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October 31, 2007

**TO:** Certifying Officers, Police and Firemen's Retirement System (PFRS)

**FROM:** Wendy Jamison *W. Jamison*  
Secretary, PFRS Board of Trustees

**SUBJECT: Maximum Age Limits on Hiring and Enrollment into the Police and Firemen's Retirement System (PFRS)**

Individuals hired to full-time positions as police officers or firefighters with State, County or Municipal government are eligible for enrollment into the Police and Firemen's Retirement System (PFRS) provided that they can meet training, medical, and maximum age requirements. This letter is being distributed to employers to clarify the current rules and limits regarding the maximum age for hiring and enrollment into the PFRS.

### PFRS MAXIMUM AGE LIMITS

New Jersey Statute; N.J.S.A. 43:16A-3, and the New Jersey Administrative Code; N.J.A.C. 17:4-2.5, requires that:

- Individuals hired in a PFRS eligible title at a **Civil Service** location must not be one day past their 35<sup>th</sup> birthday on the closing date of the examination for the title to establish membership in PFRS. Individuals meeting this age requirement can be hired at any time from the Civil Service list while it is still active and be enrolled in the PFRS.
- Individuals hired in a PFRS eligible title at a **Non-Civil Service** location must not be one day past their 35<sup>th</sup> birthday on the date of hire to establish membership in the PFRS.

The current language of the statute and Administrative Code is clear and unambiguous that over age hires are not permitted in the PFRS<sup>1</sup>.

### PAST LEGISLATION AND CASE-BY-CASE REVIEW

Past conflicts between state and federal legislation from 1984 through 1997 led to variations in the PFRS eligibility requirements concerning age limits and confusion regarding their application.

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<sup>1</sup>Limited provisions are provided under N.J.S.A. 38:23A-1 et seq. to offset the PFRS age limit for prior military or police service. Certain State and County law enforcement officers may be eligible for enrollment into the Public Employees' Retirement System (PERS) if over age 35.

When PFRS age limits were eventually deemed *fully enforceable* by the New Jersey Attorney General in an opinion of February 25, 1997, the Division of Pensions and Benefits issued a Certifying Officers' Letter on March 28, 1997 that confirmed the reinstatement of the age limits. This letter was later followed with the release in May 2000 of Fact Sheet #8, *Enrollment Eligibility and Age Limits* (PFRS) to clarify to employers and members the rules of PFRS enrollment that concern age limits.

Throughout this period of adjustment, the PFRS Board of Trustees also took a number of actions to ensure a smooth and fair application of the reinstated age limits.

- Individuals who were over age 35 and hired prior to the reinstatement of the age limits or were hired during the period of time when enforcement of the age limitation was unclear were enrolled because they relied upon prior law when accepting employment.
- Additionally, the PFRS Board of Trustees recognized that there was continuing confusion between 1997 and 2000 among employers as to the enforcement of the age limitation. Therefore, the Board engaged in a case-by-case analysis in these cases, in which the individual was hired because of confusion as to enforcement of the law, and where the individual demonstrated reliance to his detriment, i.e. a change in employment, commencing work, or were on hiring lists for law enforcement or firefighting positions, equity was applied to permit the enrollment.

### **EMPLOYERS SHOULD STRICTLY ENFORCE AGE LIMIT**

As it is now 10 years since the reinstatement of the maximum age limit, the PERS Board of Trustees sees *no further basis* with which to support the use of case-by-case review of over age hires.

At its meeting of August 13, 2007, the PFRS Board of Trustees voted to reinforce that **it will not entertain requests for review on a "case-by-case basis"** due to over age hiring that rely on confusion over the enforcement of the law. The law will be enforced.

The Board of Trustees and the Division of Pensions and Benefits also expects employers to understand and strictly apply the maximum age limit for enrollment into the PFRS when recruiting police and firefighter positions. A copy of Fact Sheet #8, *Enrollment Eligibility and Age Limits* (PFRS) is enclosed for your guidance.

### **ADDITIONAL INFORMATION**

If you have additional questions regarding any of the information provided in this letter, please write to the Enrollment Bureau, Division of Pensions and Benefits, PO Box 295, Trenton, NJ 08625-0295, or you can contact the Division's Office of Client Services at (609) 292-7524, or e-mail the Division at: [pensions.nj@treas.state.nj.us](mailto:pensions.nj@treas.state.nj.us)

Enclosure

Fact Sheet #8, *Enrollment Eligibility and Age Limits* (PFRS)

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**A PUBLICATION OF THE NEW JERSEY DIVISION OF PENSIONS AND BENEFITS**


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# Enrollment Eligibility and Age Limits

Police and Firemen's Retirement System

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## ELIGIBILITY CRITERIA

Enrollment in the Police and Firemen's Retirement System (PFRS) is required for permanent, full-time employees appointed to positions in law enforcement or fire fighting in the State of New Jersey. Please visit the Division's Internet page at [www.state.nj.us/treasury/pensions](http://www.state.nj.us/treasury/pensions) for a listing of covered positions. Generally, the date of enrollment in the PFRS for employees hired by a Civil Service employer is the date of permanent appointment to the position, or the date of hire for employees hired by a Non-Civil Service employer, *even if the hiree has yet to complete law enforcement or fire fighter training*. It is the employer's responsibility to ensure that a candidate completes the training requirements for the position. If a candidate fails to complete these requirements, the employer should advise the Division of Pensions and Benefits. Enrollment usually takes about two months to process and requires the submission of an *Enrollment Application* and a *Report of Examining Physician*.

## MAXIMUM AGE LIMIT-BACKGROUND

New Jersey statutes and the New Jersey Administrative Code establish a maximum enrollment age for the PFRS. These provisions were superseded in 1993 by the federal Age Discrimination in Employment Act (ADEA) so that the state statutes and code could not be enforced. In 1996, the federal government eliminated the ADEA restrictions which applied to the PFRS governing statutes, and in Formal Opinion No. 1, published on February 25, 1997, the State Attorney General stated that the age restrictions must be enforced.

## MAXIMUM AGE LIMIT-REQUIREMENTS

For Title 11 (Civil Service) Employers: The age of the candidate is determined at the announced closing date for the Civil Service examination. Candidates must not be one day past their 35th birthday on the announced closing date of the Civil Service examination. Those candidates meeting age requirements at that time will be considered as having met the age

maximum requirement for the duration of the Civil Service list. (N.J.S.A. 43:16A-3(1))

For Non-Civil Service Employers: Employees must be appointed on or before their 35th birthday to qualify for enrollment. (N.J.S.A. 43:16A-3(1))

## EXCEPTIONS TO MAXIMUM AGE LIMIT

There are "exceptions" to the age rule that sometimes lead to confusion. Since each employer is responsible for knowing the pension eligibility requirements for employees, the following guidelines should clarify the rules for more complex enrollment cases. If employees are applying any of the exceptions to the maximum age limit, they should submit proof of those exceptions with their enrollment applications.

- In accordance with N.J.A.C. 17:4-2.5 and N.J.S.A. 43:1-1.1, eligible periods of military service during times of war or conflict may be used to "reduce" enrollment age. Such military service must have occurred during periods outlined in the Employer's Pensions and Benefits Administration Manual (E-PBAM) or the PFRS Member Handbook as qualifying for "Veteran Status" for pension purposes and must have been served in the area of conflict. For example, if an individual who is 35 years and 6 months old at the date of appointment saw active military service in the Arabian peninsula and the Persian Gulf as part of Operation Desert Storm/Shield from September 1, 1990 to August 31, 1991, this year of active service may be "subtracted" from the candidate's chronological age to yield an enrollment age of 34 years and 6 months. This age reduction would permit enrollment in PFRS.
- In accordance with N.J.S.A. 40A:14-127.1, any former State trooper, sheriff's officer or deputy, or county or municipal policeman is permitted to use previous service as a police officer to reduce actual age in order to meet the maximum age requirement of 35 years for the position of a municipal police officer. Prior experi-

ence in federal law enforcement agencies or in law enforcement agencies of other states would also qualify for the purpose of reducing the candidate's age for the position of a municipal police officer. In any case, no person may be appointed over the age of 45 except for those who were previously involuntarily terminated from their former employment.

- "Age reductions" may also be granted for persons seeking employment as municipal police officers who have prior service with the Delaware River Port Authority Police, Amtrak or SEPTA police departments.
- While volunteer firefighters may be appointed to paid positions, within part-paid fire departments up to age 40 (N.J.S.A. 40A:14-44), any such firefighter over age 35 is eligible for enrollment in the Public Employees' Retirement System (PERS), but not the PFRS.

#### CANDIDATES WHO EXCEED THE AGE LIMIT

Individuals employed by the **State of New Jersey** or any **county**, as well as **volunteer firefighters hired by a municipality or fire district**, who exceed the maximum age requirement for membership in PFRS, but who are otherwise eligible for the position, must establish membership in Public Employees' Retirement System (PERS) under the following conditions.

- Immediately upon being permanently appointed to a position with a Civil Service employer.
- After serving provisionally in an eligible title for one year with a Civil Service employer.
- After being employed for one year in a temporary position with a Non-Civil Service employer.

Individuals seeking employment with a **municipality** in an eligible PFRS title who are over age 35 on the closing date of the examination with a Civil Service employer or over age 35 on the date of hire with a Non-Civil Service employer, even after "reductions in age" have been taken into account, cannot establish membership in any State-administered retirement system. Since enrollment in the PFRS is a condition of employment (N.J.S.A. 43:16A-3(1)), these individuals cannot be hired.

#### CANDIDATES EMPLOYED PART-TIME, UNDER AGE 35

Employees who are "part-time" officers should be enrolled into PERS if they are otherwise eligible for enrollment. They cannot be enrolled in the PFRS.

#### CANDIDATES AWAITING PERMANENT APPOINTMENT

In accordance with N.J.A.C. 17:2-2.8, employees, otherwise eligible for enrollment who are temporary or provisional pending an examination, must be enrolled in the PERS one year after being employed in the title. After an employee fulfills the enrollment requirements, including age, for the PFRS, the PERS membership may be eligible for transfer into the PFRS.

#### MORE INFORMATION

If you have specific questions regarding PFRS enrollment, you may write to the Division of Pensions and Benefits, Enrollments Bureau, PO Box 295, Trenton, NJ 08625-0295, or e-mail us at:

*pensions.nj@treas.state.nj.us*

This fact sheet has been produced and distributed by:

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