

Chapter 92 & 103



Ken Hartman

Division of Pensions and Benefits

Marc Pfeiffer

Division of Local Government Services

Chapter 92

- Provides for changes to the administration of the Public Employees' Retirement System (PERS), Teachers' Pension and Annuity Fund (TPAF) and creates the Defined Contribution Retirement Program (DCRP) in which newly elected and certain appointed officials shall be enrolled beginning July 1, 2007.

Ch. 92 DCRP

Elected Officials

- An **elected official** is any individual who holds a State or local (county, municipal, etc.) elected public office
 - Newly elected after 07/01/2007 will be ineligible for PERS
 - Elected to a new office after 07/01/2007 also ineligible for PERS
 - Exception is Legislature
 - Ex: Assemblyperson elected to Senate

Enrollment

- Position must pay at least \$1,500 to qualify for DCRP
- If position pays less than \$5,000 the official may choose to waive participation
 - Must complete a Waiver form
 - This is irrevocable for that position

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Elected Officials

- A **retired** member of another State-administered retirement system is elected to public office
- They can choose to receive the retirement benefit from the former employment
 - They would **not** be eligible for the DCRP,
- They can suspend the retirement benefit from the former employment and enroll in the DCRP while in the elected office
 - The former allowance will be reinstated when they leave office.

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Appointed Officials

- *On or after July 1, 2007 a newly appointed official who **does not** have an existing PERS account will only be enrolled in the DCRP and cannot enroll in the PERS*
 - If they were already in PERS, they would remain in PERS
 - Unless they have not contributed for 2 or more years
- An **appointed official** serving in a position that is otherwise eligible for membership in the TPAF, PFRS, SPRS, or JRS will not be enrolled in the DCRP.

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Appointed Officials

- A **State appointee** is any individual appointed by the Governor, including those requiring the advice and consent of the Senate.
- A **Local appointee** is any individual appointed by the Governor, including those requiring the advice and consent of the Senate; or an individual appointed in a similar manner by the governing body of a local public entity (county, municipality, etc.).

What's All This Substantially Similar Thing About?

For full details, see
Local Finance Notice 2008-10

Key Things

- Governing Body:
 - Consider LFB Guidelines
 - Determine which positions are DCRP
 - Adopts ordinance or resolution (as appropriate)
- Pension Certifying Officer
 - When enrolling into a pensions plan, apply exceptions to see if employees are exempt from DCRP
- Evaluate professionals that are employees and contractors

Step 1 – Appointments by Elected Governing Bodies

- N.J.S.A. 43:15C-2 provides that:
 - (3) A person who commences service on or after the effective date (July 1, 2007) of this section:
 - ...[whose position] requires the specific consent or approval of the **elected governing body** of the political subdivision that is substantially similar in nature to the advice and consent of the Senate for appointments by the Governor of the State...

Step 2 - Apply LFB Guidance Locally

- ...pursuant to guidelines or policy that shall be established by the Local Finance Board in the Department of Community Affairs or the Department of Education, as appropriate to the elected governing body.”
- as determined by the elected governing body based on the Board’s guidelines or policy and that the determination be memorialized in an adopted ordinance or resolution.

Making this difficult are 3 things...

1. Forms of government that mimics State advice and consent and some that don't
 - **Result: We treat them all the same**
2. The type or nature of the positions that are affected by State advice and consent.
 - **Result: We treat them all the same**
3. Recognizing the difference between “career” and “political” appointees
 - **Result: We make a small differentiation**

Generally Covered Positions

- Executive decision-making or are senior management of the organization...
- ...That require approval of a governing body, by statute, ordinance or resolution...
- ...Are DCRP
- Regardless of form of government
 - Deemed to include appointments by Municipal and County Managers and similar positions

Testing: For each position..

- Is there a requirement for approval of the governing body?
 - Can be based on statute, local ordinance, or previously adopted resolution establishing local practice.
 - Includes appointments of this nature made by municipal managers under the Faulkner council-manager form the municipal manager form of government, and the county manager form of county government, and commission form of government
 - These are deemed to be those of the elected governing body.

DCRP Positions Must Include..

- When the individuals are treated as *bona fide* employees and not hired under a professional services resolution:
 - Chief Administrative Officer position, regardless of title
 - Principal operating responsibility of a government function(s), commonly called “department heads” or similar title; **that are appointed** by the governing body **and** who directly report to an elected official(s) or chief administrative officer

And employees who are...

- Legal counsel to the organization
 - Regardless of title, i.e. municipal attorney, counsel, director of law, corporation counsel, solicitor, county counsel, etc., (N.J.S.A. 40A:9-139, and 40A:9-43 or similar)
- Municipal or County Engineer (N.J.S.A. 40A:9-140, and 40A:9-43 or similar)
- Municipal Court Judge (must be employee)
- Municipal Prosecutor (N.J.S.A. 2B:25-1 et seq.) and Public Defender (if employee)
 - NOT...Municipal Court Administrator (PERS)

And...

- Appointed members of local authority Board of Commissioners
- Gubernatorial appointees that serve in county or local government for a fixed term

But Not...

- Routine appointments by governing bodies:

Routine Employment Exception

Key provision:

- “...a person who is employed or appointed in the regular or normal course of employment or appointment procedures
- and consented to or approved in a general or routine manner appropriate for and followed by the agency
- Usually in township committee, borough council and freeholder forms
- Applies to administrative support and public works rank and file staff that are appointed by the governing body
- Cannot be used to supersede specific elements of this guidance
- Intended to ensure these employees remain eligible for PERS membership

Governing Body Actions

- Must identify and reach a conclusion on covered positions
 - Memorialize it by passage of an ordinance (municipal) or resolution (county).
- File it with Pensions and Benefits
- All applications for membership in PERS and DCRP are subject to Pensions review to ensure compliance and consistency with this policy and State law
- All appointments are subject to approval of Pensions and Benefits and the PERS Board of Trustees.

Step 3 – Pension Certifying
Officer Determines if a Person
Appointed to a DCRP Position is
Eligible For An Exception

1. Professional Certification Exception

- Certified Health Officer
 - Tax Collector
 - Chief Financial Officer
 - Construction Code Official (including sub-code officials)
 - Qualified Purchasing Agent
 - Tax Assessor
 - Municipal Planner
 - Registered Municipal Clerk
 - Licensed Uniform Subcode Official
 - Certified (Principal) Public Works Manager
- 2. Or someone serving in a temporary or acting appointment to one of these

3. PERS Promoted from Within

- The Pension Certifying Officer may determine that an individual in an organization promoted to a DCRP position may remain in PERS if the action is through a *bona fide* promotion
- If appointed from the outside, the person must join DCRP
- Must be legitimate promotion. No hiring an individual in a subordinate PERS position with the purpose of then promoting the person to a DCRP position
- The local unit should be prepared to document and support a decision of this nature if called upon by the Division of Pensions and Benefits

4. Has Continuously Been a Member of PERS

- An individual who was a member of PERS prior to 7/1/07, and has continuously been a member can remain in PERS if appointed to a DCRP position
 - “Continuously” means no more than two years has elapsed between PERS employment.
- Retiring from PERS to take DCRP; you must be retired before taking a DCRP position.
 - Meaning there must be a thirty day break between positions.

5. DCRP as a Supplemental Position

- Dual position holders – become a member of both systems based on the position
 - But subject to the “continuous” position – this really affects just those hired after 7/1/07 to PERS or DCRP positions.
- Salary should be apportioned accordingly
- This will be a common occurrence due to impact of the Chapter 103 Social Security maximum requirement.

Section 20 of Chapter 92 –
Professional Services and
Pensions

Generally, Section 20 provides that...

- A person performing professional services cannot receive a paycheck and compensation via voucher through a professional services agreement for the same work.
 - Generally speaking, no one should get both!
- Which means someone working under a professional services resolution cannot be a member of PERS or DCRP (e.g., getting a paycheck)
- Common application includes many municipal or county attorneys, engineers, planning and zoning board attorneys.
 - Prosecutors and Public Defenders can be employees or contractors. Usually employees, but local choice.

Further...

- All professionals working for any local unit must meet the IRS test as a bona fide employee; otherwise they are a contractor and must be treated accordingly:
 - Review IRS references in LFN 2007-28
 - Pension Certifying Officer Letter of May 6, 2008
 - No paycheck; no pension membership
 - If retired from PERS, person gets paycheck; no DCRP (or PERS) membership

Professional Services Contracts

- Effective January 1, 2008
 - Person hired under a Professional Services contract cannot join Public Employees' Retirement System (PERS)
 - If contract was established prior to 1/1/08 the member can continue in PERS for the duration of the contract
 - But cannot continue in PERS with a new contract
 - Full-time or part-time is irrelevant
 - It is how the services are provided
- Does not apply to employment agreements with salaried employees –
 - They are not backed by a Professional Services Resolution

N.J.S.A. 40A:11-2

"Professional services" means:

- services rendered or performed by a person authorized by law to practice a recognized profession,
- whose practice is regulated by law, and
- the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training.
- Professional services may also mean services rendered in the provision or performance of goods or services that are original and creative in character in a recognized field of artistic endeavor.

Professional Services Contracts

- Most contracts will run from 1/1 to 12/31
 - Some school districts have contracts that run 7/1 to 6/30
 - There is no such thing as a multiple year PSC
 - If a member is eligible to retire, they may retire and continue providing services under a PSC
 - No limit on earnings
 - Otherwise withdraw or find other employment within 2 years

Issues

- **Working After Retirement**
 - Most Employment Okay
 - Same Pension Fund **Not** Okay
 - PERS is Exception
 - But cannot join another fund (i.e. retire from PERS, cannot join DCRP)
 - Be Careful of “Consulting”
 - IRS rules as well



IRS Resources

(LFN 2007-28)

- Publication 1779
 - Independent Contractor or Employee?
 - Behavioral Control
 - Financial Control
 - Relationship of Parties
- Publication 15-A
 - Employer's Supplemental Tax Guide
 - Employee vs. Independent Contractor

Eligibility Questions

- Contractor vs. Employee?
- Hiring a retiree?
 - Fact sheets are pretty clear (21,28, 29)
- Request in writing to the Division of Pensions if there is a question as to eligibility
 - This is the employer's responsibility
 - Not the employee's

And now, back to Pensions
procedures

Enrollment

- Employers must enroll eligible members in the DCRP
 - Online through EPIC
 - Paper Enrollment Application
 - Payroll Certifications – will be generated by the Division verifying only that the applicant is enrolled with the Membership ID, SSN, Date of Enrollment, Deduction begin date and Vesting Status. Any back deductions due to delayed enrollment are to be scheduled at the discretion of the Employer.

Contributions

- Like PERS/TPAF, etc., the DCRP is a 401(a) Mandatory Retirement Program with 414(h) Contributions. However, like ABP it is a Defined Contribution Plan.
- 5.5% member contribution to an investment account managed by Prudential Financial
 - 414h tax-deferred monies
- 3% employer contribution
 - Due within 5 business days
 - Prudential will contact employers to set this up
 - Members will receive information on investment options from Prudential as they are suggested to make a positive election to direct the investment of their contributions.

Resources

- Pensions website
 - www.state.nj.us/treasury/pensions/dcrp1.htm
 - Certifying Officer Letters
 - Fact sheets
 - Enrollment Guidance
 - “Click-through” guides for elected/appointed and professional services
 - Enrollment forms and link to online enrollment
 - Waiver forms

Vesting

- A newly elected or appointed official has an existing DCRP account, or is an active or vested member of another State-administered retirement system, the official is immediately vested (Active) in the DCRP.
- If not, they will be considered Delayed and will become vested once they complete one year of service
 - As a vested member, your right to a benefit at retirement based on both the employee and employer contributions to the DCRP is non-forfeitable.

Retirement

- Contact Prudential Financial for information regarding DCRP benefits and options
 - Various methods of distribution
 - **All returns of contributions and earnings are considered taxable in the year they are received**
- No minimum retirement age under the DCRP
 - The member will automatically be considered retired, regardless of age, if there is any distribution of mandatory contributions
 - Lump-sum cash distributions to members under the age of 55 are limited to the member's contributions and earnings. The remaining employer contributions and earnings are only available after age 55
- You cannot participate in any NJ State-administered retirement system if you have take any distribution from DCRP

Health Benefits

- DCRP time cannot be used to qualify for the State Health Benefits Program in retirement
- Please contact your employer's human resources office or benefits administrator to ask about health benefit coverage options available in retirement.

Life Insurance

- While serving in an elected or appointed office, DCRP members are covered by employer-paid life insurance
 - 1½ times the annual base salary on which DCRP contributions were based
 - This coverage is available without a medical examination to members under age 60
 - Newly enrolled members 60 years of age or older must undergo a medical examination to qualify
 - Covered for 2 years if on an approved leave of absence for personal illness

Life Insurance in Retirement

- Upon retirement – drops to 3/16 of the annual base salary on which DCRP contributions were based
 - Members age 60 or older must have completed 10 years of participation in the DCRP
 - Members of any age if they have completed 25 years of participation in the DCRP
- Must also have been active in the twelve months immediately preceding the initial receipt of a retirement annuity payment
 - Same conversion rights as our other plans

Long-term Disability Insurance

- A member is eligible for employer-paid long-term disability insurance coverage after one year of participation in the DCRP
- Eligible for the disability benefit after six consecutive months of total disability due to an occupational or non-occupational condition
 - Benefits will be paid as long as the member remains disabled or until the member attains age 70
 - Terminates if the member begins receiving payments under the retirement annuity

Long-term Disability Insurance

- Participants receiving LTD are considered active members and both the member's and the employer's mandatory contributions are automatically credited to the member's retirement account while the member is considered disabled.
 - The member continues to accrue service credit for as long as the long term disability is in effect.
 - If it is determined through a required periodic medical evaluation that a member receiving long term disability benefits is no longer considered disabled, and the member is not yet 70 and chooses to return to employment rather than retire, the member will retain DCRP active group life insurance coverage.

Chapter 103

- Creates new benefit class
 - Members of PERS and TPAF enrolled after 7/1/2007 will be a class “D” member
 - Changes compensation limit
 - Based on Social Security compensation limits
 - Changes early retirement reductions
 - Reduction of 1% per year between 55 and 60 in addition to the established reductions for retirement prior to age 55.

Transfers

- An employee who transfers into PERS/TPAF will not be subject to Ch. 103 limits and DCRP enrollment if the following conditions exist:
 - No break in service
 - A break of less than 24 months
 - Returning from a break resulting from a layoff or RIF and the return is within 10 years of the last pension deduction
- All others would be subject to income limits and DCRP enrollment

Vested Accounts

- Vested accounts left inactive for 2+ years
 - Member is entitled to the benefit from the vested account
 - Would return to a Class D membership if they returned
 - Subject to salary cap and penalty under class D
 - Can combine accounts for SHBP eligibility (if applicable)
 - Cannot combine for early retirement eligibility

Contribution Rate

- Chapter 103 provides for an increase in the employee pension contribution rate for PERS and TPAF members from 5% to 5.5% of salary.
 - Done in two phases
 - Phase 1 (broadly) – July 1, 2007
 - State Employees (except Judicial)
 - Educational Employers
 - Higher Education (except UMDNJ)
 - Phase 2 (broadly) – July 1, 2008
 - Judicial
 - UMDNJ
 - Municipalities and counties

Early Retirement

- Early retirement example
 - 25 years of service
 - \$80,000 final average salary
 - Age 53
 - \$36,400 gross
 - \$32,396 –reduced by 11%
 - 5% reduction 55 to 60
 - 6% reduction under 55

Compensation Limits

- Compensation Limits
 - 2008 - \$102,000
 - Compensation over limit would not count towards PERS/TPAF compensation but would be eligible for DCRP
 - Amended “Compensation” definition:
 - “...the amount of... contractual salary equivalent to the annual maximum wage contribution base for Social Security....”

(NJSA 18A:66-2 / NJSA 43:15A-6)

Compensation Limits

- Compensation in excess of limit is eligible for participation in the Defined Contribution Retirement Program (DCRP)
 - Participation in the DCRP may be waived by TPAF or PERS member at time of DCRP eligibility
 - Waiver may be revoked
 - Submit form – effective January 1 of the following year

Enrollment

- Eligible members are enrolled in the DCRP when the annual salary exceeds the maximum compensation limit.
 - At enrollment if salary is above the limit
 - When the salary is increased to where it will exceed the maximum compensation and is reported by the employer to the Division of Pensions and Benefits
 - 5.5% member contribution to an investment account managed by Prudential Financial
 - 3% employer contribution
 - Members will receive information on investment options from Prudential

DCRP Benefits

- Provides DC benefits for compensation over the annual limit
 - Additional benefits tied to compensation over the annual limit DCRP eligibility extended to Class D TPAF & PERS members by Chapter 103, PL 2007
 - Non-contributory Group Life Insurance
 - Non-contributory Long-term Disability

IRS Regulations 2004

- Regulations implemented in 2004 still apply and may impact members taking loans in 2007
- If you have taken a loan since 2004 and it is not paid off and you are thinking of another loan.....

Charlie Miller

- Salary = \$72,000
- Outstanding loan balance = \$18,000
- Monthly payment = \$300



2004

- Borrows another \$6,000
- Total balance = \$24,000
- Monthly payment = \$400
- Balance must be satisfied by 2009



2007

- Loan balance = \$9,600
- Borrows another \$12,000
- New balance = \$21,600
- Monthly payment = \$900
- Still needs to be paid off by 2009



2008



- Loan balance = \$10,800
- Wants to borrow another \$12,000
- Balance must be satisfied by 2009
- He will only be able to borrow \$9,600
 - Payment of \$1,666/month! (+/-)

Why does this happen?

- Members cannot pay more than 25% of their salary as a loan repayment
- His payment on the \$22,800 would be about \$1,900 per month.
 - Assuming salary of \$80,000 at this point
- That represents more than 25% of his salary.