



State of New Jersey
DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
(609) 292-7524 TDD (609) 292-7718
www.state.nj.us/treasury/pensions

JON S. CORZINE
Governor

MAILING ADDRESS:
PO Box 295
TRENTON, NJ 08625-0295

LOCATION:
50 WEST STATE STREET
TRENTON, NEW JERSEY

R. DAVID ROUSSEAU
State Treasurer

FREDERICK J. BEAVER
Director

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TO: Certifying Officers
Local Employers

FROM: Frederick J. Beaver
Director, Division of Pensions and Benefits

SUBJECT: Retirement Incentive Programs

Over the past few months, the Division of Pensions and Benefits (Division) has become aware of efforts by local government units to offer incentives to their employees which in many cases encourage early retirement. Local officials should be aware that the Division is required to review these proposed Separation of Employment Agreements, regardless of what they are called, to determine whether they are early retirement incentives, and if so, to determine if they are authorized by law.

As you should know, local employers are not authorized to offer early retirement incentive programs for their employees unless they are specifically authorized by State law. The law on this subject is clearly set forth in Fair Law Ed. Assn. v. Fair Lawn Bd. of Education, 79 N.J. 574 (1979), in which the Supreme Court of New Jersey held invalid an early retirement plan because it posed a potential for financial harm to the State administered retirement system and was not authorized by State Law.

In reviewing such matters, the Division takes into account not only the expressed conditions of eligibility under which employees can participate in the program, but also the substantive certainty as to those willing to participate. For example, a separation proposal can be structured wherein all employees could be eligible for participation. However, it is rare to find an employee willing to take the incentive unless that employee is eligible for retirement. The Division's review takes into account these factors. Therefore, even though a municipality's program does not set a service threshold, the Division may reject the proposal based on the actual participation statistics. This is especially true if the members of PERS or PFRS eligible to take advantage of the separation program are those with enough service credit to make them eligible for retirement.

The Division of Pensions and Benefits' *Fact Sheet #52, Retirement Incentive Programs* discusses legislation that authorizes Early Retirement Incentive Programs for municipalities, counties, local authorities, and fire districts. It also discusses the procedure to have an Early Retirement Incentive approved first, by the Department of Community Affairs – and secondly, by the Division. The fact sheet is online at www.state.nj.us/treasury/pensions/fact52.htm.