

CHAPTER 7
ALTERNATE BENEFIT PROGRAM

Authority

N.J.S.A. 18A:66-172.

Source and Effective Date

R.2006 d.360, effective September 8, 2006.
See: 38 N.J.R. 2032(a), 38 N.J.R. 4245(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 7, Alternate Benefit Program, expires on September 8, 2013. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 7, Prison Officers' Pension Fund, was adopted and became effective prior to September 1, 1969.

Pursuant to Executive Order No. 66(1978), Chapter 7, Prison Officers' Pension Fund, was readopted as R.1983 d.176, effective May 16, 1983. See: 15 N.J.R. 527(a), 15 N.J.R. 930(d).

Pursuant to Executive Order No. 66(1978), Chapter 7, Prison Officers' Pension Fund, expired on May 16, 1988.

Chapter 7, Prison Officers' Pension Fund, was adopted as new rules by R.1988 d.577, effective December 19, 1988. See: 20 N.J.R. 2375(a), 20 N.J.R. 3142(b). Pursuant to Executive Order No. 66(1978), Chapter 7, Prison Officers' Pension Fund, expired on December 19, 1993.

Chapter 7, Alternate Benefit Program, was readopted with extensive revisions and recodified from N.J.A.C. 17:1-2 by R.2001 d.159, with the readoption effective April 25, 2001, and the recodification effective May 21, 2001. See: 33 N.J.R. 988(a), 33 N.J.R. 1601(a).

Chapter 7, Alternate Benefit Program, was readopted as R.2006 d.360, effective September 8, 2006. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. ADMINISTRATION

17:7-1.1 Designated providers

(a) The providers approved by the Division of Pensions and Benefits to offer investment accounts for Alternate Benefit Program participants (investment providers) are designated to provide retirement and annuity contracts to participants of the Alternate Benefit Program.

(b) A designated provider shall provide group life coverage to participants of the Alternate Benefit Program.

(c) A designated provider shall provide disability insurance coverage to participants of the Alternate Benefit Program.

Amended by R.2006 d.360, effective October 2, 2006.
See: 38 N.J.R. 2032(a), 38 N.J.R. 4245(a).

In (a), deleted "annuity" preceding the first occurrence of "investment"; substituted "investment" for "annuity" preceding "providers" and inserted "and" following "retirement"; in (b), deleted "and disability insurance" following "group life"; and added (c).

17:7-1.2 Salary reduction agreements; authorization and termination

(a) The State and participating institutions are authorized to enter into agreements with Alternate Benefit Program participants for mandatory and voluntary salary reductions to the maximum limitations set forth in P.L. 93-406 (Employment Retirement Income Security Act of 1974 and the Internal

Part II of the enrollment application no later than 30 days after the employee's eligibility determination date. The employee's estate shall be the employee's beneficiary for the employee's account until such time as proper designation forms are received by the Division of Pensions and Benefits.

(e) If the employee fails to designate an investment provider, the certifying officer shall be obligated to complete the appropriate application to enroll the employee with the investment provider selected as the default investment provider for the current plan year. In these situations, the employer shall be required to submit both the employee's and employer's contributions to the default investment provider designated for that plan year no later than 45 days after the commencement of payroll deductions.

R.1973 d.171, effective June 28, 1973.
See: 5 N.J.R. 203(b), 5 N.J.R. 294(a).
Amended by R.2006 d.360, effective October 2, 2006.
See: 38 N.J.R. 2032(a), 38 N.J.R. 4245(a).
Substituted "investment" for "annuity" throughout.

17:7-2.3 Part-time faculty members

(a) Alternate Benefit Program participants who concurrently work with the same employer in a part-time position, which is covered by another State-administered pension plan, shall be ineligible to make Alternate Benefit Program contributions from their concurrent part-time salary.

(b) Any eligible person who has been enrolled in the Alternate Benefit Program for at least one year who is promoted or transferred to a part-time position within the institution will not be eligible for continued participation in the Alternate Benefit Program on the basis of that employment. Such person must be enrolled into the Public Employees Retirement System if, on the basis of that part-time employment, the person is eligible to participate in that retirement program.

Amended by R.2002 d.370, effective November 18, 2002.
See: 34 N.J.R. 825(a), 34 N.J.R. 3969(a).
Inserted "with the same employer" preceding "in a part-time position", and inserted "or other State administered pension plan" preceding "contributions".
Amended by R.2006 d.360, effective October 2, 2006.
See: 38 N.J.R. 2032(a), 38 N.J.R. 4245(a).
Inserted designation "(a)"; in (a), substituted "Alternate Benefit Program" for "ABP or other State administered pension plan"; and added (b).

SUBCHAPTER 3. MEMBERSHIP

17:7-3.1 Base or contractual salary

(a) N.J.S.A. 18A:66-169c provides that only base or contractual salary is subject to pension contributions. Payments related to guaranteed faculty practice moneys shall be included in such base salary up to the extent provided by N.J.S.A. 43:3C-9.1 et seq. The participant's mandatory contributions shall be computed on earned base salary and the

employer's contributions shall be computed on the participant's contractual salary.

(b) If the participant elects to have voluntary additional contributions (elective 26 U.S.C. § 403(b)) made by entering into a salary reduction agreement with the employer, the contribution percentage is applied against the participant's actual salary after taking into account deductions for mandatory contributions.

As amended, R.1976 d.36, effective February 5, 1976.
See: 7 N.J.R. 578(a), 8 N.J.R. 140(d).
Amended by R.2006 d.360, effective October 2, 2006.
See: 38 N.J.R. 2032(a), 38 N.J.R. 4245(a).
In (b), inserted "26 U.S.C. §" and deleted "and Section 125 (26 U.S.C. § 125) contributions" from the end.

17:7-3.2 Delayed vested contribution

(a) Mandatory contributions during a participant's first year of employment, including earnings credited thereto, shall be held in delayed vested status with the designated investment provider specified by the participant. The first year of employment is considered to be the commencement of the 13th month of employment after the participant has received credit in the Alternate Benefit Program for 12 months of service.

(b) A participant who is in delayed vested status shall be ineligible to engage in the following transactions:

1. Loans;
2. Transfers of account accumulations between Alternate Benefit Program investment providers; and
3. Investments of mandatory contributions with more than one investment provider.

(c) The delayed-vested portion of a terminated participant's account attributable to employer contributions shall be forfeited at the time of termination. Such forfeitures shall be applied to the current or next succeeding employer contribution to the investment provider underwriting the terminated participant's contract. Repurchase account forfeitures, plus or minus any gains or losses from investment by the investment provider, should be reported to the Division of Pensions and Benefits in the Alternate Benefit Program Employer Contribution Report. The reimbursement of a subsequent Alternate Benefit Program Employer Contribution Report shall be reduced by the reported forfeiture amount.

(d) The participating institutions shall be required to notify the designated investment providers when a participant enters delayed vesting and has completed one year of service and is no longer in delayed vested status.

Amended by R.2006 d.360, effective October 2, 2006.
See: 38 N.J.R. 2032(a), 38 N.J.R. 4245(a).
Substituted "investment" for "annuity" throughout; in (a), added last sentence; and in (c), deleted "annuity" following "participant's", substituted "investment provider" for "vendor" and substituted "Alternate Benefit Program" for "ABP" two times.

17:7-3.3 Leave without pay or change in status

While any participant in the Alternate Benefit Program may make personal contributions at any time directly to the insurer of the individual retirement annuities, no employer obligations will be paid when the participant is on a leave of absence without pay or when the participant no longer meets the definition of a full-time regularly appointed teaching or administrative staff member in an applicable academic position.

17:7-3.4 Termination; withdrawal of delayed vested contributions

(a) A participant may withdraw the participant's delayed vested contributions held by the investment provider if the participant terminates all employment subject to coverage by the Alternate Benefit Program. If a participant terminates employment while in delayed vested status and withdraws employee contributions, the participant is not considered to be retired and is eligible to participate in the Alternate Benefit Program at a later date.

(b) No application for withdrawal of contributions while in delayed vested status shall be approved if:

1. The participant is on official leave of absence;
2. The participant or employer certifies that the employment contract has not expired, or that the participant has executed another contract to work in a position subject to coverage by the Alternate Benefit Program; or
3. The participant has been dismissed or suspended from employment. In this event, such a participant will be eligible to withdraw if the participant has formally resigned from the position or there is no legal action contemplated or pending and this dismissal has been adjudged final.

As amended, R.1977 d.32, effective February 8, 1977.

See: 9 N.J.R. 43(b), 9 N.J.R. 147(c).

Amended by R.2006 d.360, effective October 2, 2006.

See: 38 N.J.R. 2032(a), 38 N.J.R. 4245(a).

In (a), substituted "investment" for "annuity" and added last sentence.

17:7-3.5 Leave of absence with pay

(a) The mandatory pension contribution for a participant granted a leave of absence with pay shall be calculated on the actual base salary paid, if the participant earns 50 percent or more of full contractual base salary during a pay period. On the monthly Alternate Benefit Program Employer Contribution Report, the full contractual base salary should be included in the Total Base Salary section, and the employer contribution shall be paid on this salary. If a participant earns less than 50 percent of full contractual base salary during a pay period, no deductions should be made, and the member's Alternate Benefit Program status shall be the same as that of a member on leave of absence without pay.

(b) Voluntary tax-deferred contributions (26 U.S.C. § 403(b) contributions) for a participant granted a leave of ab-

sence with pay shall be calculated on the actual salary paid less the mandatory pension contribution.

(c) In order to give effect to the limitations of 26 U.S.C. § 415(c)(3), an employer may be required to limit a participant's voluntary salary reduction contribution into the participant's 26 U.S.C. § 403(b) plan.

(d) When the employer, at the participant's request, approves an extension of the initial leave of absence, and the percentage of base salary to be paid is changed retroactive to the beginning of the initial leave effective date, (a), (b) and (c) above are applicable from the effective date of the initial leave of absence to the end date of the leave of absence, which must be in accordance with N.J.S.A. 18A:66-169h.

Amended by R.2006 d.360, effective October 2, 2006.

See: 38 N.J.R. 2032(a), 38 N.J.R. 4245(a).

In (a), inserted "contractual" two times, inserted the first occurrence of "Alternate Benefit Program", and substituted "Alternate Benefit Program" for "ABP"; rewrote (b); deleted (c); recodified (d) and (e) as (c) and (d); rewrote (c); and in (d), substituted "(b) and (c)" for "(b), (c) and (d)".

17:7-3.6 Military leave, withdrawal

No participant shall be entitled to withdraw amounts contributed by the employer for the period of a military leave of absence without pay unless the participant has resumed active employment and made contributions to an Alternate Benefit Program investment provider for the period of the military leave per N.J.A.C. 17:1-4.36.

Amended by R.2006 d.360, effective October 2, 2006.

See: 38 N.J.R. 2032(a), 38 N.J.R. 4245(a).

Substituted "investment" for "annuity".

17:7-3.7 Minimum adjustment

In order to facilitate the reconciliation of contributions by the Division of Pensions and Benefits, no rebates or additional contributions shall be made where an adjustment involves an amount of \$50.00 or less.

17:7-3.8 Hardship withdrawals

(a) Any request for an early withdrawal due to hardship shall be submitted with evidence of the hardship on forms satisfactory to the investment provider(s) and consistent with applicable Federal income tax law. Hardship withdrawals are limited to a participant's 26 U.S.C. § 403(b) voluntary contributions. Hardship withdrawals shall be approved only in the event the participant experiences an immediate and heavy financial need. The amount of such withdrawal shall be limited to the amount needed to satisfy the financial need; to the extent such need may not be satisfied from other resources that are reasonably available to the participant, including commercially available loans and loans available under the retirement or annuity contracts purchased under the program.

(b) The investment provider(s) shall determine whether the participant's request for hardship withdrawal satisfies the

requirements of this section and any applicable provisions of the Federal Income Tax Code and Regulations. The investment provider(s) shall notify the institutions of those employees who received hardship distributions, so that the salary reduction agreements shall be discontinued. All employee voluntary salary contributions (to any contract or investment provider) shall be suspended for 12 consecutive months. When salary reduction resumes, the affected employee's 26 U.S.C. § 402(g) limit shall be reduced by the amount of any elective deferral made in the year the hardship withdrawal was taken.

Amended by R.2006 d.360, effective October 2, 2006.

See: 38 N.J.R. 2032(a), 38 N.J.R. 4245(a).

Substituted "investment" for "annuity" throughout; in (a), inserted "26 U.S.C. §" and "retirement or"; and in (b), substituted "26 U.S.C. §" for "Section".

17:7-3.9 (Reserved)

New Rule, R.2004 d.125, effective April 5, 2004.

See: 35 N.J.R. 5525(a), 36 N.J.R. 1787(a).

Amended by R.2006 d.360, effective October 2, 2006.

See: 38 N.J.R. 2032(a), 38 N.J.R. 4245(a).

In (c), substituted "provider" for "carrier".

Repealed by R.2010 d.191, effective September 7, 2010.

See: 42 N.J.R. 900(a), 42 N.J.R. 2141(a).

Section was "Awards of back pay".

17:7-3.10 In-service withdrawals

(a) Withdrawals from investment accounts funded by either employer or employee mandatory contributions are not permitted in any form prior to the member's separation from employment with an eligible employer.

(b) Withdrawals from investment accounts funded by employee voluntary contributions pursuant to 26 U.S.C. § 403(b) are permitted in any form under the prevailing requirements of 26 U.S.C. § 403(b).

New Rule, R.2006 d.360, effective October 2, 2006.

See: 38 N.J.R. 2032(a), 38 N.J.R. 4245(a).

SUBCHAPTER 4. INSURANCE, DEATH BENEFITS AND RETIREMENT

17:7-4.1 Death or retirement of participant; notice

(a) Upon the death or retirement of participant, the employing institution shall notify the Division of Pensions and Benefits.

(b) The Division shall process the necessary forms related to such death or retirement and notify the insurer providing life insurance coverage.

17:7-4.2 Assignments; group life insurance

(a) Any participant insured under the Alternate Benefit Program group life insurance policy, pursuant to an arrangement among the insured, the group policyholder and the insurer, shall be entitled to make any person other than the employer a gift assignment of the rights and benefits conferred on the participant by any provision of such group life policy or by law, including specifically but not by way of limitation the right to exercise the conversion privilege and the right to name a beneficiary.

(b) Any such assignment, whether made before or after June 28, 1973, the effective date of this rule, shall entitle the insurer to deal with the assignee as the owner of all rights and benefits conferred on the insured under the group life policy in accordance with the terms of the assignment.

R.1973 d.171, effective June 28, 1973.

See: 5 N.J.R. 203(b), 5 N.J.R. 294(a).

17:7-4.3 Death before payment to insurer

If a participant dies before the employee deductions have been paid to the investment provider, the deductions shall be paid in a single sum by the employer to the investment provider.

Amended by R.2006 d.360, effective October 2, 2006.
See: 38 N.J.R. 2032(a), 38 N.J.R. 4245(a).

Deleted "annuity" following "employee", substituted "investment provider" for "designated insurer", and substituted "investment" for "designated annuity".

17:7-4.4 Base monthly salary for disability benefits

(a) In determining disability benefits, base monthly salary for 12-month employees shall be 1/12 of the participant's last 12 months of salary on which employer contributions were remitted prior to the last day of work as a result of the disability.

(b) In determining disability benefits, base monthly salary for 10-month employees shall be 1/10 of the participant's last 10 months of salary on which employer contributions were remitted prior to the last day of work as a result of the disability.

17:7-4.5 Life insurance

(a) Any participant, who is reported on other than a 12-month contract year shall continue to be insured for the regular seasonal layoff provided a bona fide employee-employer relationship exists during this period as determined by the Division of Pensions and Benefits.

(b) The salary, in the month or biweekly pay period in which no salary was paid, shall be counted as zero.

(c) Death benefits shall be based upon the base salary upon which employer contributions were made to the Alternate Benefit Program during 12 months or 26 biweekly pay periods immediately preceding death.

(d) If a member dies within the first year following the date of enrollment, the insurance benefit shall be 3 ½ times the salary on which Alternate Benefit Program employer contributions were based on the actual months or pay periods of creditable service.

R.1982 d.483, effective January 17, 1983.
See: 14 N.J.R. 1200(b), 15 N.J.R. 95(c).

17:7-4.6 Long term disability insurance

(a) In accordance with the provision of the Federal Age Discrimination in Employment Act and upon advice of the New Jersey Attorney General's Office and despite the provisions of N.J.S.A. 18A:66-184, a participant enrolling in the Alternate Benefit Program or a participant becoming determined to be totally disabled after age 60 but under 70 will be eligible for long term disability insurance benefits.

(b) A participant determined to be totally disabled shall be eligible for long-term disability benefits if the participant has

completed one year of full-time continuous service in a designated Alternate Benefit Program position pursuant to N.J.S.A. 18A:66-184.

(c) The disability benefits provided shall commence after six months of continuous disability. The disability benefits shall terminate the earlier of either the participant's retirement date or 70th birthday.

(d) A participant who is in receipt of long term disability benefits shall be entitled to full pension rights. The insurance carrier shall make the basic pension contribution that the participant would have been required to make while actively working. Employer contributions shall continue.

(e) Payments from short term disability or salary continuation plans underwritten by private carriers shall not be credited as base salary for the calculation of long term disability benefits nor shall contributions based on these payments be accepted.

(f) The disability benefit shall be offset by the receipt of periodic workers compensation benefits, Social Security benefits or other periodic benefits for loss of time on account of the disability pursuant to N.J.S.A. 18A:66-185.

R.1982 d.483, effective January 17, 1983.
See: 14 N.J.R. 1200(b), 15 N.J.R. 95(c).

17:7-4.7 Life insurance coverage during leave for illness

Life insurance coverage during a leave of absence due to illness, as set forth in N.J.S.A. 18A:66-176, shall apply only to the personal illness of the participant.

17:7-4.8 Election to receive cash distribution

An election to receive cash distribution, as set forth in N.J.S.A. 18A:66-175, will include an election to transfer, or rollover, funds upon separation from service to an investment provider or to investment products not offered as part of the Alternate Benefit Program.

New Rule, R.2006 d.360, effective October 2, 2006.
See: 38 N.J.R. 2032(a), 38 N.J.R. 4245(a).

SUBCHAPTER 5. TRANSFERS**17:7-5.1 Interprogram transfers; transfer to the Alternate Benefit Program from another State retirement system by employees of the Commission of Higher Education or Higher Education Student Assistance Authority**

If an Alternate Benefit Program participant terminates employment in a covered institution and becomes employed in an eligible position in another New Jersey public institution, the Division of Pensions and Benefits will, upon the filing of the required forms with the Division, continue all of the participant's rights and obligations in the New Jersey Alternate Benefit Program.

As amended, R.1977 d.32, effective February 8, 1977.
 See: 9 N.J.R. 43(b), 9 N.J.R. 147(c).
 Amended by R.1995 d.215, effective May 1, 1995.
 See: 27 N.J.R. 469(b), 27 N.J.R. 1811(a).

17:7-5.2 Transfers, interest

Pursuant to the provisions of N.J.S.A. 18A:66-173, when payment of the transferred member's reserves in the State-administered retirement system is made more than 30 days after eligibility for the transfer, interest is added to the reserves being transferred from the system to the carriers of the Alternate Benefit Program. The 30-day period after eligibility for transfer shall not begin to run until the Division of Pensions and Benefits has received all the documents or other related information necessary to effectuate the transfer in question. The rate of interest is the average rate of return, to the nearest hundredth percent, of the State Cash Management Fund (State accounts) as reported by the Division of Investment for the fiscal year ending June 30 preceding the period for which interest is payable. No interest is payable if the amount of interest is less than \$10.00.

R.1982 d.480, effective January 17, 1983.
 See: 14 N.J.R. 1201(a), 15 N.J.R. 96(a).

Amended by R.1988 d.316, effective July 18, 1988.
 See: 20 N.J.R. 969(a), 20 N.J.R. 1732(a).

"30 days" was "one year"; added language concerning the average rate of return as payable interest, and a payable threshold of \$10.00.
 Amended by R.1990 d.517, effective November 5, 1990.
 See: 22 N.J.R. 2405(a), 22 N.J.R. 3386(a).
 Text added to clarify language.

Case Notes

Denial of cost free transfers from Public Employees' Retirement System to the Firemen's Retirement System under regulation to remedy prior age discrimination was not error. *Koschker v. Board of Trustees, Police and Firemen's Retirement System*, 233 N.J.Super. 209, 558 A.2d 503 (A.D.1989).

Denial of corrections officer's request to transfer from the Public Employees' Retirement System to the more beneficial Police and Firemen's Retirement System was improper. *Allen v. Board of Trustees, Police and Firemen's Retirement System*, 233 N.J.Super. 197, 558 A.2d 496 (A.D.1989).

Sheriff who had prior opportunity to transfer was not entitled to a cost-free transfer from Public Employees' Retirement System to Police and Firemen's Retirement System, under statute authorizing free transfer to those who had been previously precluded from making a transfer because they were over age 35. *Simon v. Board of Trustees, Police and Firemen's Retirement System*, 233 N.J.Super. 186, 558 A.2d 490 (A.D.1989), certification denied 117 N.J. 652, 569 A.2d 1348.