

SENATE, No. 1069

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JANUARY 30, 2020

Sponsored by:

Senator JAMES W. HOLZAPFEL

District 10 (Ocean)

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SYNOPSIS

Permits any member of PERS to receive accidental disability retirement allowance for disability resulting from participation in 9/11 World Trade Center 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 and
3 amending P.L.1954, c.84.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

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

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

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

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

35 Before consideration of the application by the board of trustees,
36 the physician or physicians designated by the board shall have first
37 made a medical examination of the member at his residence or at
38 any other place mutually agreed upon and shall have certified to the
39 board that he is physically or mentally incapacitated for the
40 performance of duty, and should be retired, and the appointing
41 authority shall have certified to the board that the member is
42 permanently and totally disabled as a direct result of a traumatic
43 event occurring during and as a result of the performance of his
44 regular or assigned duties, the time and place where the duty
45 causing the disability was performed, that the disability was not the

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 result of his willful negligence and that the member should be
2 retired.

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

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

7 "Qualifying condition or impairment of health" includes:

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

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

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

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

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

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

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

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

38 (2) Notwithstanding any provision of subsection a. of this
39 section or any other law to the contrary, for a member who
40 participated, whether or not under orders or instruction by an
41 employer to so participate, in World Trade Center rescue, recovery,
42 or cleanup operations for a minimum of eight hours, permanent and
43 total disability resulting from a qualifying condition or impairment
44 of health shall be presumed to have occurred during and as a result
45 of the performance of the member's regular or assigned duties and
46 not the result of the member's willful negligence, unless the
47 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, or shall present such
22 sufficient evidence of one or more medical examinations or results
23 performed within a reasonable period of time before or after entry
24 into public service, which failed to disclose evidence of the
25 qualifying condition or impairment of health that formed the basis
26 for the permanent and total disability.

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

1 (4) The board of trustees shall promulgate rules and regulations
2 necessary to implement the provisions of this subsection and shall
3 notify members and retirants in the retirement system of the
4 enactment of this act, P.L.2019, c.157, and of the enactment of
5 P.L. , c. (pending before the Legislature as this bill), within 30
6 days of enactment.

7 A member or retiree shall not be eligible for the presumption or
8 recalculation under this subsection unless within two years of the
9 effective date of this act, P.L.2019, c.157, or within two years after
10 the effective date of P.L. , c. (pending before the Legislature as
11 this bill), the member or retiree files a written and sworn statement
12 with the retirement system on a form provided by the board of
13 trustees thereof indicating the dates and locations of service.

14 (5) This subsection shall apply **【only】** to**【:】** any member or
15 retiree who is or was enrolled in the Public Employees' Retirement
16 System **【because the member or retiree did not meet the age or**
17 **medical requirements for enrollment in the Police and Firemen's**
18 **Retirement System on the basis of the position held; and to any**
19 **emergency medical technician who is a member or retiree of the**
20 **Public Employees' Retirement System. For the purposes of this**
21 **paragraph, "emergency medical technician" means a person trained**
22 **in basic life support services as defined in section 1 of P.L.1985,**
23 **c.351 (C.26:2K-21) and who is certified by the Department of**
24 **Health to perform these services】.**

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

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

30
31 2. This act shall take effect immediately.

32 33 34 STATEMENT

35
36 A law recently enacted, P.L.2019, 157, provided that a member
37 or retiree of the Police and Firemen's Retirement System (PFRS),
38 the State Police Retirement System (SPRS), and the Public
39 Employees' Retirement System (PERS) is eligible to receive an
40 accidental disability retirement allowance for a permanent and total
41 disability resulting from participation in 9/11 World Trade Center
42 rescue, recovery, or cleanup operations.

43 The law provides that permanent and total disability resulting
44 from a qualifying condition or impairment of health will be
45 presumed to have occurred during and as a result of the
46 performance of a member's regular or assigned duties if the
47 member participated in World Trade Center rescue, recovery, or
48 cleanup operations for a minimum of eight hours. The law permits

1 a member who did not participate in those operations for a
2 minimum of eight hours to be eligible for the presumption under
3 certain circumstances.

4 The law also provides for a reclassification of a retiree's
5 retirement from a service retirement or an ordinary disability
6 retirement to an accidental disability retirement under certain
7 circumstances. The law applies regardless of whether the PERS
8 member or retiree was enrolled in the PERS at the time of the
9 participation in the rescue, recovery and cleanup operations.

10 Currently, the PERS portion of the bill applies only to: any
11 member or retiree who is or was enrolled in the PERS because the
12 member or retiree did not meet the age or medical requirements for
13 enrollment in the Police and Firemen's Retirement System on the
14 basis of the position held; and to any emergency medical technician
15 who is a member or retiree of the Public Employees' Retirement
16 System.

17 The bill amends the relevant provisions of the PERS to provide
18 this benefit to any member of the PERS.