

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 Tax\$ave 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 Tax\$ave 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".

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(e). 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 Department of Personnel, 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(e) 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".

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-