mailed to such beneficiaries on a periodic basis;

3. If a retirant 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;

4. If a retirant is receiving a retirement benefit, the Boards may suspend retirement benefits pending the outcome of charges including, but not limited to, the following:

- i. An indictment;
- ii. An information;
- iii. An accusation;
- iv. An administrative or disciplinary action;
- v. An ethics violation; or
- vi. A license or credential review;

5. If a retirant or beneficiary fails to cash three consecutive monthly pension checks the monthly benefit shall be suspended until a personally endorsed, notarized signature card has been received; or

6. In the event of incarceration of the retirant, pursuant to the provision of N.J.S.A. 43:1-2, the retirement benefits will be forfeited during the period of incarceration.

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

SUBCHAPTER 2. ACCOUNTING

17:1-2.1 Receipts deposited

(a) All routine receipts as of noon of any working day, which are identifiable as to origin and propriety, are to be deposited the same day.

(b) All other checks are to be deposited as soon as possible.

(c) If checks are not in the amount of the billing and there is no dispute as to the amount involved, such checks will be returned to the remitter and the obligation will be considered as not having been paid; the remitter will be so advised.

17:1-2.2 Remittance; limitation

The monthly remittances for pension contributions to the Division by employers shall be by electronic fund transfer (EFT). All other remittances to the Division shall be by check, bank draft or money order.

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

Deleted "transmittal" following "monthly".

17:1-2.3 Due dates for remittances and reports

(a) Monthly remittances for the Police and Firemen's Retirement System, Teachers' Pension and Annuity Fund and the Public Employees' Retirement System are to be transmitted through the electronic funds transfer system by the seventh day of the month following the close of the preceding month for which contributions are required.

(b) The biweekly report to the approved investment providers of the Alternate Benefit Program shall be due from the Centralized Payroll Unit to the Division no later than the pay date for each biweekly payroll period for which deductions or reductions were required. Remittance of contributions and related reports will be transmitted to investment providers no later than five business days following the corresponding biweekly payroll date.

(c) Deductions and reductions for Alternate Benefit Program participants of county and State colleges and universities will be transmitted to approved investment providers no later than five business days following the corresponding payroll date. County and State colleges and universities, which are prepaying the employer contributions on behalf of the State of New Jersey and have agreed to be fully accountable and responsible for the timely submission of such contributions shall submit a monthly report(s) to the Division by the 15th day of the month following the close of the preceding month detailing those prepayments in a format to be determined by the Director of the Division. County and State colleges and universities will be reimbursed for prepaid employer contributions in accordance with the prevailing statutes, within 15 business days of submitting all required reports in approved formats.

(d) Quarterly reports, including the remittance for the third month of the calendar quarter, for the Public Employees' Retirement System, Teachers' Pension and Annuity Fund, and the Police and Firemen's Retirement System are due in the Division the seventh day of the month following the close of the preceding quarter.

(e) Payroll deductions for pension, contributory insurance and the Supplemental Annuity Program and salary reductions for the Tax Sheltered Supplemental Annuity Program shall be remitted on a biweekly basis immediately following the payroll payment dates for State employees reported by the Centralized Payroll System.

(f) Monthly remittances for the State Health Benefits Program are due on the date indicated on the invoice. Reporting agencies will be considered in default if premiums are not paid on or before that date.

(g) Salary reductions under I.R.C. § 403(b), made on behalf of an employee, are to be transmitted through the electronic fund transfer system and credited within five business days from the pay date.

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

Section was "Due dates for transmittals and reports". In (a), deleted "and transmittal reports" following "remittances", and substituted "to be transmitted through the electronic funds transfer system by the seventh" for "due in the Division of Pensions and Benefits by the 10th"; rewrote (b) and (c); in (d), deleted "transmittals and" following "Quarterly" and "of Pensions and Benefits" following "Division" and substituted "seventh" for "10th"; and in (f), deleted "and transmittals" following "remittances" and substituted "on the date indicated on the invoice" for "the 15th day of each month" and "on or before that date" for "within 15 days following the due date for which premiums are required".

17:1-2.4 Delinquent notices

(a) Reporting agencies, which do not file timely reports or remittances will receive a delinquent notice.

(b) In the event the employer does not respond to the delinquent notice for the Report of Contributions, and if the report is not received in a timely manner to update the members of the local employer's report, the mayor, school superintendent or person of a similar authority will be sent a letter advising of the delinquency and the ramifications of such delinquency.

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

In (a), inserted a comma following "agencies" and deleted " , transmittals" following "reports".

17:1-2.5 Interest charges; delinquent remittance; report of contributions

(a) If payment in full, representing the monthly remittance and report of contributions or charges, is not made within 15 days of the due dates for such remittance and reports, interest at the rate of six percent per annum for the Teachers' Pension and Annuity Fund and the Public Employees' Retirement System, and 10 percent per annum for the Police and Firemen's Retirement System shall commence to run against the total remittance of contributions for the period on the first day after such 15th day.

(b) The penalty will also apply where the monies have been forwarded but without the report of contributions necessary to distribute such monies to the proper accounts. The penalty amount will be computed using the total contribution amount for pension fund members listed on the report of contributions.

(c) No interest charges will be billed for delinquent remittances or the report of contributions referred to in (a) above if the interest charge is less than \$10.00.

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

Section was "Interest charges; delinquent transmittals; report of contributions". In (a), substituted the first and third occurrences of "remittance" for "transmittal" and the second occurrence of "remittance" for "transmittals", and deleted "or charges" following the second occurrence of "contributions"; in (b), substituted "monies" for "moneys" twice and inserted "of contributions" and the last sentence; and added (c).

17:1-2.6 Disbursement authorizations

All checks disbursed, requiring the signature of the State Treasurer, are forwarded with signed authorizations to the Department of the Treasury.

17:1-2.7 Disbursement schedules

(a) All disbursements, other than the regular pension payrolls, including the payment of loans, withdrawals and refunds, should be made at least once a week.

(b) The pension payrolls are disbursed by the cash control section of the Treasury Department at the end of each calendar month.

17:1-2.8 Disbursement; limitations

All disbursements returned by the Federal post office as "undelivered" shall be credited to the appropriate account. Disbursements that are made by check shall be delivered by the Federal post office unless otherwise authorized by the Director of the Division.

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

Deleted "of Pensions and Benefits" following "Division".

17:1-2.9 Adjustment statements

(a) Adjustment statements are mailed as audits are completed.

(b) When an overpayment notice is mailed, a check is issued unless the employing agency offers an explanation for the variance.

(c) Overpayments are returned to the employer from which they were received; in the case of overpayments covering local employees, State employees reported on a biweekly basis, multiple members, and on post audit overpayments, the member is made the payee.

(d) For Clearing Account overages which are the result of quarterly transmittal overpayments, these monies shall be refunded directly to the employer.

(e) One month after shortage statements are mailed, a second notice is sent if payment has not been received.

(f) One month after the second notice, a letter is sent advising the reporting agency that the shortage will be certified with interest as a back deduction or as an arrears obligation if payment is not received within 30 days.

(g) If the member is off the payroll so that such extra deduction cannot be certified, the shortage will be established in the member's account and will be subject to an interest charge at the current rate of interest earned by the annuity savings fund per annum calculated from the date of the first notice forwarded to the member.

17:1-2.10 Minimum adjustments; repayment schedules

(a) In order to facilitate the reconciliation of members' accounts upon death, no refunds or additional contributions shall be made to a member's loan and arrearages balances if such adjustments involve amounts of \$50.00 or less. Unresolved differences of \$50.00 or less will be written off.

(b) Unresolved differences of \$50.00 or less in accounts that have been withdrawn will be written off. However, if a withdrawn member provides sufficient documentation that monies are due from the withdrawn account, such refunds shall be made, notwithstanding the fact that the unresolved difference had been previously written off.

(c) Unresolved differences of \$50.01 to \$100.00 which are owed to a withdrawn member shall be paid without any further analysis of the member's account. Payment will be made to the employee and forwarded to the last employer of record.

(d) Rules concerning the unresolved differences in retirement accounts are as follows:

1. No refunds or additional contributions shall be required for retired members if the adjustments involve amounts that range from a positive to a negative \$50.00 for pensions and \$100.00 for contributory life insurance premiums. All balances within these ranges will be written off.

2. All money found to be due and payable subsequent to a member's retirement shall be repaid in one sum. In the event the retiree is unable to make payment in one lump sum, repayment may be scheduled over a period not to exceed five years. Regular interest, as defined by N.J.S.A. 43:15A-6n, 18A:66-2m, 43:16A-1(9), 53:5A-3p and 43:6A-3n, shall apply to all such repayment schedules. Any other schedule of repayment shall be referred to the Board of Trustees for consideration. As a condition of establishing a repayment schedule, the Division will automatically put a hold on the distribution of the member's group life insurance until such time that the obligation is satisfied. Any remaining funds from the group life insurance will be distributed in accordance with the member's last Designation of Beneficiary on file.

(e) Audit differences of \$5.00 or less in the reporting of members' pension contributions or contributory life insurance premiums during a quarter will not require a cash adjustment.

(f) Audit differences of \$20.00 or less in the reporting of members' pension contributions or contributory life insurance premiums covering an annual period are not subject to cash adjustments.

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

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

Section was "Minimum adjustments". In (a), substituted "\$50.00" for "\$10.00" twice; in (d)2, deleted "or scheduled for repayment over a period not to exceed 10 years" following "sum" and inserted the last five

sentences; in (e), substituted "\$5.00" for "\$2.00"; and in (f), substituted "\$20.00" for "\$8.00".

17:1-2.11 Reports of salary changes

The report of salary changes is available upon request in a format to be determined by the Director of the Division.

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

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

Section was "Annual reports of salary changes".

17:1-2.12 Lost pension checks

(a) Upon receiving notification that a retiree or other payee has not received a particular check for whatever reason, the Division shall send the payee an affidavit of non-receipt for completion.

1. Upon receipt of the affidavit of non-receipt, the Division shall send a stop payment order to the bank upon which the check was drawn. However, if theft is alleged, a stop payment order shall be sent to the bank immediately upon notification of the alleged theft.

2. Upon receipt of an acknowledgment from the bank of the stop payment notice, the Division shall issue a replacement check.

3. If the payee refuses to execute the affidavit, the procedure set forth in this subsection will be followed but a replacement check will not be issued until 90 days after the check date has passed.

(b) The Division upon being notified that the retiree has not received a particular check, shall review its canceled check file.

1. If the check has been paid, a copy of the check, together with a forged check affidavit, shall be sent to the retiree.

2. Upon receipt from the retiree of the properly executed affidavit and issuance of a credit by the bank to the account, a replacement check shall be issued.

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

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

In the introductory paragraph of (a), deleted "of Pensions and Benefits" following "Division"; and in the introductory paragraph of (b), deleted "of Pensions and Benefits," following "Division".

17:1-2.13 Administrative expenses; prorated among systems

(a) Not later than 60 days after receipt of the expenditures by account, the Division will prepare a complete fiscal statement indicating the administrative expenses incurred by the Division within its State appropriation for the previous fiscal year ending the prior June 30.

1. Such statement will reflect the total expenses incurred in each account within the Division's appropriation;

2. Supplemental statements will be prepared allocating specific costs attributable to each of the retirement systems, State Health Benefits Program, and the School Employees' Health Benefits Program within the operation of the respective bureaus; and

3. Included in the administrative expenses incurred by the Division shall be those of the State Division of Investment as the expenses of that Division pertain to the investment of monies appropriate to each Retirement System or Fund calculated on the number of transactions processed for the respective Systems.

(b) To the extent that there are costs which are attributable to the Division as a whole, as distinguished from costs attributable to each separate program administered by the Division, all Systems will share in the cost of the Division's expenses on a pro rata basis.

(c) The State shall be reimbursed on a monthly basis for operational costs.

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

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

Section was "Administrative expenses; proration among systems". In (a), deleted "of Pensions and Benefits" following "Division"; and in (a)2, substituted "retirement systems," for "Retirement Systems and" and inserted ", and the School Employees' Health Benefits Program".

17:1-2.14 Employees reported on biweekly salaries

(a) Retirement, death benefits and service credit will be determined on the basis of biweekly pay periods for employees reported on a biweekly basis.

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

17:1-2.15 Credit for partial month service

(a) For retirement purposes, a full month of service credit will be granted to any enrolled member who has received enough salary in a particular month to withhold a full monthly pension deduction. In the case of an enrolled member who is reported on a biweekly basis, a full pay period of service credit will be granted if the member has received enough salary in a particular pay period to withhold a full biweekly pension deduction.

(b) In order to purchase a full month of service credit for previous, eligible service, an employee must have received enough salary in a particular biweekly pay period or month to have had withheld a full biweekly or monthly pension deduction.

17:1-2.16 Workers' compensation without pay: employer's obligation regarding employee contributions

(a) An employer is responsible for the payment of an employee's pension contributions while the employee is receiving periodic benefits through workers' compensation.

(b) An employer is not responsible for the payment of an employee's pension contributions while the employee is receiving a periodic award of benefits through workers' compensation if a valid termination from employment has occurred. If an employer ceases payment of employee pension contributions due to a valid termination, as listed in (b)3 or 4 below, the employer shall notify the Division in writing of the reasons for the cessation of payments. A valid termination exists when:

1. The employee voluntarily files for a retirement allowance that is subsequently approved;

2. The employer files an involuntary disability retirement application for the employee that is subsequently approved;

3. The employee voluntarily resigns from employment for reasons other than the inability to perform the job's functions due to the incident that was the basis for the workers' compensation award; or

4. The employee is terminated by the employer for reasons unrelated to a workers' compensation award.

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

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

In the introductory paragraph of (b), deleted "without pay" following "compensation" and "of Pensions and Benefits" following "Division".

17:1-2.17 Report of contributions; reporting media

The report of contributions will be prepared and submitted to the pension fund administrator through secure electronic data submission provided through the State of New Jersey.

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

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

17:1-2.18 Service and salary credit: awards of back pay

(a) A member who appeals the suspension or termination of the member's employment and who, by award or settlement, becomes entitled to full 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 and, if applicable, the contributory group life insurance contribution is received from the member or is deducted from the value of the award. The member must receive full back pay, including normal salary increases before mitigation and the contributions will be computed on the base salaries that the employee would have earned for the reinstated suspended or terminated period. In the event that the amount of back payment, after mitigation, is insufficient to deduct the value of the normal pension contributions and, if applicable, the contributory group life insurance due, such contribution shall be paid by the member to the respective retirement system by certified check or money order.

(b) If a member waives an award of back pay, then the member cannot receive service or salary credit for the period of the award.

(c) 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, or provides service credit that entitles a member to file for retirement benefits to which they would not otherwise have qualified, the award or settlement shall be reviewed by the Division. If the Division 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 the various retirement systems, the Division shall determine the compensation and/or service credit to be used to calculate the retirement allowance, and the member shall have the pension contributions for the salaries based on the award refunded without interest.

(d) It is the responsibility of the certifying officer to provide to the Division 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 and all details pertaining to a mitigated award of back pay. Any resolution or legal document submitted to the Division must be fully executed by all parties to the agreement.

(e) When necessary, the Division shall request all supporting documentation regarding the award or settlement agreement from the employer. The Division has the ability to request proof of mitigation from the member.

(f) For those defined contribution retirement programs administered by the Division, the member is not entitled to the employer contributions for the period of the award unless the member receives an award equal to full back pay pursuant to N.J.A.C. 17:1-2.18.

(g) For those defined contribution retirement programs administered by the Division, the member is not entitled to investment gains or losses that the contribution would have been subject to had the member receiving the award of back pay been employed continuously during the period of the award.

New Rule, R.2010 d.187, effective September 7, 2010.
See: 42 N.J.R. 896(a), 42 N.J.R. 2139(a).

SUBCHAPTER 3. ENROLLMENT, MEMBERSHIP, TRANSFERS AND WITHDRAWALS

17:1-3.1 Compulsory enrollments; failure to enroll

(a) When an employee fails to file an application for enrollment even though the employee and employer have been advised of the compulsory nature of enrollment, the certifying officer is obligated to complete the employee's section of the enrollment application, as well as such other information required on the enrollment application. Upon receipt of a properly completed enrollment application, the

member's beneficiary shall automatically be their estate until the member files a Designation of Beneficiary form.

(b) For the purpose of establishing an employer's liability on delinquent filed enrollment applications, as well as the member's requirement to prove insurability, one year shall cover the 12-month period plus an additional two months to allow for administrative processing, elapsing between the employee's date of enrollment or transfer and the date the enrollment application or report of transfer is received by the Division.

(c) For the purpose of calculating the employer and employee costs for the employer's liability, the cost shall be calculated by multiplying the member's salary at enrollment by the current remitting pension rate times the period of service. For purposes of calculating the period of service, the service shall be the period between the date of enrollment or transfer and the date deductions are certified to begin.

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

Deleted (a) and (c); recodified former (b) as (a), and former (d) and (e) as (b) and (c); in (a), substituted "When an" for "In some cases, the", "fails" for "may fail", "enrollment, the" for "enrollment. In these cases, the" and "shall automatically be their estate until the member files a Designation of Beneficiary form" for "designation may be accepted provided the member has signed the enrollment application", and inserted a comma following the second occurrence of "application"; and in (b), deleted "of Pensions and Benefits" following "Division".

Case Notes

Former public employee not entitled to veterans' retirement benefits where he lost public employment position prior to reaching age 62. *Gerber v. Board of Trustees, Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 135.

17:1-3.2 Multiple enrollments; contributions

In some retirement systems, an employee may be enrolled in the system on the basis of more than one position with more than one employer participating in the retirement system. Within the limits of the statute and board rules, such an employee shall be required to enroll from each position.

17:1-3.3 Enrollment schedules

(a) Employees appointed after the seventh day of the biweekly pay period will be enrolled the next pay period and after the 16th day of a month for members scheduled on a monthly basis will be enrolled as of the first of the following month.

(b) An optional enrollee is enrolled as of the first of the month following the date the enrollment application is received.

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

In (a), substituted "after the seventh day of the biweekly pay period will be enrolled the next pay period and" for "on or", "16th day" for "17th", and inserted "for members scheduled on a monthly basis".

17:1-3.4 Proof of veteran's status

Members wishing to establish veteran status with the retirement system must submit copies of their discharge papers(DD 214) to the New Jersey Department of Military and Veterans' Affairs. A member who fails to submit evidence of military discharge will be enrolled as a nonveteran and this non-veteran classification shall not be altered until such time as the member's military discharge papers are received by the Department of Military and Veterans' Affairs and eligibility for a veteran classification is confirmed.

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

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

Substituted "New Jersey" for "NJ" and "and eligibility" for "confirming eligibility", inserted an apostrophe following both occurrences of "Veterans" and inserted "is confirmed".

17:1-3.5 Intrafund transfers

An active member of the Teacher's Pension and Annuity Fund, the Police and Firemen's Retirement System or the Public Employees' Retirement System who terminates employment with one participating employer but transfers to another covered position within the same retirement system with a different employer may continue such membership.

17:1-3.6 Insurance coverage; ineligibility

Any member who is not eligible for noncontributory insurance shall also be ineligible for contributory insurance coverage.

17:1-3.7 Deduction schedules

All deductions will be certified to begin on the first of the month for quarterly reporting units, or the beginning of a biweekly pay period for members who are reported on a biweekly basis.

17:1-3.8 Withdrawal application; processing

(a) Withdrawal applications which are filed prior to the member's resignation or the termination of compensation, will not be processed until the effective date of the later of the two conditions.

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

(c) No application shall be approved, if:

1. The member is on official leave of absence;
2. The member certifies that employment has not ended or that the member has taken another position covered by the retirement system;
3. The member has been dismissed or suspended from employment. In this event, such a member will be eligible to withdraw if the member has formally resigned from the

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; or

5. The member has a claim pending for Workers' Compensation benefits.

17:1-3.9 Waiver of retirement benefits upon withdrawal

If a member is eligible to begin receiving a monthly retirement allowance (due to the member's age or years of creditable service), the Division shall inform the member how to obtain the estimated amount of the retirement allowance and shall require the member to sign a waiver of such benefits, should the member still wish to withdraw.

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

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

Substituted "how to obtain" for the first occurrence of "of".

17:1-3.10 Peacetime military service; service credit

(a) A member or former member, or a person required to be a member, of a State-administered retirement system who leaves employment covered by a State-administered retirement system to enter the uniformed services of the United States and returns to covered employment within the time period and under the circumstances required for entitlement to reemployment rights under Federal law (38 U.S.C. §§4301 et seq.), may obtain service credit in the State-administered retirement system as provided in this section.

(b) A member reemployed under this section shall be treated as not having incurred a break in service with the employer by reason of the member's period of service in the uniformed services. A member that authorizes payroll deductions or makes a lump sum payment for the USERRA-eligible service will receive the pension service credit with the State-administered retirement system. The actual calculation of retirement benefits will include the time of uniformed service. Payment to the retirement system of any contributions for USERRA-eligible service is optional and voluntary on the part of the member.

(c) The types of service or situations eligible for reemployment rights include regular active duty, initial active duty for training, active and inactive duty training for members of reserve components and National Guard units, and situations where an employee leaves employment for the uniformed services or for examination of fitness for the uniformed services and is not taken into the uniformed services.

1. The person must be a member or be required to be a member of a State-administered retirement system prior to leaving employment to enter the uniformed services, must give advance written or oral notice of such service to the employer, unless precluded by military necessity, and must leave the covered employment to enter the uniformed services.

2. The person must return to employment or submit an application for reemployment covered by a State-administered retirement system within the time periods prescribed by Federal law. The cumulative length of the absence and of all previous absences with that employer shall not exceed five years unless otherwise permitted under 38 U.S.C. § 4312(c) to be eligible for reemployment rights. The person must seek reemployment within the time period prescribed by Federal law which is generally 90 days following release from the uniformed services but which differs based on the length and type of service as provided in 38 U.S.C. § 4312(e). In all cases, the time limit for return to employment or to submit an application for reemployment is extended for up to two years for any injury or illness incurred in or aggravated during the uniformed service requiring hospitalization or convalescence which continues after release from the uniformed service.

3. The person's uniformed service must have been honorable or satisfactory.

4. The person shall be denied reemployment rights if:

i. The person is not qualified to perform the duties of the position for which reemployment is sought;

ii. The accommodation, training or effort referred to in 38 U.S.C. § 4313(a)(3), (a)(4) or (b)(2)(B) would impose an undue hardship on the employer;

iii. The employer's circumstances have so changed as to make it impossible or unreasonable to reemploy the person;

iv. The employment from which the person leaves to serve in the uniformed services is for a brief, non-recurring period (temporary employment) and there is no reasonable expectation that such employment will continue indefinitely; or

v. The person knowingly provides written notice of intent not to return to a position of employment after service in the uniformed services.

5. The person will not be entitled to service credit in a State-administered retirement system if reemployment is validly denied.

6. The employer shall have the burden of proving that N.J.A.C. 17:1-3.10(c)4i, ii, iii, iv or v above justified the denial of reemployment rights. For the purposes of (c)4v above, the employer must show that the person knowingly provided clear written notice of intent not to return to a position of employment after service in the uniformed service and in doing so was aware of the specific rights and benefits to be lost.

7. To receive service credit in a State-administered retirement system for peacetime military service, prior to October 13, 1994, the person must have applied within one year following the date of return to employment or the date

initial pension contributions are certified to begin in the retirement system if the person's former membership was terminated or was in a different retirement system.

8. The employer shall notify the Division in writing within 30 days that a member has returned from service in the uniformed services and the dates of such service.

9. The member may make contributions to the retirement system for all of the period of service in the uniformed services to obtain credit in the pension system for inclusion of such service in the calculation of benefits. The member must file a written request with the Division so that a schedule of back deductions will be generated. The schedule of back deductions shall be based upon employee's rate of contribution in effect on the date the employee returned to employment multiplied by the salary the employee would have received but for the period of service; or if the determination of such salary is not reasonably certain, on the basis of the employee's average rate of compensation during the year immediately preceding such service for the period of time in which no credit was received in the system for that service. Any payment to the plan described in this paragraph shall begin as soon as practicable after the date of reemployment and shall continue for the lesser of five years or three times the period of the uniformed service. If the member does not request in writing back deductions at the time of return to employment, the member may request to receive credit for such service until the expiration of either five years or three times the period of the uniformed service, whichever is shorter. Repayment still must be made in the above referenced time frame.

10. The member is permitted to make additional elective deferrals to the Supplemental Annuity Collective Trust (SACT), the New Jersey Employees' Deferred Compensation Plan, Additional Contributions Tax Sheltered Programs (ACTS) and the Alternate Benefit Program in an amount not exceeding the maximum amount the employee would have been permitted to contribute during the period of military service if the employee had actually been employed by the employer during that period.

11. If a person retires prior to paying the total amount of contributions required to obtain service credit for the uniformed service, the total amount of service credit shall be in direct proportion as the amount paid bears to the total amount of contribution obligation.

12. An employer who participates in the Alternate Benefit Program (ABP), reemploying a person under this section, with respect to the period served by a person in the uniformed services, upon reemployment of that person, shall be liable to the employee pension plan for funding any obligation of that plan to provide benefits under that plan, and shall allocate the amount of any employer contribution for that person in the same manner and extent that the allocation occurs for other employees during the same period of service. However, the employer is not required to

make up the earnings that those contributions would have made had the person reemployed under this rule been employed continuously.

i. An employee reemployed under this paragraph who is a member of the defined contribution plan shall be entitled to the above accrued benefits only to the extent that the person makes payments to the plan with respect to such employee contributions.

ii. For the purposes of computing the employer's liability and the employee's contributions, the employee's compensation during the period of service shall be computed at:

(1) The rate the employee would have received but for the period of service; or

(2) If the determination of such rate is not reasonably certain, on the basis of the employee's average rate of compensation during the year immediately preceding such service.

iii. Make-up contributions shall begin on the date of reemployment and shall continue for five years or three times the period of uniformed service, whichever is shorter.

iv. Any employer who reemploys a person under this section shall, within 30 days after the date of reemployment, provide information in writing of such reemployment to the Division.

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

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

In (b), inserted "only" and deleted "even if the member does not make contributions to the retirement system for the period of service" from the end; in (c)4iv, substituted "nonrecurring" for "nonrecurrent"; in (c)10, inserted an apostrophe following "Employees"; and in (c)12iv, deleted "of Pensions and Benefits" following "Division".

Amended by R.2012 d.142, effective August 6, 2012.

See: 44 N.J.R. 1317(a), 44 N.J.R. 2062(b).

Rewrote (b).

17:1-3.11 Compensation limit for exclusion from membership after retirement

Beginning with the calendar year 2002, and for any calendar year thereafter, the Director of the Division may adjust the compensation limit for exclusion from membership after retirement in the Public Employees' Retirement System. The compensation limit shall be adjusted by increments of \$1,000, when \$15,000 increased by 3/5 times the change in the Consumer Price Index as defined in N.J.S.A. 43:3B-1f from the Index applicable to calendar year 2001 to the Index applicable to the calendar year immediately preceding the year of adjustment, rounded to the next highest 100 dollars, exceeds the previous compensation limit by \$1,000.

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

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

Deleted "of Pensions and Benefits" following "Division".

17:1-3.12 Interfund transfers; accumulated interest

(a) Notwithstanding the provisions of N.J.A.C. 17:2-7.1, 17:3-7.1, 17:4-7.1 and 17:10-6.1 concerning interfund transfers of members between State-administered retirement systems, accumulated interest credited to the member's account in the former system will only be transferred as part of such member's contributions to the new system if the new system likewise credits interest to its member accounts.

(b) If the new system does not credit interest to its member accounts then only the contributions actually made by the member to the former system will be transferred to the new system when an interfund transfer occurs.

SUBCHAPTER 4. PURCHASES AND ELIGIBLE SERVICE

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

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

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

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

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

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

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

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

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

17:1-4.2 Purchase terms; grace period

A member who receives a written optional purchase cost quotation is given a 90-day grace period to confirm that he or

she wishes to make the purchase of service credit. If the confirmation of the purchase is not received from the member within 90 days, the cost of purchase must be recalculated to determine if any change in the cost is warranted as a result of change in age or salary.

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

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

Inserted "service".

Case Notes

Initial Decision (2009 N.J. AGEN LEXIS 490) adopted, which found that PERS Board properly denied petitioner's request that the purchase cost of his temporary service credit be calculated based on the date of his initial application where he failed to purchase his service credit for the price initially quoted during the 90-day grace period. In re Mitchell, OAL Dkt. No. TYPPE 06956-08S, 2009 N.J. AGEN LEXIS 868, Final Decision (August 20, 2009).

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

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

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

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

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

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

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

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

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

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

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

Case Notes

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

SUBCHAPTER 5. INSURANCE AND DEATH BENEFITS

17:1-5.1 Multiple beneficiaries

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

Case Notes

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

17:1-5.2 Optional settlements; group life insurance

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

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

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

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

17:1-5.3 Accrued increase; limitations

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

17:1-5.4 Group life insurance and pension benefits

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

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

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

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

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

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

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

Section was “Return of pension contributions; death of member”. In (a), substituted “group life insurance and pension benefits” for “pension contributions” and inserted “directly”; and in (b), substituted “group life

insurance and pension benefits” for “return of pension contributions”, deleted “of Pensions and Benefits” following “Division” and “as possible” following the first occurrence of “birthday”, and inserted “as possible” following “soon”.

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

(a) If the member was retired at the time of death, the benefits to eligible beneficiaries shall become effective on the first of the month following the member’s death and shall terminate as of the month in which the beneficiary no longer qualifies for such benefits. A pension allowance shall be payable for the entire month in which the retirant or beneficiary dies.

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

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

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

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

17:1-5.6 Domestic partners

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

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

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

(b) Pursuant to P.L. 2003, c. 246, the Domestic Partnership Act (N.J.S.A. 26:8A-1 et seq.), the SHBP, SEHBP and State-administered retirement system provisions found in sections

41 through 56 of the Act only apply in the case of two persons who are of the same sex and have established a domestic partnership. Therefore:

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

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

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

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

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

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

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

New Rule, R.2004 d.413, effective November 1, 2004.
See: 36 N.J.R. 3472(a), 36 N.J.R. 4952(c).

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

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

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

17:1-5.7 Civil unions

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

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

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

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

SUBCHAPTER 6. HONORABLE SERVICE

17:1-6.1 Honorable service

(a) The receipt of a public pension or retirement benefit is expressly conditioned upon the rendering of honorable service by a public officer or employee. Pursuant to N.J.S.A. 43:1-3, the Boards of Trustees of the State-administered retirement systems are authorized to order the forfeiture of all

or part of the pension or retirement benefit of a member of the fund or system for misconduct occurring during the member's public service, which render the member's service or part thereof, dishonorable.

(b) Whenever the Board of Trustees determines that a partial forfeiture of pension or retirement benefits is warranted, it shall order that benefits be calculated as if the accrual of pension rights terminated as of the date the misconduct first occurred unless (c) below applies.

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

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

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

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

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

Case Notes

Initial Decision (2009 N.J. AGEN LEXIS 491) adopted, which found that a former prosecutor and judge had to forfeit pension benefits he accrued during his judgeship because, even though the crimes he committed — misapplication of entrusted property — were committed in his capacity as a lawyer in private practice, the offenses were for personal gain and were immoral, unethical, and tainted the public's trust in the judicial system; thus, although his criminal activity was not directly related to his public duties, during the time of the offenses he also held the public office of a municipal judge and was bound and obligated to uphold the law. In re Pizzi, OAL Dkt. No. TYPPE 09208-08N, 2009 N.J. AGEN LEXIS 932, Final Decision (July 16, 2009).

Former policeman was properly denied his pension after pleading guilty to a disorderly persons offense arising out of his attempt to dispose of a leased vehicle to collect insurance proceeds, rendering his

public service "dishonorable"; the ALJ erred in finding that the officer's actions were the result of a psychological disability because, in so finding, the ALJ effectively rejected the criminal court's conclusion at the time of the plea that the policeman was competent, which the ALJ was estopped from doing (rejecting 2008 N.J. AGEN LEXIS 103). In re Hill, OAL Dkt. No. TYP 9584-02, 2008 N.J. AGEN LEXIS 1435, Final Decision (March 18, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 78) adopted, which found that partial forfeiture of former mayor's pension service credit was warranted after he admitted to having engaged in a pervasive scheme of soliciting and accepting bribes from persons and entities doing business with the city from the first day of his second term as mayor; the misconduct was so egregious that it called in question the mayor's entire eight year tenure as mayor, warranting a partial forfeiture of service which included all eight years as mayor. In re Russo, OAL Dkt. No. TYP 05339-2006N, 2008 N.J. AGEN LEXIS 155, Final Decision (February 25, 2008).

Former township official's pension was properly reduced by forfeiting his salary from the date his wrongdoing began until the date of his retirement because, although the official had many years of honorable service, his criminal activity was not an isolated incident, but rather a continuing prolonged scheme to defraud the township and the citizens for his personal gain; the official accepted gifts from a vendor with whom the township contracted (modifying 2007 N.J. AGEN LEXIS 760). In re Auriemma, OAL Dkt. No. TYPPE 03853-2004S, 2008 N.J. AGEN LEXIS 154, Final Decision (January 18, 2008), aff'd per curiam, No. A-3058-07T3, 2009 N.J. Super. Unpub. LEXIS 1481 (App.Div. June 16, 2009).

Initial Decision (2007 N.J. AGEN LEXIS 762) affirmed, which partially forfeited a public employee's pension credits. The Board of Trustees of the PERS appropriately considered the eleven statutory factors in light of all the circumstances, including the serious and pervasive nature of the employee's criminal enterprise, which resulted in his imprisonment. The Board's determination ordering forfeiture of the employee's pension benefits from the first day he served as a county Chief of Staff until his retirement was entirely consistent with the statutory and regulatory scheme, was well-founded on the evidence in the record, and was not arbitrary, capricious or unreasonable. In re Parkin, DKT TYP No. 10358-2005S, 2007 N.J. AGEN LEXIS 945, Final (December 14, 2007), aff'd, 2009 N.J. Super. Unpub. LEXIS 1154, (May 14, 2009).

Initial Decision (2007 N.J. AGEN LEXIS 633) adopted, which determined that a public employee, who worked as a Crew Supervisor of Mechanics for the Department of Transportation and who had illegally removed gasoline and diesel fuel and falsified government records in an effort to conceal these thefts, was subject under N.J.A.C. 17:1-6.1 to forfeiture of the last 36 months of his PERS service and salary because his misconduct was grave and directly related to his public employment; the fact that no criminal charges were brought did not diminish the gravity of the theft. The forfeiture was just because the employee committed an offense going back at least three years before the date of his retirement, and the crime directly related to his employment and benefited the employee. In re Zdaniewicz, OAL Dkt. No. TYPPE 05338-2006N, 2007 N.J. AGEN LEXIS 941, Final Decision (October 18, 2007).

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

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

(b) No credit shall be granted for the period during which the member's salary has been terminated while under indictment, information, accusation or suspension, until the

outcome of the proceedings determines the basis for the award of such credit, if any.

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

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

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

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

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

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

Administrative corrections and change.

See: 41 N.J.R. 2337(b).

Case Notes

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

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

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

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

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

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

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

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

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

sible for informing the Division of any settlement agreement between the employer and an employee that provides for the employer not to pursue any civil or criminal charges or an action for misconduct against the employee in exchange for the employee's resignation in good standing. A copy of the settlement agreement must be provided to the Division by the certifying officer within 60 days of execution of such agreement. Such agreement must also be included with any employer certification of service and salary relative to an employee's claim for benefits from the pension fund or retirement system; and

2. Should the Division determine that the terms of the settlement agreement result in additional costs for the pension fund or retirement system, the State, county or local employer shall be responsible for the reimbursement of all such costs to the State pension fund or retirement system.

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

SUBCHAPTER 7. RETIREMENTS

17:1-7.1 Retirement quotations

(a) Members who apply for retirement will receive a quotation of retirement benefits upon the completion of the retirement calculation. For members of retirement systems which provide for optional survivor benefits, the retirement quotations will include a description of the various options available. If the member named a spouse as the pension beneficiary on the application and provides the spouse's birth date, in addition to the maximum allowance, all survivor options will be included in the quotation.

(b) The quotation of retirement benefits shall inform the member of their right to withdraw, cancel, or change the application for retirement at any time before the later of 30 days after the retirement date or 30 days after the date the Board of Trustees approves the application.

(c) In the event the quotation of retirement benefits is not issued prior to the date of retirement or before the date of approval by the Board of Trustees, then the member will be provided with a 30-day period in which to amend the retirement option selection.

Repeal and New Rule, R.2009 d.25, effective January 5, 2009.
See: 40 N.J.R. 4928(a), 41 N.J.R. 277(a).
Section was "Retirement quotations".

17:1-7.2 Retroactive salary increases

Except as in N.J.A.C. 17:2-4.5, 17:3-4.7, 17:4-4.8 and 17:5-3.6, retroactive salary adjustments that have been authorized after the member's effective date of retirement or date of death may be used as creditable salary for pension or insurance purposes even if the period covered by the salary

adjustment extends to a period before the member's effective date of retirement or date of death.

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

Substituted "Except as in N.J.A.C. 17:2-4.5, 17:3-4.7, 17:4-4.8 and 17:5-3.6;" for "In no event will individual" and inserted "may" following the first occurrence of "death".

17:1-7.3 Final compensation

(a) With respect to all claims for benefits, the Division 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.

(b) Those cases where a violation of the statute is suspected shall be referred to the respective Board or Commission.

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

Deleted "of Pensions and Benefits" following "Division" and inserted a comma following "credit".

Case Notes

Statutory exclusion of salary adjustments that are granted primarily in anticipation of a member's retirement from a government employee's compensation, pursuant to N.J.S.A. 43:15A-6(r), is not limited to salary increases granted in the year immediately preceding retirement; therefore, regulations implementing that statutory requirement, N.J.A.C. 17:2-4.1(e) and former N.J.A.C. 17:1-4.18 cannot be construed as restricting the Board of Trustees of the Public Employees' Retirement System and the staff of the New Jersey Division of Pensions to investigating only such increases that occur in an employee's last year of employment preceding retirement. *DiMaria v. Bd. of Trs.*, 225 N.J. Super. 341, 542 A.2d 498, 1988 N.J. Super. LEXIS 198 (App.Div. 1988).

17:1-7.4 Biweekly salary computation; retirement and death benefits

(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 employee reported on a biweekly basis, a total of 26 biweekly pays will be used, including any retroactive salary payments made for the covered period.

(b) In computing final compensation upon which pension contributions were based, in the case of a 12-month employee reported on a biweekly basis, a total of 78 biweekly pays will be used, including any retroactive salary payments made for the covered period.

(c) In order to compute the amounts under (a) and (b) above for biweekly employees, the actuary will supply factors to convert biweekly salaries to compensate for biweekly

payroll schedules. Application of the factors to the salaries reported for pension purposes will develop the wage base for the calculation of benefits.

(d) In computing the amounts under (a) and (b) above in the case of 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 (c) above shall not be made.

(e) If a member was reported on a biweekly basis on any combination of 10-and 12-month contract years in such one or three-year period, the final average compensation or last year's salary period to death or retirement shall be determined on a proportional basis.

(f) The biweekly pay periods for which no contributions were made shall not be used in the calculation with the exception of the pay periods cited in (d) above.

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

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

Section was "Biweekly salary computation; retirement and death benefits (final compensation or last year's salary)". In (c), deleted "who are reported biweekly" following "employees".

17:1-7.5 Disability applications; priorities

(a) When the Medical Review Board has made a specific recommendation that can be acted upon by the Board or Commission, the Disability Review Section will prepare sufficient copies and forward to the Secretaries of the respective retirement systems those cases that are ready for presentation to the Board or Commission.

(b) The priority in forwarding the cases to the Secretaries of the respective retirement systems shall be in the order of the Boards' or Commission's regular meeting schedule.

(c) If the Medical Review Board has not given a specific medical recommendation upon which the Board or Commission may act, the case will not be forwarded to the Secretary of the retirement system, but the Disability Review Section will proceed in accordance with the advice of the Medical Review Board to obtain additional information needed by the Board or Commission to render a medical recommendation.

17:1-7.6 Medical examinations; out-of-State

(a) The retirement system may arrange medical examinations, for members who live out-of-State, with physicians located in the vicinity of the member's place of residence.

(b) In the event the Board or Commission contemplates the denial of a disability claim based on an out-of-State physician's medical report, the employee will be required to be examined by a physician selected by the Division.

(c) The independent medical examiner's report and all related data will be reviewed by the Board or Commission to determine whether the member's application for disability benefits will be approved.

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

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

In (b), deleted "of Pensions and Benefits" following "Division".

17:1-7.7 Post-retirement employment; employer certification; break-in-service—10-month members

(a) Employers shall certify on the Certification of Service and Final Salary form that the retiring employee has terminated all service.

(b) Members employed on a 10-month schedule who retire as of July 1st and return to the same, or another 10-month position within the same pension system, prior to October 1st of the same year are not considered to have a bona fide retirement. Ten-month members who retire effective July 1st and return to 10-month employment the following September shall be deemed not to have a valid break-in-service for retirement purposes.

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

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

Section was "Post-retirement employment; employer certification". Inserted the designation (a); and added (b).

17:1-7.8 Employer resolution; involuntary disability application

Applications for the involuntary disability retirement of an employee of a local employer must be accompanied by a resolution of the governing body, or in the case of a State employee, by a letter from the State department head, certifying that the employee is disabled and unable to perform the employee's regular or assigned duties.

17:1-7.9 Workers' compensation; reduction of retirement allowance

(a) A member who retires on an accidental disability retirement under the provisions of the applicable statutes governing the various State-administered retirement systems and who receives periodic benefits under the workers' compensation law after the date of retirement shall be subject to a reduction in the pension portion of the member's retirement allowance in the amount of the periodic benefits received after the date of retirement.

1. The reduction shall be a dollar-for-dollar reduction in the pension portion of the retirement allowance in the amount of the periodic benefits for the time period for which the periodic benefits are received.

2. If the retiree receives a retirement allowance without reduction and periodic benefits under the workers' compensation law for any time period after the date of retirement, the retiree shall repay to the retirement system

the amount of the pension portion of the retirement allowance, which should have been subject to reduction under the applicable statute and this rule. If the retiree is unable to make payment in one sum, repayment may be scheduled over a period not to exceed five years. Regular interest, as defined by N.J.S.A. 43:15A-6n, 18A:66-2m, 43:16A-1(9), 53:5A-3p and 43:6A-3n, shall apply to all such repayment schedules. Any other schedule of repayment shall be referred to the Board of Trustees for consideration. In the event of the death of the retiree before full repayment of the amount required under this rule, the remaining balance shall be deducted from any death benefits payable on behalf of the retiree.

3. The reduction under this rule shall not affect the retiree's pension adjustment benefits or survivor benefits that may be payable upon the death of the retiree except for any remaining balance due to the Division as provided in (a)2 above.

(b) Any retiree or beneficiary receiving pension adjustment benefits based upon a reduced retirement allowance due to receipt of periodic workers' compensation benefits shall be entitled to receive pension adjustment benefits based upon the full retirement allowance.

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

In (a)2, inserted a comma following the second occurrence of "allowance", deleted the former second sentence and inserted the current second through fourth sentences.

17:1-7.10 Ordinary disability applications; medical examinations

(a) Applicants for ordinary disability retirement shall submit with their applications all the medical information they can supply relative to their disability, including reports of their personal physicians and consulting physicians, hospital records, diagnostic test results, and any other medical information which would assist the Medical Review Board and the Board or Commission of the retirement system in determining eligibility of the applicants for disability retirement. The Disability Review Section shall forward the applications and the accompanying medical information to the Medical Review Board.

(b) If the medical information supplied by the applicant is sufficient for the Medical Review Board to make a medical recommendation, it shall return the case to the Disability Review Section with its recommendation. If the Medical Review Board deems that the medical information supplied by the applicant is not sufficient for it to make a medical recommendation, it shall advise the Disability Review Section to arrange to have the applicant examined by a physician or physicians under contract with the Division to perform disability examinations, or to obtain additional information needed to make its medical recommendation.

(c) The Board or Commission, which governs the pension fund or retirement system may request that an applicant be

examined or reexamined by a physician or physicians under contract with the Division or that additional information be obtained, if it deems that the medical information available is insufficient to make a decision on the eligibility of the applicant for ordinary disability retirement.

(d) A member filing for a disability retirement shall not file a separate application for any other type of retirement while the disability application is pending.

(e) If a disability retirement application is denied by the Board and the applicant qualifies for any other retirement benefit, the applicant will be required to submit a separate application for retirement. If the applicant submits the separate application for retirement within 30 days of the Board's decision, the applicant may retain the retirement date designated on the disability retirement application.

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

In (b), deleted "of Pensions and Benefits" following "Division"; in (c), inserted a comma following "Commission" and deleted "of Pensions and Benefits," following "Division"; and added (d) and (e).

17:1-7.11 Waiver

(a) Application for waiver in whole or part by a retiree or beneficiary who is eligible to receive the increased allowance shall be made at least 30 days prior to the desired effective date on a form required by the Division and shall be effective on the first day of a subsequent month.

(b) A waived benefit may be reinstated by application to the Division prior to the reinstatement date and shall be effective on the first of the month subsequent to the notice of cancellation of the waiver. There shall be no retroactive payments of any benefits waived thereto.

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

In (a) and (b), deleted "of Pensions and Benefits" following "Division".

SUBCHAPTER 8. PENSION ADJUSTMENT PROGRAM

17:1-8.1 Employer payments; multiple enrollees

The liability of the several employers in the case of multiple enrollees (a pensioner receiving benefits from a retirement system on the basis of several positions covered by the same system) will be prorated on the basis of the final salaries reported to the system prior to retirement.

17:1-8.2 Employer payments; delinquencies

(a) The Division will inform all retirees and beneficiaries of the reason for the suspension of payments.

(b) Retroactive adjustments will be made once the employer's appropriation has been paid.

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

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

In (a), deleted "of Pensions and Benefits" following "Division".

17:1-8.3 Return to public employment; pension adjustments

(a) When a retiree returns to public employment to a position covered by the same retirement system from which he or she retired and subsequently retires from the post-retirement employment, each retirement will be treated separately for pension adjustment purposes.

(b) The benefit year for each retirement will be the initial year in which the retirement is effective and the member shall satisfy the 24-month waiting period for each retirement before the pension adjustment benefits may be received for that retirement.

(c) If a member was receiving pension adjustment benefits at the time that the initial retirement was cancelled due to the post-retirement employment, he or she shall begin to receive pension adjustment benefits based upon the initial retirement immediately upon the reinstatement of the initial retirement.

17:1-8.4 Employer payments

The employers shall review the detailed tabulations of retirees and beneficiaries provided with the invoice for employer liability submitted by the Division and shall report any corrections or revisions within 60 days of receipt of the invoice, otherwise invoices must be paid as submitted.

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

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

Deleted "of Pensions and Benefits" following "Division".

17:1-8.5 Calculation of cost-of-living adjustment (COLA) under P.L. 2002, c. 109

(a) The calculation for the increased benefit under P.L. 2002, c. 109 for all employees who retired prior to January 1, 2001, shall be done by the Division using the calendar year 2001 average Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers (CPI-W), U.S. City Average, All Items.

(b) The calculation for the increased benefit under P.L. 2002, c. 109 for all employees who retired effective January 1, 2001 or thereafter shall be done using the average CPI for the calendar year in which the employee retired.

(c) The calendar year used to calculate the above increases for beneficiaries will be based upon the year in which the employee retired. If the employee retired prior to January 1, 2001, the provisions of (a) above would apply. If the employee retired effective January 1, 2001 or thereafter, the provisions of (b) above would apply.

(d) On or before November 15th of each year, the Division shall provide employers participating under the provisions of

P.L. 2002, c. 109 with a rate chart to be used to calculate the above increases.

New Rule, R.2003 d.474, effective December 15, 2003.

See: 35 N.J.R. 3744(a), 35 N.J.R. 5551(a).

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

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

Section was "Calculation of cost-of-living adjustment (COLA) under P.L. 2002, c.109". In (a) and (d), substituted "c. 109" for "c.109" and deleted "of Pensions and Benefits" following "Division"; and in (a), inserted a comma following the first occurrence of "2001".

SUBCHAPTER 9. UNEMPLOYMENT INSURANCE

17:1-9.1 Due dates for contributions and reports

(a) State employing subgroups participating in the Unemployment Insurance Program whose employees are not paid by the State Centralized Payroll Unit shall file the required data and reports of unemployment insurance contributions with the Division by the 15th day following the end of each calendar quarter, together with the remittance for the deductions taken from their eligible employees' salaries or wages. State Centralized Payroll will remit weekly an Unemployment Tax Register report, which summarizes the Unemployment Compensation information for covered employees in each of the biweekly payroll units. The register is due within five days of the date the payroll is prepared.

(b) The Division shall prepare a consolidated quarterly report of Unemployment Insurance contributions on behalf of the State Centralized Payroll Unit and other State employing subgroups. The consolidated report shall be filed with the Department of Labor by the last day of the month following the end of each calendar quarter. In addition, the Division shall remit to the Department of Labor on a quarterly basis the amount of reimbursable unemployment claim charges as specified on NJ Form B-187Q.

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

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

Inserted designation (a); in (a), deleted "of Pensions and Benefits" following "Division" and inserted a comma following "report"; and added (b).

17:1-9.2 Employer responsibility; benefit claims

State payroll units and subgroups shall respond with respect to benefit claims from the Division of Unemployment and Disability Insurance as well as the contractor designated by the State to handle unemployment claims and related activities.

17:1-9.3 Employer verification of claim payments

The designated contractor auditing the program will send the chief personnel or administrative officers a monthly report identifying employees who have filed claims and are in receipt of benefits. The reports must be reviewed by the employing unit to determine if they are correct and any

discrepancies must be brought to the attention of the contractor.

17:1-9.4 Employee eligibility for coverage

Determinations will be made by the Division of Unemployment and Disability Insurance relative to an employee's eligibility for coverage in the Unemployment Insurance Program.

17:1-9.5 Termination of employment; separation notice

All employing units must immediately, upon the termination of an employee's services, provide pertinent information regarding the employee's separation to the designated contractor.

17:1-9.6 Designated contractor

A contractor will be designated to develop and maintain a cost control program in accordance with the terms of the contract awarded by the State. The Division will coordinate the contractor's activities with respect to State employing units and review quarterly reports of claims activity prepared by the contractor.

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

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

Deleted "of Pensions and Benefits" following "Division".

SUBCHAPTER 10. SOCIAL SECURITY

17:1-10.1 Social Security referendum

(a) As the provisions of P.L. 1956, c.169 contemplate the termination of an entire pension fund and the transfer of its assets, liabilities and membership to the Public Employees' Retirement System upon a successful referendum on the issue of Social Security coverage by a majority vote, when the referendum involves the use of a divided system approach in accordance with the provisions of P.L. 1980, c.86, all of the provisions of P.L. 1956, c.169, shall apply except on a pro rata basis.

(b) Unless the pension fund is terminated in its entirety, the pensions and other benefits granted shall be continued by the pension fund. As the pension fund is not terminated in whole, the actuary shall calculate the liability of each employer only for persons becoming members of the Public Employees' Retirement System, taking into account the pro rata value of assets and liabilities which are transferred to the Public Employees' Retirement System.

(c) As the use of a divided system approach may not result in the termination of the pension fund, the members of the pension fund who are already covered by Social Security and who are not eligible to vote in the referendum shall also be permitted to enroll in the Public Employees' Retirement

System on the same optional basis and to the same extent and with the same limitations as those who voted in favor of Social Security coverage.

17:1-10.2 Federal-State agreement; modifications

All modifications of the Federal-State agreement are prepared by the Division and subject to review by the Attorney General's office.

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

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

Deleted "of Pensions and Benefits" following "Division".

17:1-10.3 Benefit and claim issues

All benefit and claim issues are the responsibility of the Federal Social Security Administration.

17:1-10.4 Social Security coverage; excluded services

If an employer had previously excluded services which the employer subsequently wishes to cover, the employer shall be required to cover all previously excluded services in order to avoid the issue of discrimination against any particular group of eligible employees.

SUBCHAPTER 11. VOLUNTEER EMERGENCY-WORKERS SURVIVORS PENSION

17:1-11.1 Definitions

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

"Child" means a deceased volunteer firefighter's, emergency medical technician's, or first aid or rescue squad worker's unmarried child or children who are:

1. Under the age of 18;
2. Eighteen years of age or older and enrolled in a secondary school;
3. Under the age of 24 and enrolled in a degree program in an institution of higher education for at least 12 credit hours in each semester; or
4. Of any age who, at the time of the volunteer emergency-worker's death, is disabled because of a mental or physical incapacity, is unable to do any substantial, gainful work because of the disability, and the disability has lasted or can be expected to last for a continuous period of not less than 12 months, as certified by a licensed medical doctor.

"Division" means the Division of Pensions and Benefits, the agency charged by the Treasurer with responsibility for administering the Volunteer Emergency-Workers Survivors Pension.

“First aid” or “rescue squad” means any duly incorporated first aid and emergency or volunteer ambulance and rescue squad association providing volunteer public first aid, ambulance or rescue services within the municipality.

“Dependent parent(s)” means the parent of the volunteer emergency-worker who is receiving at least one-half of his or her support from the volunteer emergency-worker in the 12-month period immediately preceding the volunteer emergency-worker’s death in the course of volunteer service. The dependency of such a parent will be considered terminated by marriage of the parent subsequent to the death of the volunteer emergency-worker.

“Survivor’s pension” means the benefit payable pursuant to N.J.S.A. 43:12-28.1.

“Volunteer emergency worker” means a volunteer firefighter, emergency medical technician, or first aid or rescue squad worker who has died as the result of injuries sustained in the course of performance of duty, not as a result of willful negligence, after January 1, 2000.

“Widow” means the woman to whom the volunteer emergency-worker was married on the date of his death and who has not remarried.

“Widower” means the man to whom the volunteer emergency-worker was married on the date of her death and who has not remarried.

17:1-11.2 Survivor’s pension payable pursuant to N.J.S.A. 43:12-28.1

(a) The survivor’s pension pursuant to N.J.S.A. 43:12-28.1 shall equal \$15,000 annually and shall be paid to the eligible widow or widower monthly until their death or remarriage, or, should there be no surviving widow or widower, to the eligible child or children of the volunteer emergency-worker split equally among the children.

(b) If the volunteer emergency-worker’s surviving widow or widower remarries or dies leaving an eligible child or children, a survivor’s pension equal to a total of \$10,000 annually shall be paid to the child or children, split equally among the children.

(c) If the volunteer emergency-worker leaves no surviving widow, widower or child, a survivor’s pension equal to a total of \$5,000 annually shall be paid to the dependent parent(s).

17:1-11.3 Eligibility for a survivor’s pension

(a) The governing body of any municipality served by the volunteer emergency-worker shall, by resolution, determine the eligibility for a survivor’s pension of the widow, widower, children or parent of the volunteer emergency-worker who has died as the result of injuries sustained in the course of performance of duty, not as a result of willful negligence,

as a member of the volunteer fire company or first aid or rescue squad on or after January 1, 2000.

(b) If the volunteer emergency-worker is sponsored by a county, the governing body of the municipality being served by the volunteer emergency-worker at the time of the incident resulting in the volunteer emergency-worker’s death shall, by resolution, determine the eligibility for a survivor’s pension of the widow, widower, children or parent of any volunteer emergency-worker who has died as the result of injuries sustained in the course of performance of duty, not as a result of willful negligence, within the borders of the municipality after January 1, 2000.

(c) The governing body of any municipality served by a volunteer fire company or first aid or rescue squad duly incorporated within the municipality shall, by resolution, determine the eligibility for a survivor’s pension of the widow, widower, children or parent of any volunteer emergency worker who has died as the result of injuries sustained in the course of performance of duty, not as a result of willful negligence, outside of the borders of the municipality after January 1, 2000.

(d) The municipal governing body may determine that the widow, widower, children or parent of a volunteer emergency worker is eligible for a survivor’s pension whenever a volunteer dies while responding to, preparing for, during or returning from an emergency to which he or she was properly dispatched.

17:1-11.4 Application for a survivor’s pension

(a) After the municipal governing body determines, by resolution, the eligibility of a widow, widower, children or parent for a survivor’s pension, a certified copy of the resolution shall be filed by the municipal clerk with the Division within 10 days of adoption.

(b) The resolution must be accompanied by a certified death certificate of the volunteer emergency-worker, a copy of the accident or police report, and an application for the survivor’s pension. The application must be completed in all respects and filed with the Division on or before the date benefits are to begin. The application must include a copy of the marriage certificate in the case of a widow or widower, a copy of the birth certificate(s) in the case of a child or children, or a copy of the volunteer emergency worker’s tax return indicating the dependency of the parent(s). The child’s birth certificate must name the volunteer emergency worker as the child’s parent, unless the child was legally adopted, in which case, a copy of legal documentation evidencing the adoption is required.

(c) The Division shall provide for payment of the survivor’s pension, starting in January of the calendar year following the year of death of the volunteer emergency worker or the year next following the year in which P.L. 2003, c.134 (N.J.S.A. 43:12-28.1) was enacted, whichever is later.

(d) If the municipal governing body determines, by resolution, the eligibility of a widow, widower, children or parent for a survivor's pension, after the January of calendar year in which the benefit should have started, the Volunteer Emergency-Workers Survivors Pension shall be paid on a prospective basis only. Eligibility for benefits shall begin with the first month following the receipt of the resolution.

17:1-11.5 Ineligibility to receive two survivor's benefits

A survivor who is eligible for accidental death benefits under another State-administered retirement system cannot receive a survivor's pension through the Volunteer Emergency-Workers Survivors Pension for the same event.

17:1-11.6 Survivor pension benefits

(a) Payment of benefits to eligible survivors shall become effective February 1st, which is payment for January, of the calendar year following the year of the date of death of the volunteer emergency worker. Payment in the amount of 1/12 of the annual benefit shall be made on a monthly basis. Payment shall terminate on the first of the month subsequent to the date in which the survivor no longer qualifies for the benefit.

(b) Eligibility for the payment of benefits to eligible children or parents after the remarriage or death of the widow or widower shall begin on the first of the month subsequent to the date of the widow or widower's death or remarriage. A new application must be filed with the Division before benefits may begin.

SUBCHAPTER 12. CENTRAL PENSION FUND

17:1-12.1 Application required

For retirement of State employees under the Veterans Retirement Act, N.J.S.A. 43:4-1 et seq., or the Heath Act, N.J.S.A. 43:5-1 et seq., an application on a form provided by the Division must be prepared by the employee, certified by the employing agency and filed with the Division.

Amended by R.2009 d.25, effective January 5, 2009.
See: 40 N.J.R. 4928(a), 41 N.J.R. 277(a).
Deleted "of Pensions and Benefits" following "Division".

17:1-12.2 Disability certification form

Where disability is the cause for the pension, a certification of the disability by a physician on a form provided by the Division must be filed with the Division.

Amended by R.2009 d.25, effective January 5, 2009.
See: 40 N.J.R. 4928(a), 41 N.J.R. 277(a).
Deleted "of Pensions and Benefits" following "Division".

17:1-12.3 Withholding forms

A W-4P, "Withholding Certificate for Pension or Annuity Payments," must be filed with the Division.

Amended by R.2009 d.25, effective January 5, 2009.
See: 40 N.J.R. 4928(a), 41 N.J.R. 277(a).
Deleted "of Pensions and Benefits" following "Division".

17:1-12.4 Surrogate's certification

(a) When a pensioner dies and a residual benefit is payable, the claimant shall file an appropriate certification from the Surrogate's Office with the Division.

(b) No such certification will be necessary in the case of the Heath Act where there is a named beneficiary surviving the pensioner.

(c) A death certificate and a form for payment will also be required.

Amended by R.2009 d.25, effective January 5, 2009.
See: 40 N.J.R. 4928(a), 41 N.J.R. 277(a).
In (a), deleted "of Pensions and Benefits" following "Division".

17:1-12.5 Last check benefit

After July 19, 2004, and pursuant to N.J.S.A. 43:3B-2A, a cost-of-living adjustment shall be payable to the estate of a pensioner who is receiving a benefit under the provisions of N.J.S.A. 43:4-1 et seq., 43:5-1 et seq., or 43:5A-1 et seq., for the entire month in which the pensioner dies.

New Rule, R.2004 d.266, effective July 19, 2004.
See: 36 N.J.R. 1734(a), 36 N.J.R. 3414(a).
Amended by R.2009 d.25, effective January 5, 2009.
See: 40 N.J.R. 4928(a), 41 N.J.R. 277(a).
Inserted commas following "2004" and "43:5A-1 et seq.", and deleted the last sentence.

SUBCHAPTER 13. NEW JERSEY STATE EMPLOYEES TAX SAVINGS PROGRAM (TAX\$AVE)

17:1-13.1 Establishment of plan

State employees eligible to participate in the State Health Benefits Program, except those part-time employees participating due to the provisions of P.L. 2003, c.172 (N.J.S.A. 52:14-17.33a), are eligible to participate in the New Jersey State Employees Tax Savings Program (Tax\$ave) set forth in this subchapter. In each calendar year, each employee may participate in one or more of the plan options described in this subchapter.

Amended by R.2004 d.104, effective March 15, 2004.
See: 35 N.J.R. 5349(a), 36 N.J.R. 1358(a).
Substituted "Employees Tax Savings Program (Tax\$ave)" for "Employees' Cafeteria Plan".

17:1-13.2 Unreimbursed medical spending account

(a) Each employee may elect to reduce his or her salary, through regular payroll deductions, by a specified dollar amount to create an unreimbursed medical spending account (UMSA) to provide for the direct payment or reimbursement by the State, or its plan administrator, of any or all medical and dental expenses not reimbursed, or only partially reimbursed, under the employee's health benefit plan or any other benefit plan, and considered by the Internal Revenue Service (IRS) to be a tax deductible medical expense. Also eligible for reimbursement are certain expenses for medical care, that is, costs for diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body, that the IRS determines may be reimbursed by an UMSA even though these expenses are not deductible for the purpose of itemizing medical expenses for Federal taxes.

1. Examples of eligible tax deductible medical expenses are orthodontia, surgery (excluding cosmetic surgery), and the deductible portion of medical and dental expenses under the employee's health benefits plan, as well as coinsurance amounts.

2. Eligible expenses include those incurred by the employee's eligible dependents.

3. Premium contributions required for any medical or dental coverage are paid through premium conversion and not from the unreimbursed medical spending account. Such premium contributions for the State Health Benefits Program coverage do not qualify as eligible medical expenses under the UMSA. Likewise, premium contributions paid by the employee's eligible dependents for health care insurance coverage outside the State Health Benefits Program do not qualify as eligible UMSA medical expenses.

Amended by R.2004 d.104, effective March 15, 2004.
See: 35 N.J.R. 5349(a), 36 N.J.R. 1358(a).

In (a), rewrote the introductory paragraph and inserted "tax deductible medical" preceding "expenses are orthodontia" in 1.

Amended by R.2006 d.65, effective February 21, 2006.
See: 37 N.J.R. 3631(a) 38 N.J.R. 1225(b).

In (a)1, substituted "excluding" for "including."
Amended by R.2009 d.25, effective January 5, 2009.

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

In (a)3, substituted "Premium" for "Note that premium" and inserted the last two sentences.

17:1-13.3 Premium option plan

If an employee selects medical or dental coverage requiring the payment of a premium contribution, the employee's salary will be reduced by the amount of the required premium contribution as part of the plan, and the employee will not have to request this benefit. If, however, an employee does not wish to participate in the premium option plan, the employee must file a declination of premium option plan form with the employee's benefits administrator. An employee's participation in the premium option plan terminates on the employee's last day of employment.

17:1-13.4 Dependent care spending account

Each employee may elect to reduce his or her salary, through regular payroll deductions, by a specified dollar amount to create a dependent care spending account to provide for the direct payment or reimbursement by the State, or its plan administrator, of any or all dependent care expenses as provided in § 129 of the Internal Revenue Code, 26 U.S.C. § 129. Examples of eligible expenses are expenses incurred by the employee for the care of dependents under the age of 13 and dependents, including the employee's spouse, who are physically or mentally incapable of self-care.

17:1-13.5 Salary reduction elections

(a) The plan shall operate on a calendar-year basis, with each employee permitted to make a one-time salary-reduction election for the calendar year. The initial plan year shall commence on June 28, 1996, and shall conclude on December 31, 1996.

(b) Salary-reduction elections shall be made during enrollment periods announced by the Division and shall be submitted to the plan administrator. An employee shall not be permitted to make salary-reduction elections once the enrollment period for the plan year has ended unless the employee experiences a qualifying change in family circumstances as recognized under § 125 of the Internal Revenue Code, 26 U.S.C. § 125. A new employee shall be permitted to make a salary-reduction election for a period of 30 days following the employee's hire date. An employee who becomes eligible to participate in the plan following the end of the enrollment period shall also have 30 days from the employee's eligibility date to make a salary-reduction election. Information about the plan administrator and election forms shall at all times be available from the Division.

(c) In each calendar year, an employee establishing an unreimbursed medical spending account must elect a salary reduction amount of at least \$100.00 but not more than \$2,500 for this account.

(d) In each calendar year, an employee establishing a dependent care spending account must elect a salary reduction amount of at least \$250 but not more than \$5,000 (\$2,500 if married, filing separately) for this account.

(e) Once made, a salary-reduction election for a given calendar year is irrevocable; provided, however, that modification or revocation of an election will be permitted if allowable under § 125 of the Internal Revenue Code, 26 U.S.C. § 125, as in certain circumstances involving a change in family status.

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

In (b), deleted "of Pensions and Benefits" following "Division" twice and inserted the second, third, and fourth sentences; and in (c), substituted "\$100.00" for "\$100" and "\$2,500" for "\$2,000".

17:1-13.6 Claims for payment from plan accounts

(a) Claims for payment of expenses eligible for payment from plan accounts shall be submitted to the plan administrator. Information about the plan administrator and claim forms are available from the Division.

(b) In each plan year, the total payments from a plan account shall not exceed the total salary reduction amount elected by the employee for that account for that plan year. Under the unreimbursed medical spending account (UMSA), the employee will be reimbursed for the maximum amount of the elected total contribution to the plan, whether or not the deductions from the employee's pay have totaled the amount of the filed claim. Conversely, under the Dependent Care Spending Account, the maximum amount of reimbursement available to the employee during the period of coverage shall be the amount posted to the employee's account at the time the employee files a reimbursement claim.

(c) The program period is based on a calendar year from January 1 to December 31; however, the plans have adopted the 2½ month grace period rule permitted under the Federal tax code that extends the period of time for incurring qualifying expenses through March 15 of the following year. The employee may continue to submit claims for expenses incurred in the plan year through April 30 of the following year.

(d) To qualify for reimbursement from an employee's plan account, an eligible expense must be incurred during the plan year for which the employee's election was made, or during the 2½ month period immediately following the end of the calendar year, from January 1 through March 15. Expenses incurred before an employee becomes eligible to participate in the plan, for periods that an employee is not contributing to the plan, or after the employee's termination date are not eligible for reimbursement through the employee's plan account.

Amended by R.2006 d.65, effective February 21, 2006.
See: 37 N.J.R. 3631(a) 38 N.J.R. 1225(b).

In (b) and (c), substituted "plan" for "calendar"; in (d), deleted sentence pertaining to plan accounts; rewrote the section.

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

In (a), substituted "are" for "shall at all times be" and deleted "of Pensions and Benefits" following "Division"; in (b), inserted the last two sentences; and rewrote (c).

17:1-13.7 Forfeiture of account balances

In the event that the amount elected by an employee to fund a plan account in a given plan year exceeds the employee's total eligible claims for expenses incurred in that plan year, including the 2½ month grace period immediately following the end of the calendar year (as submitted no later than April 30 of the following calendar year), and eligible for payment from the plan account, the balance in the plan account shall be forfeited to the State.

Amended by R.2006 d.65, effective February 21, 2006.
See: 37 N.J.R. 3631(a) 38 N.J.R. 1225(b).

Substituted "plan" for "calendar" throughout and added "including the 2½ month grace period immediately following the end of the calendar year."

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

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

Substituted "April 30" for "March 31".

17:1-13.8 Compliance with Internal Revenue Code

The plan is intended to comply in all respects with the provisions of § 125 of the Internal Revenue Code, 26 U.S.C. § 125.

**SUBCHAPTER 14. THE NEW JERSEY STATE
EMPLOYEES COMMUTER TAX SAVINGS
PROGRAM (COMMUTER TAX\$AVE PROGRAM)**

17:1-14.1 Establishment of plan

State employees eligible to participate in the State Health Benefits Program, except those part-time employees participating due to the provisions of P.L. 2003, c. 172 (N.J.S.A. 52:14-17.33a), are eligible to participate in the New Jersey State Employees Commuter Tax Savings Program, which shall be referred to as the Commuter Tax\$ave Program, set forth in this subchapter. The Division has been charged by the Treasurer with responsibility for administering the Commuter Tax\$ave Program. In each month, an employee, but not the employee's spouse or domestic partner, may participate in one or both of the plan options available; mass transit expenses and commuter parking expenses.

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

Substituted "c. 172" for "c.172" and deleted "of Pensions and Benefits" following "Division".

17:1-14.2 Enrollment in and deductions for the Commuter Tax\$ave Program

(a) Each employee may elect to reduce his or her salary, through monthly payroll deductions, by a specified dollar amount which shall not be less than \$15.00 per month in one plan option, to create a Commuter Tax\$ave Program account in exchange for the payment by the State, or its plan administrator, of a qualified transportation fringe benefit, as defined in, and otherwise consistent with the provisions and limits of Section 132 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 132.

(b) Monthly deductions shall be taken by Centralized Payroll in the first pay period of the month prior to the benefit month. State colleges and universities may establish during the month prior to the benefit month, when deductions will be taken.

(c) The amount of any reduction in an employee's salary for the purpose of contributing to the payment of the qualified transportation fringe benefit shall continue to be treated as regular compensation for all other purposes, including the

calculation of pension contributions and the amount of any retirement allowance, but up to the limit permitted by the Federal Internal Revenue Code, shall not be included in the computation of Federal, Social Security or Medicare taxes withheld from the employee's salary.

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

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

In (b), substituted "colleges and universities" for "Colleges and Universities", deleted "when," following "establish" and inserted "when" preceding "deductions".

17:1-14.3 Salary reduction elections

(a) The Commuter Tax\$ave Program shall operate on a month-to-month basis.

(b) An employee may make monthly changes in the amount elected as a deduction for the Commuter Tax\$ave Program. Deductions shall remain in effect at the same amount until the employee makes a change or leaves payroll.

(c) An employee may elect to have deductions for mass transit expenses, commuter parking expenses, or both.

(d) A formal election is required. The election must include the date of election, amount of reduction, and applicable benefit period (month).

17:1-14.4 Reimbursement of qualified transportation fringe benefit

(a) Pre-tax salary reduction amounts will be used to purchase benefit products (transit passes, transit vouchers, etc.) that can be used to pay for mass transit and parking expenses.

(b) Pre-tax salary reduction amounts for qualified parking expenses will be reimbursed to employees upon the submission of a claim form and documentation to substantiate incurred expenses.

(c) Reimbursement claims for parking expenses must be submitted within 180 days of the date the expense is incurred.

(d) Refunds of unused election amounts are not permitted as described in N.J.A.C. 17:1-14.6; however, unclaimed amounts can be carried over month-to-month and applied toward future months' transit and parking expenses.

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

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

In (d), deleted "parking" following "unused", inserted "as described in N.J.A.C. 17:1-14.6", and substituted "carried over month-to-month and applied toward future months' transit and parking expenses" for "rolled over to a subsequent benefit month as described in N.J.A.C. 17:1-14.6".

17:1-14.5 Claims for payment from plan accounts

(a) Claims for payment of expenses eligible for payment from the Commuter Tax\$ave Program account shall be submitted to the plan administrator with parking or park-and-

ride receipts. Information about the plan administrator and claim forms shall at all times be available from the Division.

(b) In each month, the total payments from a Commuter Tax\$ave Program account shall not exceed the prescribed Federal pre-tax monthly election limit.

(c) Commuter Tax\$ave Program accounts may not be used to pay expenses incurred prior to the employee's participation in the account or for periods that an employee is not contributing to the Program, except as permitted by Section 132 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 132.

(d) Commuter Tax\$ave Program accounts may only be used to pay for eligible commuter expenses incurred by the employee.

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

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

In (a), deleted "of Pensions and Benefits" following "Division"; and in (b), substituted "prescribed Federal pre-tax monthly election limit" for "total salary reduction amount elected by the employee for that account for that month".

17:1-14.6 Forfeiture of account balances

(a) In accordance with Section 132 of the Federal Internal Revenue Code of 1986, 26 U.S.C. §132, refunds of unused election amounts to the employee are prohibited. If an employee terminates from the Commuter Tax\$ave Program and has an unused account balance on the effective termination date, such unclaimed balance shall be forfeited to the State.

(b) In the event the amount elected by an employee to fund a Commuter Tax\$ave Program Commuter Parking Reimbursement account in a given month exceeds the employee's total claims for Commuter Parking Reimbursement expenses incurred in that month and eligible for payment from the Commuter Tax\$ave Program Commuter Parking Reimbursement account, the unused balance will roll forward and shall be available to cover qualifying expenses incurred in a future benefit month.

(c) Cash reimbursement for qualified parking expenses through the plan's CashBack program must be requested within 180 days after the expense has been incurred by the employee. If an employee incurs qualifying expenses to cover the employee's benefit election in a given month but the employee fails to file a claim for reimbursement within 180 days of the incurred expense, it shall no longer qualify as an eligible reimbursable expense from a Commuter Parking Reimbursement Account. However, the funds not claimed timely shall roll forward and may be used for reimbursement of future eligible parking expenses that are submitted within 180 days of the date incurred.

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

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

Section was "Forfeiture of account balances".

(2) The payment is for unused accrued bona fide sick, vacation, or other leave that the member would have been able to use if employment had continued; or

(3) Payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the member at the same time if the member had continued employment with the employer and only to the extent that the payment is includible in the member's gross income.

(A) Any payments not described in this subparagraph are not considered compensation if paid after severance from employment, even if they are paid within two-and-a-half months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service within the meaning of 26 U.S.C. § 414(u)(1) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

(B) An employee who is in qualified military service within the meaning of 26 U.S.C. § 414(u)(1) shall be treated as receiving compensation from the employer during such period of qualified military service equal to:

(I) The compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service.

(II) If the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the 12-month period immediately preceding the qualified military service or, if shorter, the period of employment immediately preceding the qualified military service.

(III) Back pay, within the meaning of 26 CFR 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(4) If the annual additions for any member for a plan year exceed the limitation under 26 U.S.C. § 415(c), the excess annual addition shall be corrected

as permitted under the Employee Plans Compliance Resolution System or similar IRS correction program.

(5) For limitation years beginning on or after January 1, 2010, a member's compensation for purposes of this subsection shall not exceed the annual limit under 26 U.S.C. § 401(a)(17).

17:1-17.8 Normal retirement age for the Public Employees' Retirement System

(a) In addition to any other vesting provided by State law and in accordance with Internal Revenue Service guidance, a member's benefit is nonforfeitable upon attainment of the normal retirement age, which is as follows:

1. For PERS General:

i. Age 60 for persons who become members before November 2, 2008 (Tier 1 and Tier 2);

ii. Age 62 for persons who become members on or after November 2, 2008 (Tier 3 and tier 4); and

iii. Age 65 for persons who become members on or after June 28, 2011;

2. For Law Enforcement Officers, age 55;

3. For Prosecutors, age 55;

4. For Legislators, age 60;

5. For Workers Compensation judges, age 60; and

6. For Veterans, age 55 (age 60 for persons who are members on January 2, 1955).

17:1-17.9 Normal retirement age for the Teachers' Pension and Annuity Fund

(a) In addition to any other vesting provided by State law and in accordance with Internal Revenue Service guidance, a member's benefit is nonforfeitable upon attainment of the normal retirement age, which is as follows:

1. Age 60 for persons who become members before November 2, 2008 (Tier 1 and Tier 2);

2. Age 62 for persons who become members on or after November 2, 2008 (Tier 3 and Tier 4); or

3. Age 65 for persons who become members on or after June 28, 2011.

17:1-17.10 Normal retirement age for the Police and Firemen's Retirement System

In addition to any other vesting provided by State law and in accordance with Internal Revenue Service guidance, a member's benefit is nonforfeitable upon attainment of age 55, which is the normal retirement age under the retirement system.

17:1-17.11 Normal retirement age for the State Police Retirement System

In addition to any other vesting provided by State law and in accordance with Internal Revenue Service guidance, a member's benefit is nonforfeitable upon attainment of age 55, which is the normal retirement age under the retirement system.

17:1-17.12 Normal retirement age for the Judicial Retirement System

In addition to any other vesting provided by State law and in accordance with Internal Revenue Service guidance, a member's benefit is nonforfeitable upon attainment of age 60, which is the normal retirement age under the retirement system.

17:1-17.13 Actuarial factors for the various retirement systems

(a) The table of annuity values and option factors for use in calculating benefits for the applicable retirement system, as required by State law, shall be the tables prepared by the actuary at the direction of the board of trustees and adopted by the board of trustees by resolution, in accordance with N.J.S.A. 43:3C-13.

(b) The "Table of Annuity Values and Option Factors October, 2005" for the Public Employees' Retirement System of New Jersey and the Teachers' Pension and Annuity Fund of New Jersey is incorporated herein by reference, and is applicable to the New Jersey Public Employees' Retirement System, the New Jersey Teachers' Pension and Annuity Fund, and the New Jersey Judicial Retirement System. The table is available by contacting the Division of Pensions and Benefits at P.O. Box 295, Trenton, NJ 08625-0295.

17:1-17.14 Retiree reemployment

(a) Definitions. For purposes of this section, the following words and terms shall have the following meanings:

1. "Defined benefit plans" means the following: Public Employees' Retirement System, Teachers' Pension and Annuity Fund, Police and Firemen's Retirement System, State Police Retirement System, Judicial Retirement System, Prison Officers' Pension Fund, and Consolidated Police and Firemen's Pension Fund.

2. "Bona fide severance from employment" means a complete termination of the employee's employment relationship with the employer for a period of at least 180 days. The following does not constitute a complete termination of the employee's relationship with the employer:

- i. Employment or reemployment in a part-time position;
- ii. Employment or reemployment in a position that is not covered by the Defined Benefit Plan;

iii. A change in title;

iv. Employment or reemployment as a contract employee, a leased employee, or an independent contractor; or

v. Termination of employment with a pre-arranged agreement for reemployment.

Federal Internal Revenue Service factors shall be used as guidance in determining whether an employment relationship exists. A mandatory retirement shall be treated as a bona fide severance from employment.

(b) Qualified plan status. In accordance with the N.J.S.A. 43:3C-18, the defined benefit plans are established as qualified governmental defined benefit plans in accordance with Internal Revenue Code Sections 401(a) and 414(d), or such other provision of the Federal Internal Revenue Code as applicable, regulations of the United States Department of the Treasury, and other guidance of the Federal Internal Revenue Service.

(c) Requirement for a bona fide severance from employment. In order to maintain qualified plan status, as set forth in (b) above, Federal law requires that a defined benefit plan pay retirement benefits to a member only when there is bona fide severance from employment unless both of the following conditions are met:

1. The member has attained normal retirement age under the defined benefit plan; and

2. A defined benefit plan provides for the distribution without a bona fide severance from employment (also referred to as an "in-service distribution"). As of March 9, 2012, none of the defined benefit plans provide for an in-service distribution. The Federal law requirement does not apply to disability benefits.

(d) In order to demonstrate that there has been a bona fide severance from employment in compliance with Federal law, each member and the member's employer shall certify as part of the application for a retirement benefit that the member has had a bona fide severance from employment with the employer as of specific date and that there is no pre-arranged agreement for that member to be reemployed by the employer as an employee, a contract employee, a leased employee, or an independent contractor. The certification shall be made under penalties of perjury.

(e) Investigation. In order to comply with Federal law, if an employee who has applied and commenced a retirement benefit is reemployed by the same employer (as used in this subsection, this term shall include the agencies of a single employer) within fewer than 180 days after the specified date of termination, the Division may, but is not required to, do the following:

1. Require the employee and employer to again certify that there was no prearranged agreement for the reemployment; and

2. Investigate the circumstances of the reemployment to determine if there was, in fact a bona fide severance from employment.

(f) If after investigation in (e) above, the Division determines that there was not a bona fide severance from employment, the Division may revoke the retirement of the member and require the repayment of benefits in order to protect the qualified status of the defined benefit plans in accordance with (b) above.

(g) As required by Federal law, the Division shall issue a Form 1099-R with respect to any retired member who receives a taxable distribution from the defined benefit plans. In order to fulfill its obligations under Federal law with respect to the defined benefit plans, the Division must identify those

retired members who may be subject to a premature distribution penalty (10 percent of the taxable amount of the benefit) because they have not attained age 59 1/2. In the case of a retired member who returns to employment with the same employer (as defined in (e) above) within the 180-day period specified in (e) above, and if the retired member has not attained age 59 1/2 during the time that some or all of distributions were made from the defined benefit plans, the Division shall code the Form 1099-R to indicate that the distribution is an "Early Distribution" and that no known exception from the penalty applies.

17:1-17.15 Defense of Marriage Act

For purposes of interpreting the New Jersey statutes and Administrative Code provisions that apply to the retirement systems, the term "spouse" shall be interpreted in accordance with the Federal Defense of Marriage Act to the extent required by that law and guidance issued by the Internal Revenue Service.