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TO: Certifying Officers of the Judicial Retirement System (JRS), the Workers' Compensation Judges (WCJ) Part of the Public Employees' Retirement System (PERS), and the Office of Administrative Law (OAL)

FROM: New Jersey Division of Pensions and Benefits

SUBJECT: Special Provisions Related to JRS, PERS Judges of Workers' Compensation, PERS Administrative Law Judges and Bona Fide Severance of Employment

New Jersey State-administered retirement systems generally do not permit the payment of retirement benefits without a bona fide severance from public employment. This memorandum supplements that of August 22, 2014, and addresses the special provisions for retired members of the Judicial Retirement System (JRS), the Workers' Compensation Judges Part of the Public Employees' Retirement System (PERS), Judges of Workers' Compensation enrolled in the standard PERS and Administrative Law Judges (ALJs) enrolled in the PERS in regards to post-retirement employment.

INTERNAL REVENUE CODE

The JRS and the PERS¹ are established as qualified governmental defined benefit plans in accordance with Internal Revenue Code (IRC) Sections 401(a) and 414(d). In order to preserve the qualified status of these plans and to protect retirees from a 10 percent excise tax penalty on their monthly retirement payments, the Division of Pensions and Benefits was required to adopt and to enforce regulations to ensure compliance with the IRC requirements.

"Compliance with Internal Revenue Code" was adopted as a special new rule, effective March 9, 2012, under Title 17, Chapter 1, Subchapter 17, of the New Jersey Administrative Code. The provisions of N.J.A.C. 17:1-17.14 were needed to clarify criteria regarding retiree re-employment.

N.J.A.C. 17:1-17.14.2(a) states:

"'Bona fide severance from employment' means a complete termination of the employee's employment relationship with the employer for a period of at least 180 days. The following does not constitute a complete termination of the employee's relationship with the employer:

- i. Employment or re-employment in a part-time position;

¹ Chapter 92, P.L. 2007, closed the Workers' Compensation Judges Part of the PERS to new members as of July 1, 2007. After the establishment of the Defined Contribution Retirement Program in July 2007, only those individuals with an active Tier 1 PERS membership were permitted to remain in the PERS upon appointment as a Judge of Workers' Compensation or an Administrative Law Judge.

- ii. Employment or re-employment in a position that is not covered by the Defined Benefit Plan;
- iii. A change in title;
- iv. Employment or re-employment as a contract employee, a leased employee,² or an independent contractor; or
- v. Termination of employment with a pre-arranged agreement for re-employment.

Federal Internal Revenue Service factors shall be used as guidance in determining whether an employment relationship exists. A mandatory retirement shall be treated as a 'bona fide severance from employment.'"

Also, N.J.A.C. 17:1-17.14.2(b) provides as follows:

In accordance with the N.J.S.A. 43:3C-18, the defined benefit plans are established as qualified governmental defined benefit plans in accordance with Internal Revenue Code Sections 401(a) and 414(d), or such other provision of the Federal Internal Revenue Code as applicable, regulations of the United States Department of the Treasury, and other guidance of the Federal Internal Revenue Service.

Federal law does permit the distribution of an in-service retirement benefit under certain conditions as detailed in N.J.A.C. 17:1-17.14.2(c):

In order to maintain qualified plan status, as set forth in (b) above, Federal law requires that a defined benefit plan pay retirement benefits to a member only when there is bona fide severance from employment unless both of the following conditions are met:

1. The member has attained normal retirement age under the defined benefit plan; and
2. A defined benefit plan provides for the distribution without a bona fide severance from employment (also referred to as an "in-service distribution").

Recalled Judges (JRS and PERS)

Pursuant to N.J.S.A. 17:17.14.2, the 180-day requirement of a bona fide severance does not apply to a JRS retiree, a retired Judge of Compensation, or a retired Administrative Law Judge, provided the judge attained age 60 prior to retiring from the JRS or PERS, and was recalled to service under one of the following statutory provisions:

- N.J.S.A. 43:6A-13 — Provides for the recall of retired justices and retired judges of the JRS by the Supreme Court for temporary service and permits the retiree to continue to receive retirement benefits from the JRS. The retired justice or judge may be paid a per diem allowance fixed by the Supreme Court, which, when added to the retirement allowance, cannot exceed the current salary of a justice or judge of the court from which he or she retired.

² This includes services provided to all employers who are party to a shared service agreement with the former employer.

- Chapter 6, P.L. 2005 — Allows retired administrative law judges and workers' compensation judges to be recalled for service, with the judge's consent. It amends N.J.S.A. 52:14F-4 and N.J.S.A. 34:15-49, which requires these judges to retire upon attaining age 70, to provide that upon such recall the retired administrative law judge or judge of workers' compensation will have all the powers of such a judge and will be paid a per diem allowance to be fixed by the Director/Chief Administrative Law Judge or the Director/Chief Judge of the Division of Workers' Compensation, as applicable. The recalled judge will be reimbursed for reasonable expenses actually incurred in connection with the assignment and will be provided with such facilities as may be required in the performance of the judge's duties. Those per diem compensation and expenses will be paid by the State. Payment for services and expenses will be made in the same manner as payment is made to the judges of the Office of Administrative Law or Division of Workers' Compensation, as applicable, from which the judge retired.

Age-Related Mandatory Retirement

The 180-day requirement of a bona fide severance also does not apply to judges who were required to retire under the age-related mandatory retirement provisions of the statutes. In these situations, the age-related mandatory retirement is considered a "bona fide severance from employment."

EMPLOYER RESPONSIBILITIES

Completion of a *Notification of Employment After Retirement* form is not required for judges recalled to service under N.J.S.A. 43:6A-13 and Chapter 6, P.L. 2005; however, the form should be completed for all other circumstances when retaining the services of a judge who is retired from one of the New Jersey State-administered retirement systems. For more information, see [Certifying Officer letter dated August 22, 2014](#).

ADDITIONAL INFORMATION

Additional information regarding the taxability of pension benefits can be found in Fact Sheet #12, *Taxation of Retirement Benefits*. For specific questions regarding the tax implications of returning to employment after retirement, current or former employees should consult with a professional tax advisor or contact the IRS at 1-800-TAX-1040.

If you have general questions regarding any of the information provided in this letter, contact the Division's Office of Client Services at (609) 292-7524, or e-mail the Division at: <https://www.state.nj.us/treas/pensions/pensionmail.shtml>