

ASSEMBLY, No. 4614

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED SEPTEMBER 14, 2020

Sponsored by:

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Extends eligibility for accidental disability retirement allowance to certain police officers and firefighters who participated in 9/11 WTC rescue, recovery, or cleanup operations.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning the accidental disability retirement allowance
2 for members of the Public Employees' Retirement System who
3 participated in World Trade Center rescue, recovery, or cleanup
4 operations and amending P.L.1954, c.84.

5
6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
7 *of New Jersey:*

8
9 1. Section 43 of P.L.1954, c.84 (C.43:15A-43) is amended to
10 read as follows:

11 43. a. A member who has not attained age 65 shall, upon the
12 application of the head of the department in which he is employed
13 or upon his own application or the application of one acting in his
14 behalf, be retired by the board of trustees, if said employee is
15 permanently and totally disabled as a direct result of a traumatic
16 event occurring during and as a result of the performance of his
17 regular or assigned duties, on an accidental disability allowance. A
18 traumatic event occurring during voluntary performance of regular
19 or assigned duties at a place of employment before or after required
20 hours of employment which is not in violation of any valid work
21 rule of the employer or otherwise prohibited by the employer shall
22 be deemed as occurring during the performance of regular or
23 assigned duties.

24 The application to accomplish such retirement must be filed
25 within five years of the original traumatic event, but the board of
26 trustees may consider an application filed after the five-year period
27 if it can be factually demonstrated to the satisfaction of the board of
28 trustees that the disability is due to the accident and the filing was
29 not accomplished within the five-year period due to a delayed
30 manifestation of the disability or to circumstances beyond the
31 control of the member.

32 Permanent and total disability resulting from a cardiovascular,
33 pulmonary or musculo-skeletal condition which was not a direct
34 result of a traumatic event occurring in the performance of duty
35 shall be deemed an ordinary disability.

36 Before consideration of the application by the board of trustees,
37 the physician or physicians designated by the board shall have first
38 made a medical examination of the member at his residence or at
39 any other place mutually agreed upon and shall have certified to the
40 board that he is physically or mentally incapacitated for the
41 performance of duty, and should be retired, and the appointing
42 authority shall have certified to the board that the member is
43 permanently and totally disabled as a direct result of a traumatic
44 event occurring during and as a result of the performance of his
45 regular or assigned duties, the time and place where the duty

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 causing the disability was performed, that the disability was not the
2 result of his willful negligence and that the member should be
3 retired.

4 No person who becomes a member of the retirement system on
5 or after the effective date of P.L.2010, c.3 shall be eligible for
6 retirement pursuant to this section.

7 b. (1) For purposes of this subsection:

8 "Qualifying condition or impairment of health" includes:

9 diseases of the upper respiratory tract and mucosae, including
10 conditions such as conjunctivitis, rhinitis, sinusitis, pharyngitis,
11 laryngitis, vocal cord disease, upper airway hyper-reactivity and
12 tracheo-bronchitis, or a combination of such conditions;

13 diseases of the lower respiratory tract, including but not limited
14 to bronchitis, asthma, reactive airway dysfunction syndrome, and
15 different types of pneumonitis, such as hypersensitivity,
16 granulomatous, or eosinophilic;

17 diseases of the gastroesophageal tract, including esophagitis and
18 reflux disease, either acute or chronic, caused by exposure or
19 aggravated by exposure;

20 diseases of the psychological axis, including post-traumatic
21 stress disorder, anxiety, depression, or any combination of such
22 conditions;

23 diseases of the skin such as contact dermatitis or burns, either
24 acute or chronic in nature, infectious, irritant, allergic, idiopathic or
25 non-specific reactive in nature, caused by exposure or aggravated
26 by exposure; and

27 new onset diseases resulting from exposure as such diseases
28 occurring in the future including cancer, chronic obstructive
29 pulmonary disease, asbestos-related disease, heavy metal poisoning,
30 musculoskeletal disease and chronic psychological disease.

31 "World Trade Center rescue, recovery, or cleanup operations"
32 means the rescue, recovery, or cleanup operations at the World
33 Trade Center site between September 11, 2001 and October 11,
34 2001.

35 "World Trade Center site" means any location below a line
36 starting from the Hudson River and Canal Street, east on Canal
37 Street to Pike Street, south on Pike Street to the East River, and
38 extending to the lower tip of Manhattan.

39 (2) Notwithstanding any provision of subsection a. of this
40 section or any other law to the contrary, for a member who
41 participated, whether or not under orders or instruction by an
42 employer to so participate, in World Trade Center rescue, recovery,
43 or cleanup operations for a minimum of eight hours, permanent and
44 total disability resulting from a qualifying condition or impairment
45 of health shall be presumed to have occurred during and as a result
46 of the performance of the member's regular or assigned duties and
47 not the result of the member's willful negligence, unless the
48 contrary can be proved by competent evidence.

1 A member who did not participate in such operations for a
2 minimum of eight hours shall be eligible for the presumption
3 provided that:

4 the member participated in the rescue, recovery, or cleanup
5 operations at the World Trade Center site between September 11,
6 2001 and September 12, 2001;

7 the member sustained a documented physical injury at the World
8 Trade Center site between September 11, 2001 and September 12,
9 2001 that is a qualifying condition or impairment of health resulting
10 in a disability to the member that prevented the member from
11 continuing to participate in World Trade Center rescue, recovery, or
12 cleanup operations for a minimum of eight hours; and

13 the documented physical injury that resulted in a disability to the
14 member that prevented the member from continuing to participate
15 in World Trade Center rescue, recovery, or cleanup operations for a
16 minimum of eight hours is the qualifying condition or impairment
17 of health for which the member seeks a presumption under this
18 subsection.

19 In order to be eligible for the presumption provided under this
20 subsection, a member shall have successfully passed a physical
21 examination for entry into public service which failed to disclose
22 evidence of the qualifying condition or impairment of health that
23 formed the basis for the permanent and total disability.

24 (3) A member who participated in the World Trade Center
25 rescue, recovery, or cleanup operations for a minimum of eight
26 hours and subsequently retired on a service retirement or an
27 ordinary disability retirement and thereafter incurred a disability
28 caused by a qualifying condition or impairment of health which the
29 medical board determines to be caused by participation in World
30 Trade Center rescue, recovery, or cleanup operations shall be
31 eligible to apply to the board of trustees to have the retiree's
32 retirement allowance recalculated as an accidental disability
33 retirement allowance for benefit payments on or after the date of the
34 application, provided the retiree filed an application for such
35 recalculation within 30 days of the date that the retiree knew or
36 should have known of the existence of such disability and its
37 relation to the rescue, recovery, or cleanup operations. In order to
38 be eligible for such recalculation, the retiree shall have successfully
39 passed a physical examination for entry into public service which
40 failed to disclose evidence of the qualifying condition or
41 impairment of health that formed the basis for the disability.

42 (4) The board of trustees shall promulgate rules and regulations
43 necessary to implement the provisions of this subsection and shall
44 notify members and retirants in the retirement system of the
45 enactment of this act, P.L.2019, c.157, within 30 days of enactment.

46 A member or retiree shall not be eligible for the presumption or
47 recalculation under this subsection unless within two years of the
48 effective date of this act, P.L.2019, c.157, the member or retiree

1 files a written and sworn statement with the retirement system on a
2 form provided by the board of trustees thereof indicating the dates
3 and locations of service.

4 (5) This subsection shall apply only to:

5 (a) any member or retiree who is or was enrolled in the Public
6 Employees' Retirement System because the member or retiree did
7 not meet the age or medical requirements for enrollment in the
8 Police and Firemen's Retirement System on the basis of the position
9 held;

10 (b) any member or retiree who was enrolled in the Public
11 Employees' Retirement System on the effective date of P.L.1993,
12 c.247, who has been continuously enrolled therein or was
13 continuously enrolled therein until the effective date of such
14 retiree's retirement, who was eligible for enrollment in the Police
15 and Firemen's Retirement System under paragraph (1) of subsection
16 a. of section 1 of P.L.1993, c.247 (C.43:16A-3.8), and who meets or
17 met the definition of "policeman" or "fireman" under section 1 of
18 P.L.1944, c.255 (C.43:16A-1) on the final date of employment next
19 preceding the effective date of retirement; and

20 (c) to any emergency medical technician who is a member or
21 retiree of the Public Employees' Retirement System. For the
22 purposes of this paragraph, "emergency medical technician" means
23 a person trained in basic life support services as defined in section 1
24 of P.L.1985, c.351 (C.26:2K-21) and who is certified by the
25 Department of Health to perform these services.

26 (6) This subsection shall apply regardless of whether the
27 member or retiree, who is otherwise eligible, was enrolled in the
28 retirement system at the time of participation in World Trade Center
29 rescue, recovery, or cleanup operations as specified herein.

30 (cf: P.L.2019, c.157, s.4)

31
32 2. A retiree who is made eligible by the amendment of
33 paragraph (5) of subsection b. of section 43 of P.L.1954, c.84
34 (C.43:15A-43) by section 1 of P.L. , c. (pending before the
35 Legislature as this bill) to apply for a recalculation of a service
36 retirement or ordinary disability retirement under paragraph (3) of
37 that subsection shall not be eligible for the recalculation unless
38 within two years of the effective date of this act, P.L. , c. ,
39 (pending before the Legislature as this bill) the retiree files a
40 written and sworn statement with the retirement system on a form
41 provided by the board of trustees thereof indicating the dates and
42 locations of service.

43 The board of trustees may promulgate rules necessary to
44 implement the provisions of this act, P.L. , c. (pending before
45 the Legislature as this bill), which rules shall be effective
46 immediately upon filing with the Office of Administrative Law for
47 a period not to exceed 18 months, and may, thereafter, be amended,
48 adopted or readopted in accordance with the provisions of the

1 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
2 seq.). The board shall notify members and retirees in the retirement
3 system of the enactment of this act within 30 days of enactment.

4

5 3. This act shall take effect immediately.

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STATEMENT

9

10 This bill extends eligibility for accidental disability retirement
11 allowance to certain police officers and firefighters who
12 participated in 9/11 World Trade Center rescue, recovery, or
13 cleanup operations.

14 Under current law, certain members of the Public Employees’
15 Retirement System (PERS) are eligible to receive an accidental
16 disability retirement allowance if the member participated in World
17 Trade Center rescue, recovery, or cleanup operations and is then
18 permanently and totally disabled as a result of a qualifying
19 condition or impairment of health stemming from those efforts.
20 Those members include police officers and fire fighters who did not
21 meet the age or medical requirements for enrollment in the Police
22 and Firemen's Retirement System (PFRS) on the basis of the
23 position held, and emergency medical technicians. This bill would
24 extend eligibility for this benefit to police officers and firefighters
25 who are or were otherwise eligible for enrollment in the PFRS, but
26 who were enrolled in the PERS on July 1, 1993, before membership
27 in the PFRS was required, and were continuously enrolled until
28 retirement.