

SENATE, No. 4228

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED DECEMBER 6, 2021

Sponsored by:

Senator BRIAN P. STACK

District 33 (Hudson)

SYNOPSIS

Permits application for PERS accidental disability benefit for injury sustained after January 2003 while employed at State psychiatric institution or correctional facility immediately prior to PERS membership.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning eligibility for an accidental disability benefit
2 under the Public Employees' Retirement System and amending
3 P.L.1954, c.84 and N.J.S.11A:2-11.

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 or
12 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 or
18 assigned duties at a place of employment before or after required
19 hours of employment which is not in violation of any valid work rule
20 of the employer or otherwise prohibited by the employer shall be
21 deemed as occurring during the performance of regular or assigned
22 duties. A traumatic event (1) occurring during and as a result of the
23 performance of a State employee's regular or assigned duties as, but
24 not limited to, a doctor, nurse, healthcare worker, social worker, or
25 correction officer caring for or guarding individuals who are
26 permanently or temporarily incarcerated for any reason at Trenton
27 Psychiatric Hospital, any other State psychiatric institution or any
28 State correctional facility and (2) occurring when the employee is
29 employed temporarily and not yet eligible for membership in the
30 retirement system shall be deemed as occurring during membership,
31 if the employee becomes a member of the retirement system without
32 interruption in that employment.

33 The application to accomplish such retirement must be filed within
34 five years of the original traumatic event, but the board of trustees
35 may consider an application filed after the five-year period if it can
36 be factually demonstrated to the satisfaction of the board of trustees
37 that the disability is due to the accident and the filing was not
38 accomplished within the five-year period due to a delayed
39 manifestation of the disability or to circumstances beyond the control
40 of the member.

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

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 Before consideration of the application by the board of trustees,
2 the physician or physicians designated by the board shall have first
3 made a medical examination of the member at his residence or at any
4 other place mutually agreed upon and shall have certified to the board
5 that he is physically or mentally incapacitated for the performance of
6 duty, and should be retired, and the appointing authority shall have
7 certified to the board that the member is permanently and totally
8 disabled as a direct result of a traumatic event occurring during and
9 as a result of the performance of his regular or assigned duties, the
10 time and place where the duty causing the disability was performed,
11 that the disability was not the result of his willful negligence and that
12 the member should be retired.

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

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

17 "Qualifying condition or impairment of health" includes:

18 diseases of the upper respiratory tract and mucosae, including
19 conditions such as conjunctivitis, rhinitis, sinusitis, pharyngitis,
20 laryngitis, vocal cord disease, upper airway hyper-reactivity and
21 tracheo-bronchitis, or a combination of such conditions;

22 diseases of the lower respiratory tract, including but not limited to
23 bronchitis, asthma, reactive airway dysfunction syndrome, and
24 different types of pneumonitis, such as hypersensitivity,
25 granulomatous, or eosinophilic;

26 diseases of the gastroesophageal tract, including esophagitis and
27 reflux disease, either acute or chronic, caused by exposure or
28 aggravated by exposure;

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

31 diseases of the skin such as contact dermatitis or burns, either
32 acute or chronic in nature, infectious, irritant, allergic, idiopathic or
33 non-specific reactive in nature, caused by exposure or aggravated by
34 exposure; and

35 new onset diseases resulting from exposure as such diseases
36 occurring in the future including cancer, chronic obstructive
37 pulmonary disease, asbestos-related disease, heavy metal poisoning,
38 musculoskeletal disease and chronic psychological disease.

39 "World Trade Center rescue, recovery, or cleanup operations"
40 means the rescue, recovery, or cleanup operations at the World Trade
41 Center site between September 11, 2001 and October 11, 2001.

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

46 (2) Notwithstanding any provision of subsection a. of this section
47 or any other law to the contrary, for a member who participated,
48 whether or not under orders or instruction by an employer to so

1 participate, in World Trade Center rescue, recovery, or cleanup
2 operations for a minimum of eight hours, permanent and total
3 disability resulting from a qualifying condition or impairment of
4 health shall be presumed to have occurred during and as a result of
5 the performance of the member's regular or assigned duties and not
6 the result of the member's willful negligence, unless the contrary can
7 be proved by competent evidence.

8 A member who did not participate in such operations for a
9 minimum of eight hours shall be eligible for the presumption
10 provided that:

11 the member participated in the rescue, recovery, or cleanup
12 operations at the World Trade Center site between September 11,
13 2001 and September 12, 2001;

14 the member sustained a documented physical injury at the World
15 Trade Center site between September 11, 2001 and September 12,
16 2001 that is a qualifying condition or impairment of health resulting
17 in a disability to the member that prevented the member from
18 continuing to participate in World Trade Center rescue, recovery, or
19 cleanup operations for a minimum of eight hours; and

20 the documented physical injury that resulted in a disability to the
21 member that prevented the member from continuing to participate in
22 World Trade Center rescue, recovery, or cleanup operations for a
23 minimum of eight hours is the qualifying condition or impairment of
24 health for which the member seeks a presumption under this
25 subsection.

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

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

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

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

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

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

27

28 2. N.J.S.11A:2-11 is amended to read as follows:

29 11A:2-11. Powers and duties of the commission. In addition to
30 other powers and duties vested in the commission by this title or any
31 other law, the commission:

32 a. (Deleted by amendment, P.L.2008, c.29);

33 b. May appoint employees necessary to enforce or implement
34 the provisions of this title. All employees of the commission whose
35 principal duties relate to the enforcement or implementation of this
36 title shall be confidential employees for the purposes of the "New
37 Jersey Employer-Employee Relations Act," P.L.1941, c.100
38 (C.34:13A-1 et seq.);

39 c. Shall maintain a management information system necessary
40 to carry out the provisions of this title;

41 d. Shall have the authority to audit payrolls, reports or
42 transactions for conformity with the provisions of this title;

43 e. Shall plan, evaluate, administer and implement personnel
44 programs and policies in State government and political subdivisions
45 operating under this title, including a personnel orientation program
46 that informs new employees of State psychiatric institutions and State
47 correctional facilities of the risk of injury occurring during and as a
48 result of the performance of their regular or assigned duties;

1 f. Shall establish and supervise the selection process and
2 employee performance evaluation procedures;

3 g. (Deleted by amendment, P.L.2008, c.29);

4 h. Shall set standards and procedures for review and render the
5 final administrative decision on a written record or after
6 recommendation by an independent reviewer assigned by the
7 commission from classification, salary, layoff rights and in the State
8 service noncontractual grievances;

9 i. May establish pilot programs and other projects for a
10 maximum of one year outside of the provisions of this title;

11 j. Shall provide for a public employee interchange program
12 pursuant to the "Government Employee Interchange Act of 1967,"
13 P.L.1967, c.77 (C.52:14-6.10 et seq.) and may provide for an
14 employee interchange program between public and private sector
15 employees;

16 k. (Deleted by amendment, P.L.2008, c.29);

17 l. (Deleted by amendment, P.L.2008, c.29);

18 m. Shall establish and consult with advisory boards representing
19 political subdivisions, personnel officers, labor organizations and
20 other appropriate groups;

21 n. Shall make an annual report to the Governor and Legislature
22 and all other special or periodic reports as may be required. The
23 annual report shall indicate the number of persons, by title, who, on
24 March 31, June 30, September 30, and December 31 of each year,
25 held appointments to positions in the senior executive service and the
26 number of noncareer employees by title, who, on those same dates,
27 held appointments in positions in the senior executive service;

28 o. Shall have the authority to assess costs for special or other
29 services;

30 p. (Deleted by amendment, P.L.2008, c.29); and

31 q. Shall, pursuant to P.L.2019, c.346 (C.11A:3-4.1 et al.),
32 promulgate standardized recordkeeping and record retention
33 requirements concerning the recruitment, selection, hiring, and
34 employment records of persons in the State unclassified service.

35 (cf: P.L.2019, c.346, s.2)

36
37 3. This act shall take effect immediately and shall be retroactive
38 to January 1, 2003.

41 STATEMENT

42
43 This bill allows a member of the Public Employees' Retirement
44 System (PERS) to apply for accidental disability benefits based upon an
45 injury sustained while employed temporarily at Trenton Psychiatric
46 Hospital, any other State psychiatric institution or any State correctional
47 facility, which injury continues to be disabling after the person becomes
48 a PERS member. Temporary public employees are not eligible for

1 PERS membership until the employment becomes permanent or the
2 passage of one year, whichever occurs first. Currently, persons
3 employed temporarily at any State psychiatric institution or any State
4 correctional facility who are injured while ineligible for PERS
5 membership are eligible for workers compensation benefits only. They
6 are not eligible for PERS accidental disability benefits even after
7 attaining PERS member status because the injury occurred when not a
8 PERS member.

9 The bill provides that, for purposes of application for a PERS
10 accidental disability benefit, a traumatic event (1) occurring during and
11 as a result of the performance of a State employee's regular or assigned
12 duties as, but not limited to, a doctor, nurse, healthcare worker, social
13 worker, or correction officer caring for or guarding individuals who are
14 permanently or temporarily incarcerated for any reason at Trenton
15 Psychiatric Hospital, any other State psychiatric institution or any State
16 correctional facility and (2) occurring when the employee is employed
17 temporarily and not yet eligible for membership in the retirement system
18 will be deemed as occurring during membership, if the employee
19 becomes a member of the retirement system without interruption in that
20 employment. The bill's provisions would apply retroactively to January
21 1, 2003.

22 In addition, the bill also adds to the duties of the Civil Service
23 Commission a personnel orientation program that informs new
24 employees of State psychiatric institutions and State correctional
25 facilities of the risk of injury occurring during and as a result of the
26 performance of their regular or assigned duties.