

## SUBCHAPTER 4. MEMBERSHIP

**17:3-4.1 Creditable compensation**

(a) The compensation of a member subject to pension and group life insurance contributions and creditable for retirement and death benefits in the Fund shall be limited to base salary, and shall not include extra compensation.

1. Forms of compensation that have been identified as extra compensation include, but are not limited to:

- i. Overtime;
- ii. Pay for extra work, duty or service beyond the normal work day, work year for the position, or normal duty assignment;
- iii. Bonuses;
- iv. Lump-sum payments for longevity, holiday pay, vacation, compensatory time, accumulated sick leave, or any other purpose;
- v. Any compensation which the employee or employer has the option of including in base salary;
- vi. Sell-backs, trade-ins, waivers, or voluntary returns of accumulated sick leave, holiday pay, vacation, overtime, compensatory time, or any other payment or benefit in return for an increase in base salary;
- vii. Individual retroactive salary adjustments where no sufficient justification is provided that the adjustment was granted primarily for a reason other than retirement;
- viii. Individual adjustments to place a member at the maximum of his or her salary range in the final years of service where no sufficient justification is provided that the adjustment was granted primarily for a reason other than retirement;
- ix. Increments or adjustments in recognition of the member's forthcoming retirement;
- x. Any form of compensation which is not included in the base salary of all employees in the same position or covered by the same collective bargaining agreement or employment;
- xi. Retroactive increments or adjustments made at or near the end of a member's service, unless the adjustment was the result of an across-the-board adjustment for all similarly situated personnel;
- xii. Any form of compensation which is not included in a member's base salary during some of the member's service and is included in the member's base salary upon attainment of a specified number of years of service;
- xiii. Compensation paid for coaching sports;
- xiv. Compensation paid for teaching summer school;
- xv. Compensation paid for performing clerical or other duties;
- xvi. Compensation in the absence of services;

xvii. Compensation paid for working during vacation periods;

xviii. Compensation paid for serving as a bedside instructor or for leading extracurricular activities; and

xix. Compensation paid for additional services performed during a normal duty assignment, which are not included in base salary.

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

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

(d) With respect to all claims for benefits, the Division shall investigate increases in compensation reported for credit, which exceed the reasonably anticipated annual compensation increases for members of the Fund based upon either the increase in the Consumer Price Index for the time period of the increases and the table of assumed salary increases recommended by the actuary and adopted by the Board or based on the averages of the regular increases in the employees' compensation preceding the periods in which the extra compensation was received. Those cases where a violation of the statute or rules is suspected shall be referred to the Board.

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

1. Require that a notarized statement under oath be obtained from the member's employer that the reported compensation was not granted primarily in anticipation of retirement, and conforms with the statutes and rules governing the TPAF;
2. Require an employer to provide any record or information it deems necessary for the investigation, including, but not limited to, collective bargaining agreements, employment contracts, ordinances, resolutions, minutes of public meetings (closed or open), job descriptions, salary histories, promotional lists or notices or any other record or information related to the increase in compensation; and
3. Refer any suspected submission of false information in violation of N.J.S.A. 18A:66-64, these rules, or other laws of the State of New Jersey to the Attorney General for review and initiation of criminal proceedings, if warranted.

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

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

1. A denial of credit for the extra compensation;
2. An audit of the retirees and the active employees of the employer to identify any additional cases of such extra compensation;
3. A return of contributions to the active members and retirees on the extra compensation without interest;
4. A recalculation of the retirement benefits of retirees to eliminate benefits based upon the extra compensation; and
5. Repayment to the system by the retiree of any benefits received based upon the extra compensation.

(h) A member shall receive service credit for that base salary received during the period of suspension in which the member is awaiting a determination by the Commissioner of Education as provided under N.J.S.A. 18A:6-14.

(i) To be creditable compensation for teaching a period during the regular contracted day, the compensation shall be offered to all eligible and certified employees in the same position or covered by the same collective bargaining agreement, reported in regular, periodic installments in accordance with the payroll cycle of the employer and not offered to employees in anticipation of retirement.

(j) A stipend may be considered credible compensation and subject to pension deductions for retirement credit if it:

1. Is included as part of the petitioner's regular payroll check; and
2. Represents duties not addressed in base compensation that are integral to the effective functioning of the school curriculum.

Amended by R.1973 d.49, effective February 14, 1973.

See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).

Amended by R.1981 d.30, effective January 27, 1981.

See: 12 N.J.R. 675(d), 13 N.J.R. 162(a).

(f) added.

Repeal and New Rule, R.2001 d.412, effective November 19, 2001.

See: 33 N.J.R. 2609(b), 33 N.J.R. 3907(c).

Section was "Creditable salary".

Amended by R.2008 d.94, effective April 21, 2008.

See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

Rewrote (a); in (d), deleted "of Pensions and Benefits" following "Division" and inserted a comma following "credit"; in (e)1, substituted "TPAF" for "Teachers' Pension and Annuity Fund"; rewrote (i); and added (j).

#### Law Review and Journal Commentaries

Pensions—Teachers. Steven P. Bann, 133 N.J.L.J. No. 11, 54 (1993).

#### Case Notes

That home instructors are not part of the regular teaching staff for purposes of attaining tenure under N.J.S.A. 18A:28-5 can be inferred from former N.J.A.C. 17:3-4.1(a)2xix (now N.J.A.C. 17:3-4.1(a)1xviii), which excludes home instructor income from earnings which are eligible for pension credit. *Donvito v. Board of Educ. of Northern Valley Reg'l High Sch. Dist.*, 387 N.J. Super. 216, 903 A.2d 508, 2006 N.J. Super. LEXIS 232 (App.Div. 2006), cert. denied, 188 N.J. 577, 911 A.2d 69, 2006 N.J. LEXIS 1740 (2006).

High school teachers acting as department chairpersons were not temporary employees so compensation received was creditable. *Siri v. Board of Trustees of Teachers' Pension and Annuity Fund*, 262 N.J. Super. 147, 620 A.2d 440 (A.D.1993).

Additional half-day of work performed by high school psychologist was not temporary so the extra salary was creditable for pension purposes. *Siri v. Board of Trustees of Teachers' Pension and Annuity Fund*, 262 N.J. Super. 147, 620 A.2d 440 (A.D.1993).

Merit increase not a bonus for pension calculation purposes. *Farrah v. Teachers' Pension and Annuity Fund*, 93 N.J.A.R.2d (TYP) 69.

Petition for pension credit for payment received for services rendered as high school department chairman denied based upon finding that payment did not take the form of salary and was classified as extra compensation in petitioner's employment contract (also citing former N.J.A.C. 17:3-29). *Bishop v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 4 N.J.A.R. 179 (1980).

#### 17:3-4.2 Leave with pay

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

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

Amended by R.1974 d.24, effective January 31, 1974.

See: 5 N.J.R. 426(d), 6 N.J.R. 124(a).

Amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Inserted paragraph identifiers; in (a), substituted "on the basis of such salary" for "for such leave" and added "from the date of the leave" following "six months"; in (b), neutralized gender references.

#### 17:3-4.3 School year members; 10 and 12 months

(a) Members whose salaries for a school year are considered as a full year's compensation shall be given service credit in the proportion that the time employed bears to the duration of the school year, but not more than one year's salary credit shall be given during any consecutive 12 months.

(b) Members whose contracts require them to work 10 months of the year and who are employed and are compensated for employment for the full normal school year by the board of education are entitled to receive 12 months of service credit. Members will not receive service credit for months during the normal school year when they are not actively employed and did not receive salary.

(c) A 12-month member is presumed to work each month of the fiscal year. Members shall not receive service credit for a month that a member does not work and is not on an approved paid leave of absence.

Amended by R.2005 d.394, effective November 21, 2005.

See: 37 N.J.R. 1928(a), 37 N.J.R. 4460(a).

In (a), substituted "Except as provided by N.J.A.C. 17:3-6.7, a" for "A"; rewrote (e).

Amended by R.2008 d.94, effective April 21, 2008.

See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

In (c), rewrote the last sentence; and in (e), inserted the last sentence.

#### Case Notes

Denial of retiree's request to convert ordinary plan to early service retirement was not arbitrary or capricious. *Steinmann v. State, Dept. of Treasury, Div. of Pensions, Teachers' Pension and Annuity Fund*, 235 N.J.Super. 356, 562 A.2d 799 (A.D.1988) reversed 116 N.J. 564, 562 A.2d 791.

Retiree may change benefits after retirement and receipt of benefits if retiree is incompetent at time of application completed. *Cicione v. Teacher's Pension and Annuity Fund*, 97 N.J.A.R.2d (TYP) 84.

Tenured teacher could not obtain difference between her salary and disability pension benefits for period between when she applied for and was granted disability retirement. *Matter of Tenure Hearing of Scherr*, 95 N.J.A.R.2d (EDU) 97.

Monthly allowance selection; decedent was competent at the time he made selection. *Robertson v. Teachers' Pension and Annuity Fund*, 94 N.J.A.R.2d (TYP) 161.

No good cause or reasonable diligence existed to allow teacher to reopen early retirement designation made 12 years earlier. *Porter v. Board of Trustees of the Teachers' Pension and Annuity Fund*, 93 N.J.A.R.2d (TYP) 9.

Untimely request to change effective date of retirement denied. *Jengeleski v. Board of Trustees of the Teachers' pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 5.

Reformation of retirement application denied based upon decedent retiree's only partial completion of option change application prior to his death. *Ward v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 8 N.J.A.R. 60 (1984), affirmed per curiam Docket No. A-4795-83T7 (App.Div.1985).

#### 17:3-6.4 Outstanding loan

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

1. In full before the retirement allowance becomes due and payable as provided in N.J.A.C. 17:3-6.2; or
2. By deductions from retirement benefit payments of the same monthly amount deducted from the member's compensation immediately preceding retirement until the loan balance, with accrued interest, is repaid as authorized by P.L. 1999, c. 132 (N.J.S.A. 18A:66-35.1). If the member does not request repayment in full, repayment is by deductions in the same monthly amount deducted from the member's compensation immediately preceding retirement.

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

the retirant designated multiple beneficiaries to receive these benefits, each beneficiary shares in repaying the remaining balance in the same proportion in which they are entitled to the benefits.

Amended by R.1982 d.14, effective February 1, 1982.

See: 13 N.J.R. 748(b), 14 N.J.R. 161(c).

Repealed and replaced (a) and (b).

Repeal and New Rule, R.1999 d.431, effective December 20, 1999.

See: 31 N.J.R. 2709(a), 31 N.J.R. 4293(b).

Section was "Outstanding loan".

Amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

In (a), amended the N.J.A.C. reference in 1, deleted 2 and recodified former 3 as 2; in (b), substituted "1" for "T" following "Option".

Amended by R.2008 d.94, effective April 21, 2008.

See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

In the introductory paragraph of (a), (a)2 and (b), inserted "accrued"; and in (a)2, substituted "c. 132 (N.J.S.A. 18A:66-35.1)" for "c.132".

#### 17:3-6.5 Willful negligence

(a) Willful negligence is defined as:

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

#### 17:3-6.6 (Reserved)

Repealed by R.2004 d.244, effective July 6, 2004.

See: 36 N.J.R. 920(a), 36 N.J.R. 3267(c).

Former N.J.A.C. 17:3-6.6, Retirement credit, recodified to N.J.A.C. 17:3-4.7.

#### 17:3-6.7 Disability determination

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

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

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

As amended, R.1980 d.103, effective March 5, 1980.

See: 12 N.J.R. 55(b), 12 N.J.R. 224(e).

Amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

In (a), rewrote 1 and substituted "ordinary" for "ordinance" in 4; neutralized gender references throughout.

Amended by R.2005 d.394, effective November 21, 2005.

See: 37 N.J.R. 1928(a), 37 N.J.R. 4460(a).

Added (b).

#### Case Notes

Injuries sustained by industrial arts teacher when he attempted to break up fight between students were caused by traumatic event, entitling teacher to accidental disability retirement benefits. *Kopack v. Board of Trustees, Teachers' Pension and Annuity Fund*, 96 N.J.A.R.2d (TYP) 243.

Teacher injured while travelling to school at normal time was not entitled to accidental disability pension. *Loftus v. Teachers' Pension and Annuity Fund*, 95 N.J.A.R.2d (TYP) 14.

Accidental disability retirement benefits; slip and fall injury was not shown to be traumatic event. *Catarcio v. Teachers' Pension and Annuity Fund*, 94 N.J.A.R.2d (TYP) 99.

Ordinary disability retirement benefits were properly denied when employee failed to meet service requirement; out-of-state service. *Bewley v. Teachers' Pension and Annuity Fund*, 94 N.J.A.R.2d (TYP) 61.

Student's composition directed at teacher did not warrant accidental disability retirement in absence of actual threat. *Kablesh v. Board of Trustees*, 93 N.J.A.R.2d (TYP) 229.

Elementary school teacher with severe back pain entitled to ordinary disability benefits. *Dilascio v. Board of Trustees of the Teachers' Pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 105.

Third grade teacher injured while restraining violent student permanently and totally disabled by traumatic event qualifying her for accidental disability retirement benefits. *McCulloch v. Board of Trustees, Teachers' Pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 66.

Physical assault of teacher constituted a traumatic event within meaning of accidental disability retirement statute. *Malawka v. Teachers' Pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 21.

#### 17:3-6.8 Option selection; accidental disability denied

If an applicant for an accidental disability retirement benefit is rejected for an accidental disability benefit but is approved by the Board for retirement, in accordance with N.J.A.C. 17:3-6.7, the applicant will be permitted, within 30 days following Board approval of the retirement, to amend the option selection, which the applicant made on the original accidental disability retirement application.

Amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Neutralized gender references throughout.

Amended by R.2008 d.94, effective April 21, 2008.

See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

Section was "Option selection". Inserted a comma following "selection".

#### 17:3-6.9 Employer and employee notices

If an applicant for accidental disability retirement is found to be physically or mentally incapacitated for the performance

of duty but is rejected for accidental disability retirement because the Board finds that the disability was not a direct result of a traumatic event occurring during and as a result of the performance of the applicant's regular or assigned duties, and if the applicant does not meet the minimum statutory requirements for any other type of retirement allowance, the Fund will notify both the member and the member's employer that the member was found to be physically or mentally incapacitated for the continued performance of duty, as was previously certified to the Fund.

Amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Deleted the paragraph identifier in (a) and neutralized gender references throughout; deleted (b).

#### 17:3-6.10 Involuntary disability application

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

1. The member's employer has properly initiated a disability application signed by the Certifying Officer or other designated officer of the employer, on the member's behalf;

2. The member's employer has submitted a written statement as to the grounds for the employer's request for the member's involuntary disability retirement and all pertinent medical documentation;

3. The member has a period of 30 days to contest the involuntary retirement before the Board acts on the employer's application;

4. The member will be required to appear for an examination before a physician designated to conduct such an examination for the Fund;

5. In the event the Board finds that the member is totally and permanently incapacitated for the performance of duty, the member shall be granted the maximum retirement option, if the member does not file a completed "Application for Disability Retirement" setting forth the retirement option the member desires, before the retirement goes into effect; and

6. In the event the Board finds that the member is not totally and permanently incapacitated for the performance of duty, the employer's application shall be disallowed and the employer shall be informed that the member should be returned to duty.

Amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Rewrote the section.

Amended by R.2008 d.94, effective April 21, 2008.

See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

In (a)1, substituted "Certifying" for "Ccertifying" and deleted "and" from the end.