

3. Any active military service terminating in dishonorable discharge is not creditable.

#### 17:4-2.6 Enrollment date

(a) An employee who is appointed to a permanent position from a Civil Service list shall be considered as having begun his or her eligibility for enrollment on the date of his or her regular appointment. The compulsory enrollment date shall be fixed as the first of the month for an appointee whose regular appointment date falls between the first through the 16th of the month and the compulsory enrollment date shall be fixed as the first of the following month for an appointee whose regular appointment date falls between the 17th and the end of the month.

(b) An employee in the unclassified service shall be considered as beginning service on the date his or her employment began. The compulsory enrollment date shall be fixed as the first of the month for an appointee whose beginning employment date falls between the first through the 16th of the month and the compulsory enrollment date shall be fixed as the first of the following month for an appointee whose beginning employment date falls between the 17th and the end of the month.

(c) The regular appointment of an employee appointed by a local employer not covered by Civil Service shall constitute the date the employee originally accepted employment in a regular budgeted position. The date of compulsory enrollment shall be fixed as the first of the month for an appointee whose beginning date of employment falls between the first through the 16th of the month and the compulsory enrollment date shall be fixed as the first of the following month for an appointee whose beginning employment date falls between the 17th and the end of the month.

(d) An employee who does not meet the requirements for enrollment cited in (a), (b) and (c) above may be considered a temporary employee by his employer for as long as a one year period following the employee's date of hire, but if his employment continues into his second year, he will be required to enroll immediately; his compulsory enrollment date will be the first of the month following the end of the one year (12-month) period.

### SUBCHAPTER 3. INSURANCE AND DEATH BENEFITS

#### 17:4-3.1 Computation of insurance benefits

(a) Full salary credit will be given for the month or biweekly pay period in which a member dies, if he was paid salary to date of death and the salary paid was sufficient to permit a full normal month's or biweekly pension and

insurance contribution deduction, provided such deduction was made by the employer.

(b) Death benefits shall be based on the base salary upon which contributions to the Annuity Savings Fund were actually made during the 12 months or 26 biweekly pay periods immediately preceding the member's death. The salary, in the month in which no salary was paid, shall be counted as zero.

(c) If a member dies during the first year following his date of enrollment the insurance benefit shall be  $3\frac{1}{2}$  times the member's base salary on which he contributed or would have contributed immediately prior to his death.

(d) For a member dying after the first year following the date of his enrollment, the noncontributory insurance benefits shall be determined on the base salary on which contributions to the Annuity Savings Fund were made or would have been made during the 12 months or 26 biweekly pay periods preceding death.

(e) If a member has contributed pension contributions for less than a year but his enrollment has been in effect for more than a year, only those wages upon which pension contributions were based can be used as salary to determine the value of the noncontributory insurance benefit.

(f) Where a post-audit of insurance claim payments indicate the pension contributions reported by an employer were incorrect and resulted in the overpayment of an insurance claim to a member's designated beneficiary or estate, the employer will be billed for the value of the overpayment of the insurance benefits. Where post-audits establish the insurance benefits were underpaid, an additional check would be sent to the beneficiary for the value of the underpayment.

(g) Refunds of a deceased member's pension contributions will be made to the member's designated beneficiary or the employer after written confirmation is received from the employer setting forth the reason for the refund of pension contributions to either the beneficiary or to the employer.

(h) Members who prove their insurability for the group life insurance benefits shall have their insurance benefit calculated on the basis of the salary they received or salary upon which pension contributions were based during their last year (12 months) of service prior to death, regardless of their effective date of insurance coverage.

(i) 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 State employee reported on a biweekly basis, a total of 26 biweekly pays will be used, including any retroactive salary payments made within the prescribed period. The total salary will be adjusted by multiplying the total by the factors supplied by the actuary;

such adjustment will compensate for State biweekly payroll schedules.

(j) In computing (i) above in the case of State 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 (i) above shall not be made.

(k) If a member was reported on a biweekly basis on any combination of 10 and 12-month contract years, the last year's salary prior to death or retirement shall be determined on a proportional basis. The biweekly pay periods for which no contributions were made shall be counted as zero.

#### 17:4-3.2 Leave for illness

Coverage during a leave of absence without pay due to illness shall apply only to the personal illness of the member. A leave of absence on account of another person's illness will not entitle the member to continued insurance coverage.

#### 17:4-3.3 Proof of insurability

When proof of insurability is required, the member's opportunity to prove such insurability shall expire one year (12 months) from the date the initial written notice is sent advising him that he must prove insurability by taking a medical examination.

#### 17:4-3.4 Survivor benefits

(a) Payment of benefits to eligible survivors shall become effective on the first of the month of the member's death and shall terminate as of the month in which the survivor no longer qualifies for such benefits.

(b) In the instance of an active member who died in the performance of duty (accidental death), the initial pension payment will be for the month following the month in which the member died and the last payment will cover the month immediately preceding the month the survivor dies or ceases to qualify for the continuance of benefits.

#### 17:4-3.5 Beneficiary designation; pension contributions

Only a primary and a contingent designation of beneficiary may be made by the member for the payment of his accumulated pension contributions.

#### 17:4-3.6 (Reserved)

### SUBCHAPTER 4. MEMBERSHIP

#### 17:4-4.1 Creditable salary

(a) Only a member's base salary shall be subject to pension contributions and creditable for retirement and death benefits in the system.

(b) The board shall reserve the right to question any salary to determine its credibility where it is evident from the record that a salary reported for benefits includes extra compensation.

(c) Such extra compensation shall not be considered creditable for benefits and all contributions made thereon shall be returned.

(d) Some of the forms of compensation that have been defined as extra compensation include overtime; bonuses; longevity lump sum payments; individual retroactive salary adjustments or individual adjustments to place a member at the maximum of his or her salary range in the final year of service; increments granted for retirement credit or in recognition of the member's forthcoming retirement or in recognition of the member's years of service in the community.

(e) All claims involving an increase in compensation of more than 15 percent over that of the previous year, as reported to the retirement system, shall be investigated. Those cases where a violation of the statute is suspect shall be referred to the board.

#### Case Notes

Firefighter's clothing allowance was not creditable as salary in retirement benefits calculation. *Cox v. Police and Firemen's Retirement System*, 96 N.J.A.R.2d (TYP) 192.

Retroactive increase in police chief's salary could not be considered in calculating his retirement benefits. *Letts v. Police and Firemen's Retirement System*, 96 N.J.A.R.2d (TYP) 110.

Longevity and college allowance may not be added to retiring police officer's base pay for purpose of calculating final compensation. *Lowry v. PFRS*, 96 N.J.A.R.2d (TYP) 63.

#### 17:4-4.2 Prior service

(a) Any period of prior service credit paid for by an employer at the adoption of the system will reflect identical credit when calculating membership credit.

(b) Prior service credits are limited to service rendered on a full-time basis.

#### 17:4-4.3 Continuance of membership; transfer

Once an employee establishes membership in the retirement system, he is eligible to continue such membership should he be temporarily employed in a position covered by the system.

#### 17:4-4.4 Loan tolerance

Interest will be calculated on a periodic basis on the unpaid loan balance. If scheduled payments are not paid timely, interest will be accrued and added to the remaining outstanding loan balance. If, at the end of the loan schedule, there is a balance of less than \$10.00, it will be written off. If the balance is equal to or greater than \$10.00, the member will be assessed.

(f) Should the member continue to receive a salary beyond the effective date of retirement after approval of the retirement by the Board of Trustees, no retirement benefits shall be paid for the period where the member received salary and no salary or service credit shall be provided for the service rendered after the approved, effective date of retirement.

#### Case Notes

Retiree time-barred from requesting change in benefits three years after receiving benefits. *Esposto v. Police and Firemen's Retirement System*, 97 N.J.A.R.2d (TYP) 93.

Lack of good cause and diligence defeated request to reopen application for accidental disability benefits. *Stein v. Police and Firemen's Retirement System*, 96 N.J.A.R.2d (TYP) 198.

#### 17:4-6.3 Effective date; death prior thereto

(a) A member's retirement allowance shall not become due and payable until 30 days after the date the board approved the application for retirement or 30 days after the date of the retirement, whichever is later.

(b) A member who files an application for retirement and whose insurance coverage has not lapsed prior to filing a retirement application is covered under the insurance program as an active member in the event of death prior to the date the retirement allowance becomes due and payable.

#### 17:4-6.4 Outstanding loan

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

1. In full before the retirement allowance becomes due and payable as provided in N.J.A.C. 17:4-6.3; or
2. By retention of retirement benefit payments, excluding authorized deductions, by the retirement system until the loan balance, with interest, is repaid.
  - i. Authorized deductions include Federal tax liens, health benefit premiums, and Federal income tax withholding. If the member does not request repayment in full, repayment is by retention of retirement benefits.

(b) A member who retires on a disability pension or because of medical illness or disability as determined by the board of trustees with an outstanding loan balance may repay the balance as follows:

1. In the manner prescribed in (a) above; 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 interest, is repaid.
  - i. If a member who retires on a disability pension does not request another repayment option, repayment is by deductions in the same monthly amount deducted

from the member's compensation immediately preceding retirement.

(c) A member whose retirement is other than a disability retirement and who wants to establish that the retirement is necessitated by medical illness or disability shall submit an application acceptable to the retirement system together with a report of the member's personal or attending physician and all other physicians' reports, hospital records or other medical evidence which the member can supply pertaining to the illness or disability. The medical evidence shall be sufficient to show to the satisfaction of the board of trustees that the member is totally and permanently disabled and would qualify on a medical basis for ordinary disability retirement. The board may require the member to be examined by a physician designated by the retirement system, and may refer the medical evidence to the medical panel for its report on whether the member is totally and permanently disabled and retirement is necessitated by medical illness or disability.

(d) If a retirant dies before the loan balance, with 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 that are due to the beneficiary or estate. If multiple beneficiaries are to receive these benefits, each beneficiary shares in repaying the remaining balance in the same proportion in which they are entitled to the benefits.

#### 17:4-6.5 Willful negligence

(a) Willful negligence is defined as follows:

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.

#### 17:4-6.6 Retirement credit

(a) A member shall receive credit toward retirement for any month or biweekly pay period in which a full normal deduction is received by the system.

(b) A member who appeals the suspension or termination of his or her employment and is awarded back pay for all or a portion of his or her employment for the period of such suspension or termination shall receive retirement credit for the period covered by the award, regardless of the amount of the back pay awarded, provided a full normal pension contribution is received from the member or deducted from the value of the award. The amount of the pension contribution will be determined by the provisions of the award. If the member receives full back pay, including normal salary increases, then the contribution will be computed on the base salaries that the employee would have earned for the

reinstated, suspended or terminated period. When the settlement is less than the full back pay, the pension contribution will be based upon the salary that the member was receiving for pension purposes prior to the suspension or termination of employment. In the event that the amount of back payment is insufficient to deduct the value of the normal pension contributions due, such contribution shall be paid by the member.

(c) It is the responsibility of the certifying officer to provide 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 that details the terms of the settlement.

#### 17:4-6.7 Disability determination

(a) A member for whom an application for accidental disability retirement allowance has been filed by the member, by his 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 member was under the normal retirement age at the time of filing application for a disability retirement allowance; and
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 his regular or assigned duties; and
4. The member meets the service requirement for ordinary disability.

#### Case Notes

Accidental disability retirement allowance denied because no traumatic event occurred. *Joyce v. Police and Fireman's Retirement System*, 97 N.J.A.R.2d (TYP) 11.

Police officer who witnessed deaths of his father and brother while on duty suffered qualifying traumatic event entitling him to accidental disability retirement benefits. *Flint v. Police and Firemen's Retirement System*, 96 N.J.A.R.2d (TYP) 278.

Corrections officer who sustained back injury in trip and fall incident did not suffer traumatic event for purposes of accidental disability retirement benefits eligibility. *Burzachiello v. Board of Trustees, Police and Firemen's Retirement System*, 96 N.J.A.R.2d (TYP) 275.

Police officer granted disability retirement for psychiatric disorder offered sufficient proof that he no longer suffered from disorder to support his reinstatement 15 years later. *Dascoli v. Police and Firemen's Retirement System*, 96 N.J.A.R.2d (TYP) 231.

Bus driver injured when patients fell on her in three unrelated incidents several days apart suffered qualifying traumatic event entitling her to award of accidental disability retirement benefits. *Harring v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 202.

Bus collision constituted traumatic event entitling driver to accidental disability retirement benefits. *Fullwood v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 200.

Former firefighter's application for disability retirement benefits was properly dismissed where applicant was not member in service at time of filing. *Kirwin v. Police and Firemen's Retirement System*, 96 N.J.A.R.2d (TYP) 183.

Corrections officer who was diagnosed as suffering from multiple sclerosis while receiving treatment for on-the-job tripping injury was not entitled to accidental disability retirement benefits. *McBride v. Police and Firemen's Retirement System*, 96 N.J.A.R.2d (TYP) 162.

Incident in which corrections officer was surrounded and threatened by prison inmates, and which resulted in officer's total psychiatric disability, constituted traumatic event entitling him to accidental disability retirement benefits. *Flume v. Police and Firemen's Retirement System*, 96 N.J.A.R.2d (TYP) 153.

#### 17:4-6.8 (Reserved)

#### 17:4-6.9 Average final compensation; 10 and 12-month members

(a) In order to determine the average final compensation (three-year average) for benefits on a:

1. Member reported on a monthly basis, use the creditable salaries upon which pension contributions were made to the retirement system for his last 36 months of service.
2. If a member was reported on any combination of 10 and 12-month contract years in such three-year period, the final average compensation shall be determined on a proportional basis.
3. The months for which no contributions were made shall be counted as zero.

#### 17:4-6.10 Employer disability application; employee notice

(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 his or her employees, the member will be promptly notified by letter that:

1. His employer has initiated a disability application, on the member's behalf; and
2. His employer has certified that the member is permanently and totally disabled for the continued performance of duty; and, if appropriate;
3. His employer has certified that the member should be retired as a direct result of a traumatic event occurring during and as a result of the performance of his regular or assigned duties;
4. He has a period of 30 days to contest his involuntary retirement before the board acts on his employer's application;
5. He will be required to appear for an examination before a physician designated to conduct such an examination for the retirement system; and

6. In the event the board finds that he is totally and permanently incapacitated for the performance of duty, he shall be granted the maximum retirement allowance payable under the statute, if he does not file a completed

“Application for Disability Retirement Allowance” setting forth the type of allowance he desires, before his retirement goes into effect; and