

CHAPTER 140
(CORRECTED COPY)

AN ACT concerning enrollment of workers' compensation judges in the Public Employees' Retirement System and amending various parts of the statutory law.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 2 of P.L.2007, c.92 (C.43:15C-2) is amended to read as follows:

C.43:15C-2 Eligibility for participation in the Defined Contribution Retirement Program.

2. a. The following persons shall be eligible and shall participate in the Defined Contribution Retirement Program:

(1) A person who commences service on or after the effective date of this section of P.L.2007, c.92 (C.43:15C-1 et al.) in an elective public office of this State or of a political subdivision thereof, except that it shall not include a person who holds elective public office on the effective date of this section and is enrolled in the Public Employees' Retirement System while that person continues to hold that elective public office or, for an elected official specified in section 5 of P.L.2017, c.344 (C.43:15A-7.5), another elective public office, without a break in service. Service in the Legislature shall be considered a single elective public office.

(2) A person who commences service on or after the effective date of this section in an employment, office or position of the State or of a political subdivision thereof, or an agency, board, commission, authority or instrumentality of the State or of a subdivision, pursuant to an appointment by the Governor that requires the advice and consent of the Senate, or pursuant to an appointment by the Governor to serve at the pleasure of the Governor only during his or her term of office. This paragraph shall not be deemed to include a person otherwise eligible for membership in the State Police Retirement System or the Judicial Retirement System. This paragraph shall not include Workers' Compensation Judges of the Division of Workers' Compensation in the Department of Labor and Workforce Development.

(3) A person who commences service on or after the effective date of this section in an employment, office or position in a political subdivision of the State, or an agency, board, commission, authority or instrumentality of a subdivision, pursuant to an appointment by an elected public official or elected governing body, that 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 as that similarity is determined by the elected governing body and set forth in an adopted ordinance or resolution, 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. This paragraph shall not be deemed to include a person otherwise eligible for membership in the Teachers' Pension and Annuity Fund or the Police and Firemen's Retirement System, or 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 political subdivision, or the agency, board, commission, authority or instrumentality of a subdivision, or a person who holds a professional license or certificate to perform and is performing as a certified health officer, tax assessor, tax collector, municipal planner, chief financial officer, registered municipal clerk, construction code official, licensed uniform subcode inspector, qualified purchasing agent, or certified public works manager.

(4) A person who is granted a pension or retirement allowance under any pension fund or retirement system established under the laws of this State and elects to participate pursuant to section 1 of P.L.1977, c.171 (C.43:3C-3) upon being elected to public office.

(5) A member of the Teachers' Pension and Annuity Fund, Police and Firemen's Retirement System, State Police Retirement System, or the Public Employees' Retirement System for whom compensation is defined as the amount of base or contractual salary equivalent to the annual maximum wage contribution base for Social Security, pursuant to the Federal Insurance Contributions Act, for contribution and benefit purposes of those retirement systems, for whom participation in this retirement program shall be with regard to any excess over the maximum compensation only.

(6) A person in employment, office or position for which the annual salary or remuneration is less, or the hours of work per week are fewer, than that which is required to become a member of the Teachers' Pension and Annuity Fund or the Public Employees' Retirement System, or to make contributions to those systems as a member on the basis of any such employment, office or position, after November 1, 2008.

b. No person shall be eligible to participate in the retirement program with respect to any public employment, office, or position if:

(1) the base salary for that employment, office, or position is less than \$5,000 per year;

(2) the person is, on the basis of service in that employment, office, or position, eligible for membership or enrolled as a member of another State or locally-administered pension fund or retirement system established under the laws of this State including the Alternate Benefit Program, except as otherwise specifically provided in subsection a. of this section;

(3) the person is receiving a benefit as a retiree from any other State or locally-administered pension fund or retirement system established under the laws of this State, except as provided in section 1 of P.L.1977, c.171 (C.43:3C-3); or

(4) the person is an officer or employee of a political subdivision of this State or of a board of education, or of any agency, authority or instrumentality thereof, who is ineligible for membership in the Public Employees' Retirement System pursuant to section 20 of P.L.2007, c.92 (C.43:15A-7.2).

c. A person eligible and required to participate in the retirement program pursuant to paragraph (5) of subsection a. of this section may elect to waive participation with regard to that employment, office, or position by filing, when first eligible, on a form required by the division, a written waiver with the Division of Pensions and Benefits that waives all rights and benefits that would otherwise be provided by the retirement program. Such a person may thereafter elect to participate in the retirement program by filing, on a form required by the division, a written election to participate in the retirement program and participation in the retirement program pursuant to such election shall commence on the January 1 next following the filing of the election to participate.

d. Service credited to a participant in the Defined Contribution Retirement Program shall not be recognized as service credit to determine eligibility for employer-paid health care benefits in retirement pursuant to P.L.1961, c.49 (C.52:14-17.25 et seq.), N.J.S.40A:10-16 et seq., P.L.1979, c.391 (C.18A:16-12 et al.) or any other law, rule or regulation.

2. Section 7 of P.L.1954, c.84 (C.43:15A-7) is amended to read as follows:

C.43:15A-7 Public Employees' Retirement System, established; membership.

7. There is hereby established the Public Employees' Retirement System of New Jersey in the Division of Pensions and Benefits of the Department of the Treasury. The membership of the retirement system shall include:

a. The members of the former "State Employees' Retirement System of New Jersey" enrolled as such as of December 30, 1954, who shall not have claimed for refund their accumulated deductions in said system as provided in this section;

b. Any person becoming an employee of the State or other employer after January 2, 1955 and every veteran, other than a retired member who returns to service pursuant to subsection b. of section 27 of P.L.1966, c.217 (C.43:15A-57.2) and other than those whose appointments are seasonal, becoming an employee of the State or other employer after such date, including a temporary employee with at least one year's continuous service. The membership of the retirement system shall not include those persons appointed to serve as described in paragraphs (2) and (3) of subsection a. of section 2 of P.L.2007, c.92 (C.43:15C-2), except a person who was a member of the retirement system prior to the effective date of sections 1 through 19 of P.L.2007, c.92 (C.43:15C-1 through C.43:15C-15, C.43:3C-9, C.43:15A-7, C.43:15A-75 and C.43:15A-135) and continuously thereafter. The membership of the retirement system shall include Workers' Compensation Judges of the Division of Workers' Compensation in the Department of Labor and Workforce Development; and

c. Every employee veteran in the employ of the State or other employer on January 2, 1955, who is not a member of any retirement system supported wholly or partly by the State.

d. Membership in the retirement system shall be optional for elected officials other than veterans, and for school crossing guards, who having become eligible for benefits under other pension systems are so employed on a part-time basis. Elected officials commencing service on or after the effective date of sections 1 through 19 of P.L.2007, c.92 (C.43:15C-1 through C.43:15C-15, C.43:3C-9, C.43:15A-7, C.43:15A-75 and C.43:15A-135) shall not be eligible for membership in the retirement system based on service in the elective public office, except that an elected official enrolled in the retirement system as of that effective date who continues to hold that elective public office or, for an elected official specified in section 5 of P.L.2017, c.344 (C.43:15A-7.5), another elective public office, without a break in service shall be eligible to continue membership in the retirement system under the terms and conditions of enrollment. Service in the Legislature shall be considered a single elective public office. Any part-time school crossing guard who is eligible for benefits under any other pension system and who was hired as a part-time school crossing guard prior to March 4, 1976, may at any time terminate his membership in the retirement system by making an application in writing to the board of trustees of the retirement system. Upon receiving such application, the board of trustees shall terminate his enrollment in the system and direct the employer to cease accepting contributions from the member or deducting from the compensation paid to the member. State employees who become members of any other retirement system supported wholly or partly by the State as a condition of employment shall not be eligible for membership in this retirement system. Notwithstanding any other law to the contrary, all other persons accepting employment in the service of the State shall be required to enroll in the retirement system as a condition of their employment, regardless of age.

(1) Before or on November 1, 2008, no person in employment, office or position, for which the annual salary or remuneration is fixed at less than \$1,500.00, shall be eligible to become a member of the retirement system.

(2) After November 1, 2008, a person who was a member of the retirement system on that date and continuously thereafter shall be eligible to be a member of the retirement system in employment, office or position, for which the annual salary or remuneration is fixed at \$1,500 or more.

(3) After November 1, 2008 and before or on the effective date of P.L.2010, c.1, a person who was not a member of the retirement system on November 1, 2008, or who was a member of the retirement system on that date but not continuously thereafter, and who is in employment, office or position, for which the annual salary or remuneration is certified by the applicable public entity at \$7,500 or more, shall be eligible to become a member of the retirement system. The \$7,500 minimum annual salary or remuneration amount shall be adjusted annually by the Director of the Division of Pensions and Benefits, by regulation, in accordance with changes in the Consumer Price Index but by no more than 4 percent. "Consumer Price Index" means the average of the annual increase, expressed as a percentage, in the consumer price index for all urban consumers in the New York City and Philadelphia metropolitan statistical areas during the preceding calendar year as reported by the United States Department of Labor.

(4) After the effective date of P.L.2010, c.1, no person in an employment, office or position of the State, or an agency, board, commission, authority or instrumentality of the State, for which the hours of work are fixed at fewer than 35 per week shall be eligible to become a member of the retirement system; and no person in employment, office or position with a political subdivision of the State, or an agency, board, commission, authority or instrumentality of a political subdivision of the State, for which the hours of work are fixed by an ordinance or resolution of the political subdivision, or agency, board, commission, authority or instrumentality thereof, at fewer than 32 per week shall be eligible to become a member of the retirement system. Any hour or part thereof, during which the person does not work due to the person's participation in a voluntary or mandatory furlough program shall not be deducted in determining if a person's hours of work are fixed at fewer than 35 or 32 per week, as appropriate, for the purpose of eligibility and the person's service credit as a member of the system or fund shall include the period of mandatory or voluntary furlough provided the person continues to make contributions based on the person's base salary or compensation. If the pay of a furloughed person is insufficient to withhold the entirety of the person's regular contributions, then the person shall remit the entirety of the regular contribution which was not withheld from the person's pay to the Division of Pensions and Benefits in the Department of the Treasury in a manner determined by the division, except that no deduction for the payment of such contributions shall be made from the unemployment compensation benefits of the employee.

e. Membership of any person in the retirement system shall cease if he shall discontinue his service for more than two consecutive years.

f. The accumulated deductions of the members of the former "State Employees' Retirement System" which have been set aside in a trust fund designated as Fund A as provided in section 5 of this act and which have not been claimed for refund prior to February 1, 1955 shall be transferred from said Fund A to the Annuity Savings Fund of the Retirement System, provided for in section 25 of this act. Each member whose accumulated deductions are so transferred shall receive the same prior service credit, pension credit, and membership credit in the retirement system as he previously had in the former "State Employees' Retirement System" and shall have such accumulated deductions credited to his individual account in the Annuity Savings Fund. Any outstanding obligations of such member shall be continued.

g. Any school crossing guard electing to terminate his membership in the retirement system pursuant to subsection d. of this section shall, upon his request, receive a refund of his accumulated deductions as of the date of his appointment to the position of school crossing guard. Such refund of contributions shall serve as a waiver of all benefits payable

to the employee, to his dependent or dependents, or to any of his beneficiaries under the retirement system.

h. A temporary employee who is employed under the federal Workforce Investment Act shall not be eligible for membership in the system. Membership for temporary employees employed under the federal Job Training Partnership Act, Pub.L.97-300 (29 U.S.C.s.1501) who are in the system on September 19, 1986 shall be terminated, and affected employees shall receive a refund of their accumulated deductions as of the date of commencement of employment in a federal Job Training Partnership Act program. Such refund of contributions shall serve as a waiver of all benefits payable to the employee, to his dependent or dependents, or to any of his beneficiaries under the retirement system.

i. Membership in the retirement system shall be optional for a special service employee who is employed under the federal Older American Community Service Employment Act, Pub.L.94-135 (42 U.S.C.s.3056). Any special service employee employed under the federal Older American Community Service Employment Act, Pub.L.94-135 (42 U.S.C.s.3056), who is in the retirement system on the effective date of P.L.1996, c.139 may terminate membership in the retirement system by making an application in writing to the board of trustees of the retirement system. Upon receiving the application, the board shall terminate enrollment in the system and the member shall receive a refund of accumulated deductions as of the date of commencement of employment in a federal Older American Community Service Employment Act program. This refund of contributions shall serve as a waiver of all benefits payable to the employee, to any dependent or dependents, or to any beneficiary under the retirement system.

j. An employee of the South Jersey Port Corporation who was employed by the South Jersey Port Corporation as of the effective date of P.L.1997, c.150 (C.34:1B-144 et al.) and who shall be re-employed within 365 days of such effective date by a subsidiary corporation or other corporation, which has been established by the Delaware River Port Authority pursuant to subdivision (m) of Article I of the compact creating the Delaware River Port Authority (R.S.32:3-2), as defined in section 3 of P.L.1997, c.150 (C.34:1B-146), shall be eligible to continue membership while an employee of such subsidiary or other corporation.

k. An employee of a renaissance school project established pursuant to P.L.2011, c.176 (C.18A:36C-1 et seq.) upon commencement of employment.

3. Section 2 of P.L.2001, c.259 (C.43:15A-143) is amended to read as follows:

C.43:15A-143 Membership in Workers Compensation Judges Part; service dates.

2. a. Notwithstanding the provisions of any other law, workers compensation judges shall be members of the Workers Compensation Judges Part, established pursuant to this act, P.L.2001, c.259 (C.43:15A-142 et seq.), of the Public Employees' Retirement System, established pursuant to P.L.1954, c.84 (C.43:15A-1 et seq.), and shall be subject to the same membership and benefit provisions as State employees, except as provided by P.L.2001, c.259. Membership in the retirement system shall be a condition of employment for service as a judge of compensation.

b. A Workers' Compensation Judge of the Division of Workers' Compensation in the Department of Labor and Workforce Development who is a participant in the Defined Contribution Retirement Program, established pursuant to P.L.2007, c.92 (C.43:15C-1 et seq.), on the effective date of P.L.2021, c.140 shall be transferred and enrolled in the Workers' Compensation Judges Part of the Public Employees' Retirement System within 90 days following that effective date. The account in the Defined Contribution Retirement

Program or the Public Employees' Retirement Program for each judge transferred and enrolled shall be transferred to the Workers' Compensation Judges Part of the Public Employees' Retirement System and each judge shall be given service credit in the Workers' Compensation Judges Part of the Public Employees' Retirement System for service starting on the judge's date of appointment. The unfunded liability for the benefits provided by the transfer and enrollment of such judges shall be paid by transfers from the Second Injury Fund as provided by section 13 of P.L.2001, c.259 (C.43:15A-154) to the Workers' Compensation Judges Part of the Public Employees' Retirement System.

Service credit transferred from a participant in the Defined Contribution Retirement Program under this subsection shall be recognized as service credit to determine eligibility for employer-paid health care benefits in retirement pursuant to P.L.1961, c.49 (C.52:14-17.25 et seq.), or any other law, rule or regulation.

The actuary for the Public Employees' Retirement System shall determine the unfunded accrued liability resulting from the transfer and coverage of judges under this subsection a. of this section in the same manner provided for the determination of the unfunded accrued liability of the retirement system by section 24 of P.L.1954, c.84 (C.43:15A-24). This unfunded accrued liability shall be amortized in the manner provided by section 24 over an amortization period of 20 years. Accrued liability and normal contributions for workers compensation judges shall be paid by transfers from the Second Injury Fund as provided by subsection j. of R.S.34:15-94. The Commissioner of Labor and Workforce Development may, with the authorization of and appropriation by the Legislature, pay the unfunded accrued liability in a lump sum or over a period of time shorter than 20 years.

c. The value of the account of a workers' compensation judge who is transferred out of the program shall be transferred from the Defined Contribution Retirement Program to the Public Employees' Retirement System in accordance with the relevant provisions of the federal Internal Revenue Code and Internal Revenue Service guidance as a direct trustee-to-trustee transfer. The transfer shall be in accordance with a rule, method, or process that shall not result in the transfer being deemed a distribution includible in federal gross income for the workers' compensation judge.

d. A workers compensation judge who retired on or after May 20, 2021 and who was not transferred and enrolled pursuant to this subsection shall be retroactively transferred and enrolled in the Workers Compensation Judges Part of the Public Employees' Retirement System pursuant to this section and the retirement allowance calculated and paid from the date of retirement based on that enrollment in Workers Compensation Judges Part of the Public Employees' Retirement System, provided the retiree complies with any terms and conditions for that transfer, enrollment, and calculation as required by the Division of Pensions and Benefits and the board of trustees of the Public Employees' Retirement System. The retroactive provision in this subsection shall only apply to those workers compensation judges who have not received a distribution from the judge's Defined Contribution Retirement Program account.

4. This act shall take effect immediately.

Approved June 30, 2021.