

**CHAPTER 2**

**PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

**Authority**

N.J.S.A. 43:15A-17 et seq.

**Source and Effective Date**

R.1995 d.91, effective February 21, 1995.  
See: 26 N.J.R. 4747(a), 27 N.J.R. 754(a).

**Executive Order No. 66(1978) Expiration Date**

Chapter 2, Public Employees' Retirement System, expires on February 21, 2000.

**Chapter Historical Note**

Chapter 2, Public Employees' Retirement System was filed and became effective prior to September 1, 1969. Pursuant to Executive Order No. 66(1978), Chapter 2 expired on October 9, 1984, and subsequently was adopted as new rules by R.1984 d.562, effective December 17, 1984. See: 16 N.J.R. 2515(b), 16 N.J.R. 3479(a). Pursuant to Executive Order No. 66(1978), Chapter 2 was readopted as R.1989 d.597, effective November 8, 1989. See: 21 N.J.R. 2439(a), 21 N.J.R. 3788(a).

Pursuant to Executive Order No. 66(1978), Chapter 2 expired on November 8, 1994, and subsequently was adopted as new rules by R.1995 d.91. See: Source and Effective Date.

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#### SUBCHAPTER 1. ADMINISTRATION

##### 17:2-1.1 Board meetings

(a) The Board of Trustees shall meet on the third Wednesday of each month or at such other time as may be deemed necessary by the board.

(b) No meeting will be held in the month of August unless it is deemed necessary by the chairman or the secretary.

(c) The chairman may call for special meetings when necessary.

Amended by R.1977 d.148, effective April 27, 1977.  
 See: 9 N.J.R. 142(b), 9 N.J.R. 295(a).

##### 17:2-1.2 Fiscal year

The transaction of business and control of finance shall be conducted from a July 1 to June 30 fiscal year, with the exception of the actuarial valuation, which shall be prepared on the basis of the membership payroll status of all account results as of March 31 of each year.

##### 17:2-1.3 Officers and committees

(a) The members of the board shall elect a chairman and vice chairman from its membership for the forthcoming year at its regular meeting held in July.

(b) The chairman of the board shall preside at all of its meetings, or in the absence of the chairman, the vice chairman shall assume the chairman's responsibilities.

(c) The chairman and the secretary of the board shall have the power to act for the board in any matter which may be referred to them by the Board of Trustees.

(d) There shall be three standing committees, which are the finance committee, the retirement committee, and the executive committee. The committees shall be appointed by the chairman at the July meeting for the forthcoming fiscal year.

(e) The finance committee shall review all investment transactions and financial reports referred to it by the secretary for presentation to the board at its regular monthly meetings. The committee shall consist of three members.

(f) The retirement committee shall consider all cases referred to it by the secretary and submit its recommendations to the board at its next meeting. The committee shall consist of three members.

(g) The executive committee shall consider all cases referred to it by the secretary and submit its recommendations to the board at its next meeting. The committee shall consist of three members.

As amended, R.1971 d.71, effective May 18, 1971.

See: 3 N.J.R. 50(a), 3 N.J.R. 117(b).

As amended, R.1976 d.383, effective December 6, 1976.

See: 8 N.J.R. 537(c), 8 N.J.R. 48(a).

##### 17:2-1.4 Election of member-trustee

(a) The election of the Board of Trustee members will include the use of nominating petitions.

1. This will entail the separate distribution of at least two forms for all active member employees of the State or of the counties or municipalities, as the case may be.

2. Public agencies will vote on the basis of whether they are State, county or municipal instrumentalities.

3. The first will be an election notice setting forth the rules for filing nominating petitions and other pertinent data.

4. The second will be ballot, containing the names of the candidates who have been properly nominated as well as the rules governing the balloting. If only one candidate is nominated, the second form will be a notice containing the name of the candidate and an indication that the candidate is deemed elected to the position without balloting because there was only one nominee.

5. Petition forms will be available at the office of the Public Employees' Retirement System.

6. Biographical information on the candidates will be distributed to the certifying officer of each employing agency at the time of distribution of ballots or notices of election without balloting.

(b) Rules concerning election notice and petition are as follows:

1. At least four months prior to the expiration of the term of each elected trustee, a notice will be prepared and distributed to the certifying agents of the State or of the counties or municipalities, as the case may be, advising them of the position to be voted upon (position and term), as well as the name and expiration of term of office of the present trustee. The names of all present trustee members of the Board of Trustees and the expiration of their terms will also be shown. The notice will also inform the members that petition forms are available at the office of the retirement system. The election notice will specify the time and place of the drawing by lot for position on the ballot. All petitioners will be invited to attend on the given date.

Petitioner's claim for inclusion for pension calculation of salary received as town sewer attorney denied as services rendered were of the type usually rendered by an independent contractor rather than an employee: claim for inclusion for pension calculation of vouchered fees received as town sewer attorney denied as such fees are outside the statutory definition of compensation (Board's Final Decision). *Fasolo v. Bd. of Trustees, Public Employees' Retirement System*, 6 N.J.A.R. 4 (1980), affirmed in part and reversed in part and remanded 181 N.J.Super. 434, 438 A.2d 328 (App.Div.1981).

#### 17:2-4.2 Leave with pay

(a) If a member is granted a leave of absence 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 be required to make contributions only if he is receiving 50 percent or more of his regular base salary.

#### Case Notes

Salary paid township counsel during three years before retirement was paid primarily in anticipation of retirement, and thus ineligible compensation for pension purposes. *Mangini v. Trustees of Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 43.

#### 17:2-4.3 School year members; 10 and 12 months

(a) Ten month members 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.

(b) A 12 month member is presumed to work each month of the fiscal year.

(c) Not more than one year's service credit will be given during any period of 12 consecutive months.

(d) If a member terminates a position that requires less than 12 months to constitute one full year of service at the end of the normal academic school year and accepts a 12 month position with the same employer or another employer that participates in the Public Employees' Retirement System and begins employment on or before the date that was established by the previous year's contract position, such member will receive service credit within the Public Employees' Retirement System for the period between the end of the previous contract and the new 12 month position.

Amended by R.1989 d.423, effective August 7, 1989.  
See: 21 N.J.R. 979(a), 21 N.J.R. 2300(a).

Reference to 10-month employment as a minimum deleted.  
Amended by R.1993 d.296, effective June 21, 1993.  
See: 25 N.J.R. 908(a), 25 N.J.R. 2701(a).  
Amended by R.1994 d.162, effective April 4, 1994.  
See: 26 N.J.R. 108(a), 26 N.J.R. 1537(c).  
Amended by R.1995 d.61, effective February 21, 1995.  
See: 26 N.J.R. 3823(a), 27 N.J.R. 754(b).

#### 17:2-4.4 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.

New Rule, R.1987 d.511, effective December 7, 1987.  
See: 19 N.J.R. 194(a), 19 N.J.R. 2303(d).

Old rule was loan revaluation.

#### 17:2-4.5 Approved leave

When benefits are payable involving approved leaves of absence or when a purchase of credit is to be processed involving such leaves, a certified copy of the employer's resolution, or approved CS-21 form, granting such approved leave must be available in the file or must be confirmed before processing can be completed.

#### 17:2-4.6 Minimum adjustment

In order to facilitate the reconciliation of a member's account no rebates or additional contributions shall be made where an adjustment involves an amount of \$3.00 or less.

#### 17:2-4.7 Hourly or per diem salary

Deductions from the salary of a member who is paid on an hourly or per diem basis shall be calculated on an average monthly or biweekly salary, which shall be certified to the system. This salary will continue for deduction purposes but will be subject to annual revision.

As amended by R.1974 d.230, effective August 19, 1974.  
See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).

#### 17:2-4.8 Military leave

(a) Military leave contributions remitted by an employer on behalf of an employee, who does not return to the payroll for the minimum 90-day period required by N.J.S.A. 43:15A-41a, shall be retained by the System. Such contributions shall be transferred from the annuity savings fund to the contingent reserve fund.

(b) Military leave contributions remitted by an employer shall be based on the employee's salary at the time he entered military service.

(c) Payroll as referred to above shall be interpreted to mean any public payroll in New Jersey, not necessarily the payroll of the employer where the member was employed when he entered military service.

#### 17:2-4.9 Eligibility for loan

Only active contributing members of the System may exercise the privilege of obtaining a loan and the maximum loan shall be 50 per cent of the accumulated deductions posted to the member's account.

**17:2-4.10 Waiver required**

Any member, who makes application for withdrawal from the system, who may otherwise be eligible to make application for a retirement benefit, shall be required to execute and file a statement with the System setting forth the benefits he is waiving in favor of withdrawal, before his application for withdrawal may be processed.

**17:2-4.11 Termination; withdrawal**

(a) Under the terms of the statutes a member may withdraw from the system only if he terminates all employment.

(b) No application shall be approved, if:

1. The member is on official leave of absence.
2. The member certifies that his employment has not ended or that he has taken another position subject to coverage.
3. The member has been dismissed or suspended from employment. In this event, such a member will be eligible to withdraw if he has formally resigned from his position or there is no legal action contemplated or pending and the dismissal has been adjudged final.
4. A multiple member has not terminated employment in all covered positions.
5. The member has a claim pending for Workers' Compensation benefits.

As amended by R.1979 d.399, effective October 9, 1979.  
See: 11 N.J.R. 411(a), 11 N.J.R. 596(b).

**Case Notes**

Division of Unemployment and Disability Insurance Director held not to have surrendered his position in classified service when he was granted an unpaid leave of absence to serve an unclassified appointment as assistant commissioner, income security; demotion and layoff rules found not to adequately recognize rights inherent in a leave of absence; doctrine of incompatible offices held not to mandate loss of classified position, since there was no dual office holding. In re Viviani, 184 N.J.Super. 582, 446 A.2d 1239 (App.Div.1982), certification denied 91 N.J. 533, 453 A.2d 854 (1982).

Held that where State employee did not discontinue employment or terminate service until her resignation, which coincided with terminal date of her leave of absence, and where she was reemployed by State less than two consecutive years following her resignation, her membership in the State pension system never ceased. Blinn v. Bd. of Trustees, Public Employees' Retirement System, 173 N.J.Super. 277, 414 A.2d 263 (App.Div.1980).

Proceeds of group life insurance; deceased not active member of retirement system on date of death. Johnson v. Public Employees' Retirement System, 94 N.J.A.R.2d (TYP) 204.

Employee with two years of consecutive discontinued service was not a member of system entitled to ordinary disability retirement. Zakarias v. Retirement System, 93 N.J.A.R.2d (TYP) 308.

Reactivation of retirement account not warranted once membership expired two years after cessation of covered employment. Smartt v. Retirement System, 93 N.J.A.R.2d (TYP) 260.

No public employee retirement system life insurance benefits for widower of employee terminated from employment four months earlier. Estate of Stanton v. Board of Trustees, Public Employees' Retirement System, 93 N.J.A.R.2d (TYP) 220.

Former public employee voluntarily resigned from employment, and thus not entitled to extension of inactive membership in public employees' retirement system. Perlmutter v. Board of Trustees of the Public Employees' Retirement System, 93 N.J.A.R.2d (TYP) 140.

Application for veteran retirement benefits invalid as result of continued employment as municipal attorney, despite change in method of compensation. Mastro v. Board of Trustees, Public Employees' Retirement System, 92 N.J.A.R.2d (TYP) 123.

Former member of retirement system not eligible for ordinary disability retirement benefits more than two years after he discontinued his employment. Cartagena v. Public Employees' Retirement System, 92 N.J.A.R.2d (TYP) 12.

**17:2-4.12 Deductions**

(a) A full deduction shall be taken for the Public Employees' Retirement System in any payroll period in which the member is paid a sufficient amount to make a full normal deduction, plus any other arrears or loan deductions then in effect.

(b) No deduction shall be taken in any pay period in which the employee's salary is not sufficient to cover the required deductions for the Public Employees' Retirement System.

**Case Notes**

Held that where State employee did not discontinue employment or terminate service until her resignation, which coincided with terminal date of her leave of absence, and where she was reemployed by State less than two consecutive years following her resignation, her membership in the State pension system never ceased. Blinn v. Bd. of Trustees, Public Employees' Retirement System, 173 N.J.Super. 277, 414 A.2d 263 (App.Div.1980).

**17:2-4.13 Active employment; membership requirement**

All employees, otherwise eligible, who are not actively employed on the date of their enrollment will not be covered by the group life insurance program until they return to service.

R.1974 d.230, effective August 19, 1974.  
See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).

**Case Notes**

Held that no group life insurance death benefits were payable to deceased county employee's beneficiaries where employee was on leave without pay when PERS enrollment was to commence and employee died before going back on payroll. Burns v. Div. of Pensions, Public Employees' Retirement System, 180 N.J.Super. 1, 433 A.2d 778 (App. Div.1981).

**17:2-4.14 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.

R.1979 d.399, effective October 9, 1979.