



## NEW JERSEY LAW REVISION COMMISSION

### **Tentative Report Addressing Availability of Disability Benefits To Employees Who Left Public Sector Employment**

**March 18, 2021**

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” *N.J.S. 1:12A-8*.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **May 18, 2021**.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

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## Project Summary<sup>1</sup>

In New Jersey, most State employees are eligible for membership in the Public Employees' Retirement System (PERS). N.J.S. 43:15A-42 allows eligible members of PERS to receive ordinary disability retirement benefits (ODRB) so long as they meet service credit minimum requirements.<sup>2</sup> The text of this statute, however, is silent regarding the eligibility of an employee who leaves public sector service prior to becoming disabled, but retains membership in PERS. This question was addressed by the Appellate Division in *Murphy v. Bd. of Tr., Pub. Emp.'s Ret. Sys.*<sup>3</sup>

The proposed statutory language contained in the Appendix of this Report clarifies that an eligible member must be "working in New Jersey service" at the time of the disability, divides the statute into subsections to improve clarity and accessibility, uses gender-neutral language, and removes redundant and obsolete language.

## Statute Considered

N.J.S. 43:15A-42 provides, in pertinent part:

A member, under 60 years of age, who has 10 or more years of credit for New Jersey service, shall, upon the application of the head of the department in which he shall have been employed or upon his own application or the application of one acting in his behalf, be retired for ordinary disability by the board of trustees. The physician or physicians designated by the board shall have first made a medical examination of him at his residence or at any other place mutually agreed upon and shall have certified to the board that the member is physically or mentally incapacitated for the performance of duty and should be retired.

## Background

The petitioner in *Murphy v. Bd. of Tr., Pub. Emp.'s Ret. Sys.*, Bonnie Murphy, began employment with the Wall Township Board of Education in 1999.<sup>4</sup> In 2006, she was terminated from her employment.<sup>5</sup> She was reinstated in 2009, and awarded back pay, after a successful unfair labor practice charge.<sup>6</sup> In 2012, the petitioner signed a settlement agreement with her employer, ending her employment in exchange for \$485,000.<sup>7</sup> She obtained work in the private sector but maintained her membership in PERS.<sup>8</sup>

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<sup>1</sup> Preliminary work on this project was conducted by Christopher Mrakovic during his tenure as a Legislative Law Clerk with the NJLRC.

<sup>2</sup> N.J.S. 43:15A-42.

<sup>3</sup> *Murphy v. Bd. of Tr., Pub. Emp.'s Ret. Sys.*, 2019 WL 1646371 (App. Div. 2019).

<sup>4</sup> *Id.* at \*1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

In 2013, the petitioner became totally and permanently disabled.<sup>9</sup> She applied to PERS for disability benefits under N.J.S. 43:15A-42.<sup>10</sup> PERS denied the application, the petitioner appealed, and the case was transferred to an administrative law judge (ALJ) for resolution.<sup>11</sup> The petitioner argued that she was eligible for benefits under the text of N.J.S. 43:15A-42 because “it was not disputed she was still a member of PERS, under sixty years of age, had provided over ten years of service for the State, and was totally and permanently disabled when she applied for ODRB benefits.”<sup>12</sup> PERS argued that the petitioner was not entitled to benefits because she did not have the disability when she resigned from her public sector employment.<sup>13</sup> The ALJ, however, found in favor of the petitioner, noting that the text of the statute does not require that a claimant become disabled from public sector employment in order to receive benefits.<sup>14</sup>

### Analysis

The Appellate Division reversed the ALJ’s determination, denying benefits to the petitioner.<sup>15</sup> The Court acknowledged that deference is ordinarily afforded to decisions of administrative agencies.<sup>16</sup> The Court found, however, that N.J.S 43:15A-42 is ambiguous and that a determination of legislative intent was required to render a decision in this case.<sup>17</sup> The Court determined that the phrases “for the performance of duty” and “should be retired” in N.J.S. 43:15A-42 indicate a legislative intent that the performance of duty be for a public sector entity.<sup>18</sup> The Court cited the PERS rehabilitation statute, which requires an employee who recovers from a disability to return to public sector service.<sup>19</sup> Reading the statutes together, the Court held that an employee must be disabled from public sector employment, in addition to the other eligibility requirements, in order to receive ordinary disability benefits.<sup>20</sup>

### Conclusion

N.J.S. 43:15A-42 does not state whether it permits or prohibits the provision of ordinary disability retirement benefits to eligible PERS members who leave public sector employment before the onset of disability. The language contained in the Appendix proposes changes to the statute consistent with the determination of the Appellate Division in *Murphy v. Bd. of Tr., Pub. Emp. ’s Ret. Sys.*

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<sup>9</sup> *Murphy*, 2019 WL 1646371 at \*1.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at \*2.

<sup>15</sup> *Murphy*, 2019 WL 1646371 at \*3.

<sup>16</sup> *Id.* at \*2.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* (citing N.J.S. 43:15A-42).

<sup>19</sup> *Id.* (citing N.J.S. 43:15A-44.).

<sup>20</sup> *Murphy*, 2019 WL 1646371 at \*3.

## Appendix

The proposed modifications to **N.J.S. 43:15A-42** (shown with ~~strikethrough~~ and underlining), follow:

### **43:15A-42. Ordinary disability retirement**

a. A member, under 60 years of age, who has 10 or more years of credit for New Jersey service, currently employed in a Public Employees' Retirement System (PERS) eligible position shall, upon the application of the head of the department in which he shall have been employed or upon his own application or the application of one acting in his behalf, be retired for ordinary disability by the board of trustees if he or she:

(1) is under 60 years of age;

(2) has 10 or more years of credit for New Jersey service; and,

(3) has undergone a medical examination by the physician or physicians designated by the board, at the member's residence or any other place mutually agreed upon, and the physician or physicians have certified to the board that the member is:

(A) physically or mentally incapacitated for the performance of duty; and,

(B) should be retired.

~~The physician or physicians designated by the board shall have first made a medical examination of him at his residence or at any other place mutually agreed upon and shall have certified to the board that the member is physically or mentally incapacitated for the performance of duty and should be retired.~~

~~The service requirement provisions of this amendatory and supplementary act shall not become effective for 5 years following the effective date of the act.~~

b. An application pursuant to subsection a. may be made by:

(1) the member;

(2) someone acting on the member's behalf; or,

(3) the head of the department in which the member was employed.

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

## COMMENT

The statute as currently written does not state whether it permits or prohibits the extension of ordinary disability retirement benefits to eligible PERS members who leave public sector employment before the onset of disability. This proposed language clarifies that the eligible member must be “employed in a Public Employees’ Retirement System (PERS) eligible position” at the time of disability. The language is consistent with the Appellate Division’s finding in *Murphy v. Bd. of Tr., Pub. Emp.’s Ret. Sys.* that “should be retired” indicates legislative intent that the retirement be from public sector employment.

The proposed language also divides the statute into subsections in order to improve clarity and accessibility. Some of the language in subsection b. was relocated from the initial paragraph of the section.

Finally, the proposed changes also delete the reference to the long-past date triggering the five-year delay before the service requirement becomes effective (the statute was enacted in 1954).