

8. The relationship between the misconduct and the employee's public duties;
9. The quality or moral turpitude or the degree of guilt and culpability, including the employee's motives and reasons, personal gain and the like;
10. The availability and adequacy of other penal sanctions; and
11. Other personal circumstances relating to the employee bearing upon the justness of the forfeiture.

The Division of Criminal Justice in the Department of Law and Public Safety and the County and Municipal Prosecutor's Offices are required to inform the Division of Pensions and Benefits whenever a public official or employee is prosecuted or convicted. State and Local public employers are also required to notify the Division of Pensions and Benefits whenever a public employer takes formal disciplinary action to remove a member from public office or employment for cause on charges of misconduct or delinquency. In these cases, the Board of Trustees will consider all relevant documentation to render a determination on any appropriate action.

The Board will suspend processing of a member's application for retirement pending the receipt of the final disposition of charges against the member. All claims for retirement, death benefits, or the return of the member's contributions cannot be processed until the criminal or administrative matter has been resolved to the satisfaction of the Board of Trustees. The Division will postpone action on all claims where there is pending litigation against the member's employment. In this case, the Division will hold all applications or requests in abeyance until such time as the matter is fully resolved. Once all the required information is provided to the Division, the Board of Trustees will consider each case on its own merits.

New Jersey law stipulates that a retired member is not eligible to collect retirement benefits if the retiree is confined in a penal institution as a result of a conviction of a crime involving moral turpitude. The law provides that an eligible dependent may continue to collect a retirement benefit if they can prove to the satisfaction of the Board of Trustees that they rely on the retiree's benefits for their maintenance.

The member should contact the Division's Board and Trustee Administration Office, in writing, if any of the conditions listed above should occur in order to obtain more specific instruction on how to proceed.

For additional information, see Fact Sheet #76, *Honorable Service*, which is available on the Division of Pensions and Benefits Web site at:

www.state.nj.us/treasury/pensions

EMPLOYMENT AFTER RETIREMENT

(LRS and WCJ Part members see addendum)

For most PERS retirees, working for private industry, the federal government, or a government agency in another state will not affect your retirement benefits (disability retirees should see "Disability Retirees - Earnings after Retirement" on page 35).

For PERS retirees who resume public employment in New Jersey after retirement, there are several areas of concern.

IRS Provisions

A PERS retiree who returns to public employment before age 59½ may be subject to 10% additional federal tax withholding for an in service distribution under the Internal Revenue Code. Because this issue is fact sensitive, you should consult with the Internal Revenue Service or a qualified tax consultant and **are strongly advised to use caution if considering a return from retirement to public employment.**

Bona Fide Retirement

In applying the return to employment provisions described throughout this section, it is assumed that the PERS retirement is considered to be "bona fide." This means the retiree has **made a good faith action to retire** and that **the employer/employee relationship is completely severed.**

A "bona fide" retirement must also be "due and payable." Your retirement does not become "due and payable" until there has been a cessation of employment of *at least* 30 days following your retirement date, or 30 days following approval of your retirement by the PERS Board of Trustees, whichever is later. If you return to a PERS covered position — on either a paid or voluntary basis — before the 30 days have elapsed, you should expect to continue enrollment in

the PERS. Your retirement will be considered invalid, and you will remain an active employee under your original PERS account.

Note: N.J.A.C. 17:2-2.6(a) requires that employees who work a 10-month school year and retire on July 1 or August 1, **must** count the 30-day break in service from the start of the following normal school year in September.

Other situations where a retirement may not be considered "bona fide" include, but are not limited to, the following examples:

- If you make arrangements prior to your retirement to return to the same or similar public employment as a regular employee, contract employee, leased employee, or an independent contractor, the employer/employee relationship has not been completely severed — regardless of the length of any break in employment — and your retirement will be determined to be invalid. In this case you would be required to remain an active employee under the retirement system in the new position.
- If you are re-employed or appointed by the same employer to the same or a similar position that would have qualified for continued membership in the retirement system had the retirement not occurred, this may indicate that the employer/employee relationship has not been completely severed and, therefore, your retirement may be determined to be invalid. In this case you would be required to remain an active employee under the retirement system in the new position.

If your retirement is determined to be invalid (not "bona fide"), you will be required to reimburse the retirement system for the amount of any retirement benefits you receive from the date of retirement and be required to pay pension contributions in the form of back deductions going back to the date when you should have been reenrolled. **There is no limitation on the amount of reimbursement that may be recovered by the retirement system in these situations.**

The information contained in the rest of this section assumes that the returning retiree has a "bona fide" retirement. If it is established at any

time that the retirement was not made in good faith or that the employer/employee relationship was not completely severed, the provisions described below will not apply.

Returning to a Position under the PERS

Membership in the PERS is required as a condition of employment if you accept regular employment in a position covered by the PERS, work at least the minimum hours per week required for PERS enrollment (see page 2), and earn an aggregate annual salary of more than \$15,000 from PERS-covered employment.

Note: If returning for fewer than the required minimum hours per week or earning less than \$15,000 annually, see the "IRS Provisions" above for federal tax implications.

If, as a "bona fide" PERS retiree, you accept regular employment in a position that makes you eligible for the PERS, you **must** reenroll in the PERS (see the exceptions listed later in this section).

Your prospective employer should be able to tell you if the employment you are considering is covered by the PERS. However, if there is any doubt, you should have the prospective employer contact the Division of Pensions and Benefits for verification prior to your accepting any public employment after retirement. You will be responsible for any penalties imposed based on violation of the law.

Failure to Reenroll in the PERS — If you return to employment under the PERS and:

- You are eligible for membership but you fail to reenroll; or
- It is determined that your PERS retirement is not "bona fide" (see page 33);

You will be required to reimburse the retirement system for the amount of all retirement benefits you receive from the date you should have enrolled, and — if still employed — reenroll in the PERS. In addition, you will be required to pay pension contributions in the form of back deductions going back to the date you should have been reenrolled.

There is no limitation on the amount of reimbursement that may be recovered by the retirement fund in these situations.

