

HONORABLE SERVICE

All Funds

New Jersey law (N.J.S.A. 43: 1-3 et seq.) stipulates that the receipt of retirement benefits is expressly conditioned upon the rendering of honorable service by the member (i.e. a public officer or public employee). A member may be subject to a reduction or forfeiture of earned service credit,* salary, and/or benefits if suspension, dismissal, or termination of employment is due to misconduct; or if convicted of a crime that is in any way related to his or her employment or involves a crime of moral turpitude.

The purpose of this fact sheet is to outline the duties and responsibilities of public employers, the Retirement Systems' Boards of Trustees, the Division of Pensions and Benefits, and other State and municipal agencies when addressing the issue of honorable service in cases of alleged misconduct by a retirement system member.

REPORTING MISCONDUCT

In accordance with N.J.S.A. 43:1-4, the Division of Criminal Justice in the Department of Law and Public Safety (based on information provided by the County and Municipal Prosecutor's Offices) is required to inform the Division of Pensions and Benefits, in writing, whenever a public official or public employee is charged, prosecuted, or convicted. N.J.S.A. 43:1-5 requires State and Local public employers 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.

EMPLOYER RESPONSIBILITIES CONCERNING INDICTMENTS, DISMISSALS, LITIGATION, OR APPEALS

When a member is indicted or dismissed, the public employer is required to refer the matter to the "Chief of the Retirement Bureau" at the Division of Pensions and Benefits, who will determine the status of any claim which may be filed by the member.

No retirement service credit will be granted for any period during which a member's salary has been terminated while under indictment or suspension. The final outcome of any legal proceedings and review by the Board of Trustees will determine the basis for the award of such service credit, if any.

All applications submitted for retirement, death benefits, withdrawal, etc., will not be processed until outstanding matters have been completely resolved to the satisfaction of the Board of Trustees. The Division will postpone action **on all claims** where there is pending litigation regarding the member's employment.

- If an indictment, information, etc. related to a member's public employment is received by the Boards of Trustees or the Division *after* a retirement has been approved, the Board may suspend retirement benefits pending the outcome of the final disposition of the charges.

Dependents of Retirees — In cases of suspension of a retirement benefit due to incarceration, the law provides that an eligible dependent may be approved to continue to collect a retirement benefit if it can

**The Boards shall also disallow the purchase of any former service that is deemed to be dishonorable by the respective Board of Trustees.*

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be proven, to the satisfaction of the Board of Trustees, that the dependent relies on the retiree's benefits for their maintenance. The retiree or dependent should contact the Division's Board of Trustee Administration Office, in writing, in order to obtain more specific instruction on how to proceed for cases where the conditions listed above apply.

- The public employer is responsible for reimbursement to the retirement system of all pension costs incurred by the retirement system following any settlement agreement between the employer and the member, by which the employer will not pursue civil or criminal charges or an action for misconduct against the employee in exchange for the employee's resignation in good standing, and that fails to fully disclose the settlement so that the Board of Trustees can determine whether to order the forfeiture of all or part of the earned service credit, or pension or retirement benefit due to misconduct, which renders all or part of the member's service dishonorable.

The statute requires that all public employers disclose these settlements to the appropriate Board of Trustees. Therefore, public employers must submit any executed settlement agreement to the "Chief of the Retirement Bureau" at the Division of Pensions and Benefits, along with identifying information that includes the member's pension member number, a copy of the underlying charge or charges, and information on who to contact if the Division requires additional information. The obligation of disclosure, as mandated by the statute, further requires employers to submit any additional information requested by the Division of Pensions and Benefits pertaining to the underlying charges and any additional factual information so that the Board can be fully informed and take action as it deems appropriate.

NOTE: It is a misdemeanor punishable under the laws of the State of New Jersey for any person to knowingly make false statements, or falsify or permit to be falsified any record or records of the retirement system, in any attempt to defraud the retirement system. This includes the Certifying Officer's responsibility to properly complete the *Certification of Service and Final Salary* at the time the member files for retirement benefits.

DOCUMENTATION REQUIRED IN CASES OF MISCONDUCT OR DISHONORABLE SERVICE

The Division of Pensions and Benefits requires employers and other agencies to provide the following documentation for review of honorable service cases. Some of the documentation may not be applicable in all cases, but **if the documents are issued, a copy must be provided to the Division**. Once all of the required information is provided to the Division, the Board of Trustees will consider each case on its own merits.

Documents Required for Administrative or Disciplinary Charges

- Preliminary and Final Notices of Disciplinary Action (Civil Service employers);
- Administrative Law Judge's Initial Decisions;
- Merit System Review Board Decisions;
- Settlement Agreements;
- Investigative Reports;
- Employer letters or memos outlining the administrative charges and final disposition of the charges;
- Employment and Salary History;
- Letter of Resignation;
- Ordinance or Resolutions listing employee's termination date;

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- Board Minutes listing employee's termination date;
- Status of any pending civil litigation that may have an impact on the resolution of the administrative case;
- Toxicology Reports (in cases of drug or alcohol charges);
- Department of Education — State Board of Examiners Teaching Revocation Notice (TPAF members only);
- Commissioner of Education Decision (TPAF members only);
- Tenure Charges (TPAF members only);
- Order to Show Cause (TPAF members only).

Documents Required for Criminal Charges

- Indictments, Information, Summons, Complaints, Accusations, and Waivers;
- Plea Agreements;
- Allocution or Plea Hearing Transcripts;
- Sentencing Hearing Transcripts;
- Status of any pending civil litigation that may have an impact on the resolution of the criminal case;
- Investigative Reports;
- Final Adjudication of the Charges (Judgment of Conviction, Order of Commitment, Judgment of Acquittal);
- Order of Forfeiture of Public Office;
- Order of Sentencing;
- If incarcerated, the dates of incarceration, and the Notice of Parole;
- Documents to show enrollment in, or successful completion of, Pre-trial Intervention (PTI) or Intensive Supervision Program (ISP);
- Employment and Salary History;
- Letter of Resignation;
- Preliminary and Final Notices of Disciplinary Action;
- Toxicology Reports (in cases of drug or alcohol charges).

In addition, the Board may request and consider any other information or documentation it determines is relevant.

REVIEW BY THE BOARD OF TRUSTEES

Upon notification, the Board of Trustees evaluates the member's disciplinary and/or criminal charges using the following 11 factors set forth in N.J.S.A. 43:1-3 to determine whether the member's public service is considered honorable:

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1. The employee's length of service;
2. The basis for retirement, i.e., age, service, disability, etc. (includes the effective date of retirement);
3. The extent to which the employee's pension has vested;
4. The duties of the particular employment;
5. The employee's public employment and service (includes the date of last pension contribution);
6. Any other public employment and service;
7. The nature of the misconduct or crime, including the gravity or substantiality of the offense, whether it was a single or multiple offense(s), and whether it was continuous or isolated;
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 Board of Trustees may subpoena witnesses and compel their attendance, and also may require the production of books, papers, or documents in a matter concerning the rendering of honorable service by a public officer or employee seeking to receive a public pension or retirement benefit.

Refusal to obey a subpoena or to testify or produce any required documents will result in referral of the matter to the Superior Court for an order to compel the person to comply with the subpoena.

The final resolution of any indictment, dismissal, or other charges must be verified by contact with the County Prosecutor's Office, the Attorney General's Office, the Department of Education, the Civil Service Commission, or other responsible agencies.

BOARD OF TRUSTEE DETERMINATIONS

The Board of Trustees may determine that a full forfeiture, or a partial forfeiture, of pension or retirement benefits is warranted:

- If the Board of Trustees determines that a partial forfeiture of pension or retirement benefits is warranted, benefits will be calculated as if the accrual of pension service terminated as of the date the misconduct first occurred; or
- Where the termination of pension rights as of the date of the misconduct results in no reduction, a minimal reduction of pension or retirement benefits, **or** in an excessive forfeiture, as compared to the nature and extent of the misconduct and the years of honorable service, the Board may, in its sole discretion, provide a more equitable relief. Alternate methods available to the Board when a forfeiture of service renders an unreasonable or unjust result include, but are not limited to:
 1. Forfeiture of salary credit upon which retirement benefits are based;
 2. Forfeiture of system-paid retired State Health Benefits;
 3. Forfeiture of right to participate in the retired State Health Benefits Program/School Employees' Health Benefits Program;
 4. Reduction in monthly retirement allowance;
 5. Forfeiture of service and/or salary credit in a specific title or rank;

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6. Forfeiture of service in excess of that needed to qualify for a specific retirement benefit; or
 7. Forfeiture of a percentage of the retirement benefit based on the calculation of the percentage of time which was dishonorable service as compared to the total years and months of service credit.
- **Dual Members** — if the member is enrolled in more than one of the State-Administered Retirement Systems, a finding of misconduct and dishonorable service under one retirement system may also be used to reduce or forfeit benefits under the second retirement system.

There is no time limit or statute of limitations after which the Board of Trustees cannot consider charges of misconduct and dishonorable service. The Board of Trustees is required to evaluate charges of misconduct that occurred at any time during an official's or employee's pension membership, or subsequent charges that can be related to the employee's or retiree's public employment.

COURT ORDERS

The Board of Trustees shall implement any pension forfeiture ordered by a court under P.L. 2007, c. 49, which requires forfeiture of all of the pension or retirement benefit earned in the retirement system covering persons holding any public office, position, or employment, or elective or appointed positions, who are convicted of certain crimes or offenses enumerated in the law which involve or touch the office, position, or employment. The pension forfeiture will be ordered by the court immediately upon a finding of guilt or a plea of guilty unless the court, for good cause, orders a stay of the pension forfeiture pending a hearing on the merits at the time of sentencing.

Chapter 49 does not preclude the authority of the Board of Trustees from ordering the forfeiture of all or part of the earned service credit, or pension or retirement benefit, of any member of the retirement system for misconduct occurring at the time of the member's public service, including cases where the court does not enter an order of forfeiture.

The Board of Trustees will stay its consideration of any claim pending before it until the criminal case and any application made by the prosecutor or Attorney General to the court for an order of forfeiture has been concluded.

MORE INFORMATION

If you have questions about the information presented in this fact sheet or need additional information about honorable service, please contact the Board of Trustee Administration Office, Division of Pensions and Benefits, PO Box 295, Trenton, NJ 08625-0295.

This fact sheet has been produced and distributed by:
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