

SUBCHAPTER 1. GENERAL PROVISIONS

12:235-1.6 Maximum workers' compensation benefit rates

(a) In accordance with the provisions of N.J.S.A. 34:15-12.a, the maximum workers' compensation benefit rate for temporary disability, permanent total disability, permanent partial disability, and dependency shall be [\$945.00] **\$969.00** per week.

(b) The maximum compensation shall be effective as to injuries occurring in the calendar year [2020] **2021**.

TREASURY—GENERAL**(a)**

**DIVISION OF PENSIONS AND BENEFITS
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
World Trade Center Accidental Disability Rules
Proposed New Rules: N.J.A.C. 17:2-9**

Authorized By: Jeff Ignatowitz, Secretary, Public Employees' Retirement System Board of Trustees.

Authority: N.J.S.A. 43:15A-1 et seq.; and P.L. 2019, c. 157.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2020-084.

Submit comments by November 7, 2020, to:

Susanne Culliton
Assistant Director
Division of Pensions and Benefits
PO Box 295
Trenton, NJ 08625-0295
DPB.regulations@treas.nj.gov

The agency proposal follows:

Summary

On July 8, 2019, Governor Murphy signed P.L. 2019, c. 157, the Bill Ricci World Trade Center Rescue, Recovery, and Cleanup Operations Act (the Act), which permits certain members of the Police and Firemen's Retirement System of New Jersey (PFRSNJ), State Police Retirement System (SPRS), or the Public Employees' Retirement System (PERS) to receive an accidental disability retirement allowance for disability resulting from participation in the 9/11 World Trade Center rescue, recovery, or cleanup operations. Specifically, the law creates two broad categories of eligibility. The first category is members who participated for eight hours in the specified one-month period and now manifest a qualifying injury or condition resulting from the event, and members who sustained an injury between September 11, 2001 and September 12, 2001, that is a qualifying condition and prevented them from working eight hours, and are now manifesting a qualifying condition that disables them. The second category is members who took any kind of retirement and were EMTs, or ineligible for the Police and Firemen's Retirement System due to age and service restrictions, or general PERS members who have manifested a qualifying condition under the Act, who are then eligible to have their benefits recalculated. The Act, which became effective on July 8, 2019, states that the Public Employees' Retirement System Board of Trustees (Board) shall promulgate rules necessary to implement the provisions of the law.

Therefore, the Board proposes the following new subchapter, which affects retirements within PERS.

Subchapter 9. 9/11 World Trade Center Accidental Disability

The Board proposes to add new N.J.A.C. 17:2-9, 9/11 World Trade Center Accidental Disability, to implement P.L. 2019, c. 157, which permits certain members of the PERS to receive an accidental disability retirement allowance for disability resulting from participation in 9/11 World Trade Center rescue, recovery, or cleanup operations. The subchapter and its subsections will set forth: the purpose of this

subchapter, definitions, eligibility, filing requirements, and calculation of accidental disability.

As the Board has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rules benefit PERS members, retirees, and survivors of members and retirees by increasing eligibility for accidental disability for some members, and by increasing pension benefits for those now eligible to purchase or transfer service from another system. Members, retirees, and survivors of members and retirees rely on the efficient operation of the PERS to provide them with a monthly distribution in retirement, proper crediting of contributions and earnings, death benefits, and information regarding their individual accounts.

Economic Impact

The proposed new rules will result in an increase in contributions to PERS by the State and local government employers. According to the fiscal estimate produced by the Office of Legislative Services, "[t]he cost increase cannot be estimated because it will depend on the number of members or retirees who incurred an illness, who can prove participation in the rescue, recovery, and cleanup operations, and who submit an application for the benefit."

Federal Standards Statement

The proposed new rules meet the applicable Federal standards, that is, 26 U.S.C. § 403(b). There are no other Federal standards applicable to the subject matter of this subchapter.

Jobs Impact

As the proposed new rules concern retirement benefits for active members or retirees who already are, or may become, disabled as a result of having participated in rescue, recovery, and cleanup operations at the World Trade Center in the approximately one-month period between September 11, and October 11, 2001, it is not anticipated to have any effect upon the generation or loss of jobs in the future, implementation of the proposed new rules will not result in the generation or loss of jobs.

Agriculture Industry Impact

The proposed new rules will not have any impact on the agriculture industry.

Regulatory Flexibility Statement

N.J.A.C. 17:2 affects PERS members, retirees, and survivors of members and retirees. Thus, the proposed new rules do not impose any reporting, recordkeeping, or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Housing Affordability Impact Analysis

The proposed new rules will have no impact on the affordability of housing in New Jersey, nor will they involve a change in the average costs associated with housing, because the rules pertain only to administration of the PERS for members, retirees, and survivors of members and retirees.

Smart Growth Development Impact Analysis

The proposed new rules will not have any impact on the achievement of smart growth; nor will they involve a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey, because the rules pertain to administration of the PERS for members, retirees, and survivors of members and retirees.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

PERS has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposed new rules follows:

SUBCHAPTER 9. WORLD TRADE CENTER ACCIDENTAL DISABILITY

17:2-9.1 Purpose

P.L. 2019, c. 157, the Bill Ricci World Trade Center Rescue, Recovery, and Cleanup Operations Act (Act), permits certain members or retirees of the Police and Firemen's Retirement System of New Jersey (PFRSNJ), State Police Retirement System (SPRS), and Public Employees' Retirement System (PERS) to receive an accidental disability retirement allowance for disability resulting from participation in the 9/11 World Trade Center rescue, recovery, or cleanup operations. The purpose of this chapter is to establish the rules necessary to implement the provisions of this law.

17:2-9.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Emergency medical technician" means a person who was trained in basic life support services, as defined in section 1 of P.L. 1985, c. 351 (N.J.S.A. 26.2K-21), and certified by the Department of Health to perform these services, as of the date(s) the member or retiree participated in World Trade Center rescue, recovery, or cleanup operations.

"Public service" includes paid and volunteer positions.

"Qualifying condition or impairment of health" includes: diseases of the upper respiratory tract and mucosae, including conditions of conjunctivitis, rhinitis, sinusitis, pharyngitis, laryngitis, vocal cord disease, upper airway hyper-reactivity and tracheo-bronchitis, or a combination of such conditions; diseases of the lower respiratory tract, including, but not limited to, bronchitis, asthma, reactive airway dysfunction syndrome, and different types of pneumonitis, such as hypersensitivity, granulomatous, or eosinophilic; diseases of the gastroesophageal tract, including esophagitis and reflux disease, either acute or chronic, caused by exposure or aggravated by exposure; diseases of the psychological axis, including post-traumatic stress disorder, anxiety, depression, or any combination of such conditions; diseases of the skin, such as contact dermatitis or burns, either acute or chronic in nature, infectious, irritant, allergic, idiopathic or non-specific reactive in nature, caused by exposure or aggravated by exposure; and new onset diseases resulting from exposure as such diseases occur in the future, including cancer, chronic obstructive pulmonary disease, asbestos-related disease, heavy metal poisoning, musculoskeletal disease, and chronic psychological disease.

"Tier 1" means a member or retiree enrolled in PERS before July 1, 2007.

"Tier 2" means a member or retiree eligible for enrollment in PERS on or after July 1, 2007, and before November 2, 2008.

"Tier 3" means a member or retiree eligible for enrollment in PERS on or after November 2, 2008, and on or before May 21, 2010.

"World Trade Center Health Program" means the program created by the James Zadroga Health and Compensation Act of 2010, including the Clinical Centers of Excellence administered by the Centers for Disease Control/National Institute for Occupational Safety and Health.

"World Trade Center rescue, recovery, or cleanup operations" means the rescue, recovery, or cleanup operations at the World Trade Center site between September 11, 2001 and October 11, 2001.

"World Trade Center site" means any location below a line starting from the Hudson River and Canal Street, east on Canal Street to Pike Street, south on Pike Street to the East River, and extending to the lower tip of Manhattan.

17:2-9.3 Eligibility

(a) The event(s) on which an application for accidental disability retirement benefits is based shall be presumed to have occurred during, and as a result, of the performance of a member's regular or assigned duties and not the result of the member's willful negligence, if the member:

1. Participated in World Trade Center rescue, recovery, or cleanup operations for:

i. A minimum of eight hours; or

ii. Less than eight hours, and the member sustained a documented physical injury at the World Trade Center site between September 11, 2001 and September 12, 2001, that prevented the member from continuing to participate in World Trade Center rescue, recovery, or cleanup operations for a minimum of eight hours, and the documented physical injury is a qualifying condition or impairment of health that resulted in a total and permanent disability for which the member seeks a presumption under this subsection;

2. Is totally and permanently disabled by a qualifying condition or impairment of health as a direct result of participation in World Trade Center rescue, recovery, or cleanup operations;

3. Is a member of PERS:

i. Who is or was enrolled in PERS because the member did not meet the age or medical requirements for enrollment in PFRSNJ on the basis of the position held; or

ii. Who is an emergency medical technician;

4. Is enrolled in Tier 1, Tier 2, or Tier 3 of PERS; and

5. Passed a physical examination for entry into public service that failed to disclose evidence of a qualifying condition or impairment of health that formed the basis for the total and permanent disability.

(b) A retiree who retired on a service retirement, early retirement, or an ordinary disability retirement shall be eligible to apply to the board of trustees to have the retiree's retirement allowance recalculated as an accidental disability retirement allowance for benefit payments on or after the application for recalculation, if the retiree:

1. Participated in the World Trade Center rescue, recovery, or cleanup operations for a minimum of eight hours;

2. Is totally and permanently disabled by a qualifying condition or impairment of health as a direct result of participation in World Trade Center rescue, recovery, or cleanup operations;

3. Is a retiree of PERS:

i. Who was enrolled in PERS because the retiree did not meet the age or medical requirements for enrollment in PFRSNJ on the basis of the position held; or

ii. Who is an emergency medical technician;

4. Was enrolled in Tier 1, Tier 2, or Tier 3 of PERS; and

5. Passed a physical examination for entry into public service that failed to disclose evidence of a qualifying condition or impairment of health that formed the basis for the total and permanent disability.

17:2-9.4 Filing requirements

(a) A member or retiree must file a written and sworn Eligibility Registration Form with the Division indicating the dates, locations of service, and number of hours of participation in World Trade Center rescue, recovery, or cleanup operations by July 8, 2021, to qualify for the presumption or recalculation pursuant to N.J.A.C. 17:2-9.3, unless a retiree files an application for recalculation, pursuant to N.J.A.C. 17:2-9.3(b), before July 8, 2021, then such application for recalculation shall serve as the Eligibility Registration Form. This form allows eligible PERS members or retirees the right to file for an accidental disability retirement should they become totally and permanently disabled by a qualifying condition or impairment of health as a direct result of participation in World Trade Center rescue, recovery, or cleanup operations.

(b) A retiree seeking recalculation of a retirement allowance pursuant to N.J.A.C. 17:2-9.3(b) must file an application for recalculation, on a form prescribed by the Division, within 30 days of the date that the retiree knew or should have known of the existence of a total and permanent disability caused by a qualifying condition or impairment of health and its relation to World Trade Center rescue, recovery, or cleanup operations. Retirees who knew, or should have known, of the existence of a total and permanent disability caused by a qualifying condition or impairment of health and its relation to World Trade Center rescue, recovery, or cleanup operations before July 8, 2019, must have filed an application for recalculation, on a form prescribed by the Division, by October 15, 2019 (within 30 days of September 16, 2019, the date members and retirees were notified of the enactment of P.L. 2019, c. 157, and the requirement to file).

(c) A member with an Eligibility Registration Form on file with the Division must file an application with the prospective date of retirement pursuant to N.J.A.C. 17:2-6.1.

(d) N.J.S.A. 43:15A-43 requires the Board to designate physicians to perform medical examinations of members who apply for accidental disability retirements. If a member or retiree who is enrolled in the World Trade Center Health Program provides medical documentation for treatment provided, or paid, by the World Trade Center Health Program sufficient to allow the Medical Review Board to certify that the member or retiree is totally and permanently disabled by a qualifying condition or impairment of health as a direct result of participation in World Trade Center rescue, recovery, or cleanup operations, no further evaluation is necessary. However, if the medical documentation is not sufficient to establish a total and permanent disability caused by a qualifying condition or impairment of health as a direct result of participation in World Trade Center rescue, recovery, or cleanup operations after review by the Medical Review Board, then an independent medical examination shall be required pursuant to N.J.A.C. 17:1-7.10.

17:2-9.5 Calculation of accidental disability

If a member or retiree is approved for an accidental disability retirement under the provisions of P.L. 2019, c. 157, the annual allowance shall be 72.7 percent of the member or retiree's salary at the time of participation in World Trade Center rescue, recovery, or cleanup operations. If a member or retiree was not a member of PERS at the time of participation in World Trade Center rescue, recovery, or cleanup operations, the annual allowance shall be 72.7 percent of the member or retirees' salary at the time of enrollment in PERS.

(a)

DIVISION OF PENSIONS AND BENEFITS

Alternate Benefit Program

Proposed Readoption with Amendments: N.J.A.C. 17:7

Authorized By: Division of Pensions and Benefits, John D. Megariotis, Acting Director.

Authority: N.J.S.A. 18A:66-192.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2020-083.

Submit comments by November 7, 2020, to:

Susanne Culliton
Assistant Director
Division of Pensions and Benefits
PO Box 295
Trenton, NJ 08625-0295
DPB.regulations@treas.nj.gov

The agency proposal follows:

Summary

The Division of Pensions and Benefits (Division) is responsible for promulgating and reviewing the administrative rules for the Alternate Benefit Program ("ABP" or "Program") codified at N.J.A.C. 17:7. When the Division becomes aware of a court decision or change in the law that could affect the ABP, the administrative rules are reviewed and, if changes are mandated, steps are taken to propose revisions to those rules, so that they conform to the new statute or court decision. Additionally, the rules are periodically reviewed by the Division to ascertain whether current rules are necessary, cost efficient, reflect current procedures of the Division, and maintain qualified plan status in compliance with Federal IRS regulations. Finally, when the rules at N.J.A.C. 17:7 are due to expire, they must be readopted.

The Director of the Division proposes to readopt the existing rules at N.J.A.C. 17:7, with several amendments, at N.J.A.C. 17:7-8.11, in light of a review of other states' experience in this area. The rules proposed for readoption with amendments reflect the requirements for administration, enrollment, contributions, distribution, termination, and transfers at N.J.S.A. 18A:66-167 through 192. N.J.A.C. 17:7 was scheduled to expire on May 4, 2022. As the Division has filed this notice of readoption prior

to May 4, 2022, that date is extended 180 days to October 31, 2022, pursuant to N.J.S.A. 52:14B-5.1.c(1).

The ABP is a defined contribution retirement program for eligible employees of the public institutions of higher education in New Jersey. In addition to the distribution of retirement benefits, the ABP provides members with life insurance and disability coverage. Under the ABP, members direct their own retirement accounts and may accumulate contribution balances with any employer who participates in the ABP. Authorized ABP carriers offer a variety of investment choices and distribution methods to ABP members. Vested members are permitted to allocate and transfer employer and employee contributions to authorized investment carriers.

A member of the ABP becomes eligible to commence distributions at any age upon termination of employment or retirement. Members may receive benefits in the form of an annuity or cash distribution. Annuity benefits are calculated by the investment carrier(s) based upon the account accumulation, life expectancy, and the distribution option selected. Cash distributions to members under the age of 55 are limited to their employee contributions and accumulations. The remaining employer contributions and earnings are available for distribution upon attaining age 55. Once vested members start collecting benefits from their ABP account, members are considered retired and are not eligible to enroll in any New Jersey State-administered retirement system; nor are they eligible to reenroll in the ABP. Transitional programs exist across the higher education landscape. They allow key faculty who may be the head of a significant research project or program, or the advisor for graduate students, to transition projects to another faculty member, wind down research, or, in the case of graduate students, successfully transition students toward graduation. Transitional programs tend to extend from three to five years across the nation.

Members, retirees, and survivors of members and retirees rely on the efficient operation of the ABP to administer their accounts and to provide the information they need regarding their accounts. They rely on the presence and predictability of rules that guide the administration of their accounts. The protections and guarantees that the rules afford members and retirees mandate their continued existence.

Following is a discussion of the rules proposed for readoption with amendments:

Subchapter 1. General Provisions

Subchapter 1 restates the provisions of the Alternate Benefit Program established by statute. It includes information about the Program's establishment, the ABP as an exclusive benefit, and the five plans that make up the ABP, including the ABP Retirement Plan, the ACTS Program, the Group Life Insurance Plan, the Group Long-Term Disability Benefit Plan, and the closed ABP Pre-1995 Annuity Contracts Plan. No changes are proposed to this subchapter.

Subchapter 2. Definitions

Subchapter 2 provides definitions for terms that are used regularly in ABP rules. No changes are proposed to this subchapter.

Subchapter 3. Pension Provider Selection Board

The composition of the Pension Provider Selection Board is delineated in Subchapter 3. In addition, the pension provider selection process and the pension provider performance review process is outlined. No changes are proposed to this subchapter.

Subchapter 4. Participation in the Alternate Benefit Program

Subchapter 4 outlines eligibility requirements for participation in the ABP. It includes information about who carries the responsibility for determining ABP eligibility and about transfers from other programs into the ABP. No changes are proposed to this subchapter.

Subchapter 5. Contributions to the ABP Retirement Plan

The process of enrolling members in the ABP Retirement Plan is outlined at Subchapter 5. Subchapter 5 specifies the employee and employer contributions to be made, based on a member's base salary. No changes are proposed to this subchapter.