



NEW JERSEY LAW REVISION COMMISSION

Final Report to Clarify the Teaching Role Exception in the Public Employee Retirement System Act's Re-enrollment Statute

September 15, 2022

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.

Please consult the New Jersey statutes in order to determine the law of the State.

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Project Summary¹

In New Jersey, the Public Employees' Retirement System (PERS) Act governs enrollment, membership, termination, and disbursement of retirement pensions for eligible State employees.² Pursuant to N.J.S. 43:15A-57.2 (re-enrollment statute), retired members re-employed in PERS-eligible roles must re-enroll in PERS until again retiring, with certain relevant exceptions.³

The “teaching role” exception⁴ in N.J.S. 43:15A-57.2b.(2) contains a reference to the \$10,000 maximum yearly compensation that a retired member could earn without re-enrolling in PERS under the “salary cap” exception in N.J.S. 43:15A-57.2b.(1).⁵ After the enactment of the “teaching role” exception, however, the “salary cap” exception was amended to allow aggregate annual compensation up to \$15,000 without re-enrollment, eliminating the source of the \$10,000 amount referenced in the “teaching role” exception.⁶

The Commission recommends that the “teaching role” exception be modified to clarify that the exception applies to all retired members in qualifying teaching staff positions. The Appendix sets forth modifications to N.J.S. 43:15A-57.2b.(2) that eliminate the outdated annual salary reference and insert language emphasizing that the exception applies regardless of compensation.

During the June 2022 Commission meeting, the Commission considered whether the compensation limit in the “salary cap” exception would also benefit from modification.⁷ The Commission requested information related to when the annual salary limit was last updated to determine whether to remove the monetary figure and clarify that the Director of the Division of Pensions and Benefits (Director) is authorized to set the annual compensation limit within certain parameters.⁸

¹ In March 2021, the Commission authorized a project related to the “critical need” exception to re-enrollment in N.J.S. 43:15A-57.2c. Preliminary work was conducted by Christopher Mrakovcic, former Legislative Law Clerk, during his tenure at the New Jersey Law Rev. Comm’n. Additional review of the “critical need” exception led to the identification of an issue concerning the “teaching role” exception in N.J.S. 43:15A-57.2b.(2). In January 2022, the Commission authorized work to address the “teaching role” exception. *See* N.J. Law Revision Comm’n, *Minutes NJLRC Meeting*, at 3, Jan. 20, 2022, www.njlrc.org (last visited Aug. 17, 2022) (agreeing unanimously to conclude work on the “critical need” exception to re-enrollment, which arose from an analysis of the exception by the Appellate Division in *Yamba v. Bd. of Tr., Pub. Emp. ’s Ret. Sys.*, 2019 WL 2289209 (N.J. Super. Ct. App. Div. May 29, 2019) and authorizing additional research and outreach on the “teaching role” exception). *See also* N.J. Law Revision Comm’n, Memorandum Regarding Re-Enrollment in PERS as a Critical Need Employee (*Yamba v. Bd. of Tr., Pub. Emp. ’s Ret. Sys.*, 2019 WL 2289209 (N.J. Super. Ct. App. Div. May 29, 2019)) (Jan. 10, 2022), www.njlrc.org (last visited Aug. 17, 2022).

² N.J. STAT. ANN. §§ 43:15A-6 through -161 (West 2022).

³ N.J.S. 43:15A-57.2 (“[r]e-employment of retired former member”).

⁴ N.J.S. 43:15A-57.2b.(2).

⁵ N.J.S. 43:15A-57.2b.(1).

⁶ *See infra* p. 5 and note 27.

⁷ N.J. Law Revision Comm’n, *Minutes NJLRC Meeting*, at 5, June 16, 2022, www.njlrc.org (last visited Aug. 17, 2022).

⁸ N.J.S. 43:15A-57.2b. (“The Director of the Division of Pensions and Benefits may from time to time adjust the amount in paragraph (1) of this subsection. This adjustment shall be 3/5 of the percentage of change in the index, as defined in section 1 of P.L.1958, c.143 (C.43:3B-1), over a period of time as determined by the director.”).

The New Jersey Administrative Code and recent administrative decisions issued by the PERS Board of Trustees (PERS Board) confirm that the \$15,000 figure is the current and accurate annual compensation limit amount. Therefore, no modification of the “salary cap” exception in N.J.S. 43:15A-57.2b.(1) is recommended.

Relevant Statute

The statute at issue is N.J.S. 43:15A-57.2, which provides in relevant part that:

a. Except as provided in subsections b., c., and d. of this section, if a former member of the State Employees' Retirement System or the retirement system, who has been granted a retirement allowance for any cause other than disability, becomes employed again in a position which makes him eligible to be a member of the retirement system, his retirement allowance and the right to any death benefit as a result of his former membership, shall be canceled until he again retires.

Such person shall be re-enrolled in the retirement system and shall contribute thereto at a rate based on his age at the time of re-enrollment

b. The cancellation, re-enrollment, and additional retirement allowance provisions of subsection a. of this section shall not apply to a former member of the retirement system who, after having been granted a retirement allowance, becomes employed again by: (1) *an employer or employers in a position or positions for which the aggregate compensation does not exceed \$15,000 per year; or (2) if the compensation exceeds \$10,000 per year, by an employer that is a public institution of higher education as defined in N.J.S.18A:62-1 in a teaching staff position.* The Director of the Division of Pensions and Benefits may from time to time adjust the amount in paragraph (1) of this subsection. This adjustment shall be 3/5 of the percentage of change in the index, as defined in section 1 of P.L.1958, c.143 (C.43:3B-1), over a period of time as determined by the director⁹

Legislative History

As originally enacted, the PERS re-enrollment statute did not provide for any exception to re-enrollment when a retired member resumed employment in a PERS-eligible position.¹⁰ The statute has been amended five times since its enactment in 1966 to expand the categories of retirees returning to work who are exempt from re-enrolling in the PERS system.¹¹

⁹ N.J.S. 43:15A-57.2 (emphasis added).

¹⁰ L. 1966, c.217, §27.

¹¹ L. 1997, c.23, §2, eff. Feb. 27, 1997; L. 2001, c.253, §1, eff. Nov. 15, 2001; L. 2001, c.278, §1, eff. Dec. 27, 2001; L. 2001, c.355, §2, eff. Jan. 6, 2002; L. 2011, c.78, §34, eff. June 28, 2011.

- “Salary Cap” Exception

The first exception to re-enrollment was added in 1997.¹² This “salary cap” exception “allow[ed PERS retirees] to accept employment in a position covered by the retirement system without being subject to cancellation of retirement benefits and reenrollment in the system, provided the person's annual compensation from the position d[id] not exceed \$10,000.”¹³

The statute also authorizes the Director to “adjust the [annual compensation] amount . . . [by] 3/5 of the percentage of change in the index . . . over a period of time as determined by the director.”¹⁴ Until 2021, the monthly percent change in the relevant “index”¹⁵ rarely breached 4%.¹⁶ In many months over the past twenty years, the monthly percent change was negative.¹⁷

At the end of 2001, the Legislature amended the exception to permit retirees to earn up to an aggregate amount of \$15,000 annually without re-enrolling in PERS.¹⁸ The compensation limit in the statutory “salary cap” exception has not been amended since 2001, although the statute was amended twice to add other exceptions to re-enrollment.¹⁹

- “Teaching Role” Exception

Also in 2001, the Legislature amended the PERS statute to include an exception for members returning to qualifying teaching staff positions (the “teaching role” exception).²⁰ Rather than create an additional subsection, the Sponsors of the bill added the new “teaching role” exception to the same subsection as the existing “salary cap” exception:

b. The cancellation, re-enrollment, and additional retirement allowance provisions of subsection a. of this section shall not apply to a former member of the retirement system who, after having been granted a retirement allowance, becomes employed again by: (1) an employer in a position for which the compensation does not exceed \$10,000 per year; or (2) if the compensation exceeds \$10,000 per year, by an

¹² L. 1997, c.23, §2, eff. Feb. 27, 1997.

¹³ Sponsor’s Statement to S.B. 1152 (identical to A.B. 1604), 1996 Leg., 207th Sess., later codified as L. 1997, c.23, §2, eff. Feb. 27, 1997.

¹⁴ N.J.S. 43:15A-57.2b. (“adjustment shall be 3/5 of the percentage of change in the index, as defined in section 1 of P.L.1958, c.143 (C.43:3B-1)”).

¹⁵ N.J. STAT. ANN. § 43-3B-1f. (West 2022) (defining “index” as “the annual average over a 12-month period, beginning September 1 and ending August 31, of the Consumer Price Index for Urban Wage Earners and Clerical Workers, All Items Series A, of the United States Department of Labor (1957-1959=100)”).

¹⁶ Bureau of Labor Statistics Data Viewer, “CPI for Urban Wage Earners and Clerical Workers, All Items, U.S. City Average, Jan. 2001 – Jul. 2022,” United States Department of Labor, <https://beta.bls.gov/dataViewer/view/timeseries/CWSR0000SA0> (last visited Aug. 17, 2022).

¹⁷ *Id.*

¹⁸ L. 2001, c.278, §1, eff. Dec. 27, 2001.

¹⁹ L. 2001, c.355, §2, eff. Jan. 6, 2002 (adding the “critical need” exception); L. 2011, c.78, §34, eff. June 28, 2011 (adding an exception for public office holders who retired prior to the effective date of the amendment).

²⁰ L. 2001, c.253, §1, eff. Nov. 15, 2001.

employer that is a public institution of higher education as defined in N.J.S.18A:62-1 in a teaching staff position. . . .²¹

The “teaching role” exception permitted retirees to accept a qualifying teaching role “if the compensation is in excess of \$10,000 per year.”²² The Sponsors’ Statement emphasized that, “[u]nder current law, the retired member may already accept such employment if the compensation does not exceed \$10,000 per year,”²³ making clear that qualifying retirees remained exempt even if their annual salary exceeded the \$10,000 limit in the “salary cap” exception.²⁴

In addition, a Senate Education Committee Statement confirmed the intent of the Legislature to completely exempt qualifying teaching staff from re-enrollment.²⁵ The Senate Education Committee Statement explained that “PERS retirees employed in a PERS-covered position with compensation of \$10,000 or less or employed in a teaching staff position by a public institution of higher education . . . are exempt from the reenrollment requirement.”²⁶

About six weeks after the “teaching role” exception became effective, however, the Legislature amended the “salary cap” exception to permit retirees to earn up to \$15,000 annually without re-enrolling in PERS.²⁷ This amendment severed the connection between the “salary cap” exception in N.J.S. 43:15A-57.2b.(1) and the “teaching role” exception in 43:15A-57.2b.(2) because it eliminated the \$10,000 yearly compensation amount from subsection b.(1) *only*.²⁸ As a result, the phrase “if the compensation exceeds \$10,000 per year” at the beginning of the “teaching role” exception is currently untethered to any other provision in the re-enrollment statute.²⁹

The reference to a yearly compensation amount in the “teaching role” exception appears to be both outdated and unnecessary in light of the expressed legislative intent to exempt retirees returning to qualifying teaching positions without regard to their yearly compensation.

New Jersey Administrative Code Section 17:2-2.3

Staff also identified a New Jersey Administrative Code provision, N.J.A.C. 17:2-2.3, which sets forth categories of individuals who are ineligible for enrollment in the PERS.³⁰ The provision,

²¹ Sponsor’s Statement to A.B. 988, 2000 Leg., 209th Sess. (identical to: S.B. 2249), later codified as L. 2001, c.253, §1, eff. Nov. 15, 2001 (“Matter underlined thus is new matter.”).

²² *Id.*

²³ *Id.*

²⁴ *Id.* (“[t]here is a wealth of expertise among these retirees and they could provide significant contributions to higher education if they were assured that their retirement benefits would not be affected.”).

²⁵ Senate Education Committee Statement to S.B. 2718, 209th Leg., 2nd Sess. (N.J. Dec. 13, 2001) (emphasis added) (S.B. 2718 was later enacted at L. 2001, c. 355, §2, eff. Jan. 6, 2002, as the “critical need” exception).

²⁶ *Id.* at 1.

²⁷ L. 2001, c.278, §1, eff. Dec. 27, 2001.

²⁸ Sponsor’s Statements to S.B. 517, 2000 Leg., 209th Sess. (identical to: A.B. 2495), later codified as L. 2001, c.278, §1, Dec. 27, 2001 (increasing “from \$10,000 to \$15,000 the annual amount of compensation a PERS retiree is permitted to receive without having to re-enroll in PERS.”).

²⁹ N.J.S. 43:15A-57.2b.(2).

³⁰ N.J.A.C. § 17:2-2.3 (West 2022).

entitled “Ineligible persons,” contains subsections that parallel the statutory exceptions to re-enrollment in N.J.S. 43:15A-57.2.³¹

- “*Salary Cap*” Exception

In March 1998, the PERS Board issued a Rule Proposal related to the “salary cap” exception.³² The Rule Proposal added subsection N.J.A.C. 17:2-2.3(a)(7), which was “necessary due to the enactment of P.L. 1997 c.23, which makes [PERS retirees] who, after being granted a retirement allowance, return to public employment in a position which earns less than \$10,000, ineligible for reenrollment into the Retirement System.”³³

Although the summary of the Rule Proposal directly referenced the monetary amount in N.J.S. 43:15A-57.2, the proposed administrative code provision excluded “[a]ny retired member who returns to a PERS-eligible position for which the annual compensation is less than the compensation limit for exclusion from membership pursuant to N.J.S.A. 43:15A-57.2b.”³⁴ Following a comment period, the rule was adopted May 20, 1998, effective July 6, 1998.³⁵

In 2004, the PERS Board proposed “changes to N.J.A.C. 17:2-2.3, Ineligible persons, to comply with the provisions of P.L. 2001, c.278,” which increased the annual compensation limit to an aggregate annual limit of \$15,000.³⁶ The proposed changes included the addition of the word “aggregate” and a requirement that members “notify their employer or employers when the aggregate calendar year compensation limit will be reached.”³⁷

In its adopted form, the rule applied to “[a]ny retired member who returns to a PERS covered position or positions for which the aggregate compensation is less than the aggregate calendar year compensation limit for exclusion from membership pursuant to N.J.S.A. 43:15A-57.2b.”³⁸ This language is identical to the current iteration of N.J.A.C. 17:2-2.3(a)(7).³⁹

- “*Teaching Role*” Exception

N.J.A.C. 17:2-2.3(a)(10) parallels the statutory “teaching role” exception.⁴⁰ Subsection (a)(10) makes ineligible “[a]ny retired member . . . who returns to employment with an institution

³¹ N.J.A.C. §§ 17:2-2.3(a)(7), (a)(10), and (a)(11) (West 2022).

³² “Proposed Amendment: N.J.A.C. 17:2-2.3,” 30 N.J.R. 1025(a) (Mar. 16, 1998).

³³ *Id.*

³⁴ *Id.* (emphasis added).

³⁵ “Adopted Amendment: N.J.A.C. 17:2-2.3(7),” 30 N.J.R. 2513(c) (May 20, 1998) (declining to incorporate the statutory authority of the Director of the Division of Pensions and Benefits to change the compensation limit based on the percentage change in the Consumer Index).

³⁶ “Proposed Amendment: N.J.A.C. 17:2-2.3,” 36 N.J.R. 619(a) (Feb. 2, 2004).

³⁷ *Id.*

³⁸ “Adopted Amendment: N.J.A.C. 17:2-2.3,” 36 N.J.R. 3066(a) (Jun. 21, 2004) (emphasis added) (noting in response to a commenter that “[t]he Board must comply with the provisions of P.L. 2001, chapter 278 and so did not have any discretion in limiting compensation to \$ 15,000 in the aggregate”).

³⁹ N.J.A.C. § 17:2-2.3(a)(7).

⁴⁰ N.J.A.C. § 17:2-2.3(a)(10) (West 2022).

of higher education in a teaching position covered by the PERS pursuant to N.J.S.A. 43:15A:57.2.”⁴¹ The language of the rule tracks the language of the statutory “teaching role” exception closely but does not reference yearly compensation.

According to the summary that accompanied the Rule Proposal, this category of ineligible person was proposed due to the enactment of “P.L. 2001, c.253 [which] permits PERS retirees to take employment in teaching positions at institutions of higher education without having to reenroll in the PERS regardless of income.”⁴²

Although the interpretation of statutory language by the Division is persuasive, rather than binding, it aligns with the expressed legislative intent to create a re-enrollment exception based on qualifying teaching staff positions unrelated to yearly compensation.

Administrative Decisions

Staff undertook a review of decisions issued by the PERS Board of Trustees and the Office of Administrative Law related to the statutory exceptions to re-enrollment in N.J.S. 43:15A-57.2b.(2), but did not find any opinions addressing the “teaching role” exception.

However, with respect to the “salary cap” exception, two recent administrative decisions concern retired PERS members found to be in violation of the statute because they earned more than \$15,000 per year while receiving retirement benefits.

In *Hamilton v. PERS*, the PERS Board notified a retired attorney in 2016 that his 2007 retirement was not bona fide and his post-retirement employment annual earnings since 2007 were in excess of the \$15,000 yearly amount allowed under the statute.⁴³ Similarly, in *Salgado v. PERS*, a retired Rutgers employee was notified in 2013 that his yearly earnings since his retirement in 2007 violated the “salary cap” exception in N.J.S. 43:15A-57.2.⁴⁴

Moreover, the final administrative decision addressed in *Yamba v. PERS Board of Trustees*, 2019 WL 2289209 (N.J. Super. Ct. App. Div. May 29, 2019),⁴⁵ although responding primarily to the argument that the petitioner qualified under a different “critical need” exception, also notes that if a retired member makes more than \$15,000 per year he must re-enroll absent eligibility under another statutory exception.⁴⁶

⁴¹ *Id.*

⁴² “Proposed Amendment: N.J.A.C. 17:2-2.3,” 36 N.J.R. 619(a) (Feb. 2, 2004) (emphasis added).

⁴³ *Hamilton v. PERS*, No. TYP06454-16 (Sept. 10, 2019)
https://njlaw.rutgers.edu/collections/oal/html/initial/typ06454-16_1.html (last visited Aug. 17, 2022).

⁴⁴ *Salgado v. PERS*, No. TYP08324-14 (Sept. 13, 2018),
https://njlaw.rutgers.edu/collections/oal/html/initial/typ08324-14_1.html (last visited Aug. 17, 2022).

⁴⁵ See supra note 1.

⁴⁶ Board of Trustees, Public Employees’ Retirement System, “Final Administrative Decision Re: A. Zachary Yamba,” at 5 (September 21, 2017).

Outreach

In connection with this Report, Staff sought comments from knowledgeable individuals and organizations including: Deputy Attorney General Robert Kelly, who serves as the Legal Advisor to the PERS Board of Trustees; New Jersey Division of Pensions and Benefits; the Director of Policy and Outreach in the New Jersey Office of the Secretary of Higher Education; the Division of Administrative Rules in the New Jersey Office of Administrative Law; the Department of the Treasury; the Labor and Employment Law Section and the Administrative Law Section of the New Jersey State Bar Association; the New Jersey Association of State Colleges and Universities; as well as the relevant offices at Rutgers University, New Jersey Institute of Technology, Rowan University, and Montclair State University.

In addition, outreach was conducted to: private practitioners; the New Jersey Council of County Colleges; the New Jersey League of Municipalities; the Co-Chairs of the Advisory Board to New Jersey Retired Public Employees Organization; New Jersey Education Association; Professor Barbara Lee at Rutgers University; Professor Richard West at Rutgers Law School; Emeritus Professor Charles Sullivan and Professor Timothy Glynn at Seton Hall University School of Law; and the New Jersey State Conference of the American Association of University Professors and the Council of New Jersey State College Locals.

Staff also conducted outreach specific to the issue raised during the June 2022 Commission meeting relating to the monetary amount in the “salary cap” exception by first calling the general assistance number at the Division of Pensions and Benefits. The Division representative was unable to provide any information regarding the annual compensation limit. Staff also contacted the office of John D. Megariotis, Acting Director, and was provided with an e-mail contact for Danielle Schimmel. Staff e-mailed Ms. Schimmel on August 4, 2022, and to this time, has not received any response.

No objections were received regarding the proposed modifications set forth in the Appendix.

Conclusion

Given that the relevant Administrative Code provision defers to the amount set forth in N.J.S. 43:15A-57.2b.(1), and that administrative decisions refer to a \$15,000 annual compensation limit, it is reasonable to conclude that the statutory figure is the current and accurate compensation limit. Although no changes related to the monetary figure in subsection b.(1) are recommended in this Report, the Commission notes that the salary limit has not been changed since 2001. Whether to modify the salary requirement in N.J.S. 43:15A-57.2b.(1) involves policy determinations best suited to the Legislature.

Based on the legislative history of the “teaching role” exception and the related administrative provision in N.J.A.C. 17:2-2.3(a)(10), the Commission recommends modifying N.J.S. 43:15A-57.2 to clarify that the “teaching role” exception applies to all retired members in qualifying teaching staff positions regardless of the amount of compensation.

Appendix

The recommended modifications to N.J.S. 43:15A-57.2 (shown with ~~strike through~~, and underlining) follow:

a. Except as provided in subsections b., c., and d. of this section, if a former member of the State Employees' Retirement System or the retirement system, who has been granted a retirement allowance for any cause other than disability, becomes employed again in a position which makes ~~him~~ them eligible to be a member of the retirement system; ~~his~~

(1) the former member's retirement allowance and the right to any death benefit as a result of ~~his~~ former membership, shall be canceled until ~~he~~ the former member again retires;

(2) ~~Such person~~ the former member shall be re-enrolled in the retirement system and shall contribute thereto at a rate based on ~~his~~ age at the time of re-enrollment. Such person shall be treated as an active member for determining disability or death benefits while in service and no benefits pursuant to an optional selection with respect to ~~his~~ former membership shall be paid if ~~his~~ the former member's death shall occur during the period of such re-enrollment; and,

(3) ~~Upon~~ subsequent retirement of such member, ~~his~~ any former retirement allowance shall be reinstated together with any optional selection, based on ~~his~~ former membership. ~~In addition, he~~ The former member shall receive an additional retirement allowance based on ~~his~~ subsequent service as a member, computed in accordance with applicable provisions of chapter 84 of the laws of 1954; provided, however, that ~~his~~ the total retirement allowance upon such subsequent retirement shall not be a greater proportion of ~~his~~ the final compensation than the proportion to which ~~he~~ the former member would have been entitled had ~~he~~ they remained in service during the period of ~~his~~ prior retirement. Any death benefit to which such member shall be eligible shall be based on ~~his~~ their latest retirement, but shall not be less than the death benefit that was applicable to ~~his~~ the former retirement.

b. The cancellation, re-enrollment, and additional retirement allowance provisions of subsection a. of this section shall not apply to a former member of the retirement system who, after having been granted a retirement allowance, becomes employed again by:

(1) an employer or employers in a position or positions for which the aggregate compensation does not exceed \$15,000 per year, an amount which may be adjusted from time to time by the Director of the Division of Pensions and Benefits and which adjustment shall be 3/5 of the percentage of change in the index, as defined in section 1 of P.L.1958, c.143 (C.43:3B-1), over a period of time as determined by the Director; or,

(2) ~~if the compensation exceeds \$10,000 per year, by an employer that is a public institution of higher education as defined in N.J.S. 18A:62-1 in a teaching staff position, regardless of the amount of compensation.~~⁴⁷

~~The Director of the Division of Pensions and Benefits may from time to time adjust the amount in paragraph (1) of this subsection. This adjustment shall be 3/5 of the percentage of change in the index, as defined in section 1 of P.L.1958, c.143 (C.43:3B-1), over a period of time as determined by the director.~~

c. Unless the former member becomes employed within 120 days of retirement in a position with the employer from which the member retired,⁴⁸ ~~the cancellation, reenrollment, and additional retirement allowance provisions of subsection a. and the compensation limitations of subsection b. of this section shall not apply to a former member of the retirement system who, after having been granted a retirement allowance, becomes employed by:~~

~~(1) the State Department of Education in a position of critical need as determined by the State Commissioner of Education; or becomes employed by~~

~~(2) a board of education in a position of critical need as determined by the superintendent of the district on a contractual basis for a term of not more than one year; except that the cancellation, reenrollment, and additional retirement allowance provisions and the compensation limitations shall apply if the former member becomes employed within 120 days of retirement in a position with the employer from which the member retired, which may be renewed for one additional year, provided that the total period of employment with any individual board of education does not exceed a two-year period.~~

~~Nothing herein shall preclude a former member so reemployed by a board of education from renewing a contract for one additional year, provided that the total period of employment with any individual board of education does not exceed a two year period.~~

d. The cancellation, reenrollment, and additional retirement allowance provisions of subsections a., b., and c. of this section shall not apply to a former member of the retirement system who was granted a retirement allowance pursuant to section 1 of P.L.1985, c.414 (C.43:15A-47.2) prior to the effective date of P.L.2011, c.78.

⁴⁷ See *supra* pp. 4-5 and notes 17 and 25 (discussing the legislative intent to exempt *all* qualifying teaching staff positions and the Division of Pension and Benefits' summary of the "teaching role" exception as allowing "PERS retirees to take employment in [qualifying] teaching positions . . . without having to reenroll in the PERS regardless of income.").

⁴⁸ Senate Education Committee Statement to S.B. 2718, 209th Leg., 2nd Sess. (N.J. 2001) (explaining that the purpose of the language was to "eliminate the requirement that a member of the retirement system not accept employment for 120 days following retirement" but maintaining "the 120 day requirement . . . for a retiree who accepts employment with the employer from which he retired . . .").

COMMENTS

Subsection a.

Subsection a. consists of three paragraphs. The beginning of the first paragraph sets forth the events which trigger the cancellation, re-enrollment, and additional retirement allowance provisions in that subsection, namely the re-employment of a retired member of the PERS in a PERS-eligible role. There are no modifications recommended with respect to this part of the first paragraph.

To improve the accessibility of subsection a., the Commission recommends dividing the remainder of the subsection into additional subsections. The latter part of the first paragraph, describing the cancellation of retirement, is designated as subsection a.(1). The second paragraph in subsection a. is designated subsection a.(2), as it addresses the consequences of re-enrollment in the retirement system. The third paragraph is designated subsection a.(3) because it sets forth the effects of subsequent retirement of a PERS member falling within the parameters of subsection a.

Finally, the recommended modifications to subsection a. render the language gender-neutral. The substance of N.J.S. 43:15A-57.2 subsection a. remains unchanged.

Subsection b.

As currently written, N.J.S. 43:15A-57.2b.(2), setting forth the “teaching role” exception to re-enrollment, references an outdated \$10,000 yearly compensation amount that was contained in a prior version of the “salary cap” exception immediately preceding it in N.J.S. 43:15A-57.2b.(1).

The Commission recommends eliminating this reference from subsection b.(2) and adding the language “regardless of the amount of compensation,” to make clear that the “teaching role” exception is applicable to qualifying teaching positions no matter the annual compensation amount earned. This clarification of the “teaching role” exception is consistent with the expressed legislative intent and the corresponding administrative provision at N.J.A.C. 17:2-2.3(a)(10). It also ensures that subsections b.(1) and b.(2) remain consistent with each other, regardless of any subsequent adjustments to the compensation amount in the “salary cap” exception.

In addition, the Commission recommends moving the final paragraph of subsection b., which provides that the Director of the Division of Pensions and Benefits is permitted to “adjust the amount in paragraph (1)” pursuant to enumerated guidelines, to subsection b.(1). This modification is suggested on the basis that the authority to adjust the compensation amount is applicable only to subsection b.(1), as already specified in the statute.

No modifications are recommended with respect to the monetary figure contained in the “salary cap” exception in subsection b.(1). In light of the New Jersey Administrative Code provision and administrative decisions employing the \$15,000 aggregate annual compensation limit, the statutory amount appears to be accurate and current.

Subsection c.

Subsection c. contains the “critical need” exception, and sets forth two categories of “critical need” employment which are exempt from the provisions of subsections a. and b. The recommended modifications divide these two categories of employment into separate subsections: c.(1) and c.(2), to improve accessibility.

Additionally, subsection c. specifies that former members employed by “the employer from which the member retired” are exempt from the provisions in subsection a., as long as employment was not resumed within 120 days of retirement. The recommended modifications move this condition to the beginning of subsection c. because it is applicable to both categories of “critical need” employment, but do not alter the substance of this provision.

Subsection c. also imposes time limits on “critical need” positions with boards of education, specifying that “a former member so reemployed by a board of education [may renew a contract] for one additional year, provided that the total period of employment with any individual board of education does not exceed a two-year period.” The recommended modifications move this language to subsection c.(2) because the time limits are applicable only to employment with a board of education, as already specified in the statute, but do not alter the substance of this section.

Subsection d.

No modifications are recommended with respect to N.J.S. 43:15A-57.2d.