

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, will be permitted to obtain another loan from that retirement system if the member is otherwise eligible to obtain such loan. The loan repayment schedule for loans taken after the date of filing for bankruptcy will not include the aggregate outstanding balance of the previous loan or loans. However, the amount eligible to be borrowed is affected by the existing outstanding loan balance.

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

(c) If a bankruptcy action is dismissed, an active or retired member must submit a written request for reinstatement of the loan deductions. An active member's loan balance will be reevaluated, with interest, and loan deductions will resume. A retired member will continue to pay the loan amount prior to the bankruptcy. When the loan is near completion, the interest from the date of retirement to the date the loan is satisfied will be added to the retired member's repayment schedule.

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.

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. Such designation or selection remains the prerogative of the member.

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.

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;

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).

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 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-