ARTICLE 71-02
PUBLIC EMPLOYEES RETIREMENT SYSTEM

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CHAPTER 71-02-01
DEFINITIONS

Section
71-02-01-01 Definitions

71-02-01-01. Definitions. As used in North Dakota Century Code chapter 54-52 and this article:

13. "Medical consultant" means a person or committee appointed by the board of the North Dakota public employees retirement system to evaluate medical information submitted in relation to disability applications, recertifications, and rehabilitation programs or other such duties as assigned by the board.
14. “Normal retirement age" means age 65 except as otherwise provided.
15. Office" means the administrative office of the public employees retirement system.
~~15~~16. "Participating employer" means an employer who contributes to the North Dakota public employees retirement system. For confidentiality purposes, "participating employer" means the person or group of persons with the ultimate authority over personnel decisions within the agency or political subdivision with which the member is employed or the person’s or group’s official designee.
~~16~~ 17. "Pay status" means a member is receiving a retirement allowance from the fund.
~~17~~ 18. "Permanent and total disability" for members of the main retirement system and the national guard/law enforcement retirement plan means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months. For members of the judge’s retirement plan, "permanent and total disability" is determined pursuant to subdivision e of subsection 3 of section 54-52-17 of the North Dakota Century Code.
~~18~~ 19. "Plan administrator" means the executive director of the North Dakota public employees retirement system or such other person or committee as may be appointed by the board of the North Dakota public employees retirement system from time to time.
~~19~~ 20. "Plan year" means the twelve consecutive months commencing July first of the calendar year and ending June thirtieth of the subsequent calendar year.

~~20~~ 21. "Prior plan" means the state employees' retirement system which existed from July 1, 1966, to June 30, 1977.
~~21~~ 22. "Regularly funded" means a legislatively authorized full-time equivalent (FTE) position for state agencies. For all governmental units other than state agencies, regularly funded means a similar designation by the unit's governing board which is created through the regular budgeting process and receives traditional employee benefits such as sick leave and annual leave.
~~22~~ 23 "Retiree" means an individual receiving a monthly retirement allowance pursuant to chapter 54-52.
24. "Retirement allowance" means a reoccurring, periodic benefit from an eligible employer-sponsored retirement plan as approved by the board.
~~23~~ 25."Service credit" means increments of time to be used in the calculation of retirement benefits. Service credit may be earned as stated in section
71-02-03-01 or may be purchased or repurchased according to section 71-02-03-02.1.
~~24~~ 26. "Substantial gainful activity" is to be based upon the totality of the circumstances including consideration of an individual's training, education, and experience; an individual's potential for earning at least seventy percent of the individual's predisability earnings; and other items deemed significant on a case-by-case basis. Eligibility is based on an individual's employability and not actual employment status.
~~25~~ 27. "Termination of employment" means a severance of employment by not being on the payroll of a covered employer for a minimum of one month. Approved leave of absence does not constitute termination of employment.
~~26~~ 28. "Termination of participation" means termination of eligibility to participate in the retirement plan.

History: Amended effective September 1, 1982; November 1, 1990; September 1, 1991; January 1, 1992; September 1, 1992; June 1, 1993; July 1, 1994; June 1, 1996; July 1, 2000; April 1, 2002; May 1, 2004.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52

CHAPTER 71-02-02
MEMBERSHIP

Section
71-02-02-01 Membership - General Rule

71-02-02-01. Membership - General rule. Each eligible employee shall become a member of the public employees retirement system upon filing a membership form with the office, and the beginning of contributions to the fund. In addition, the following requirements apply:

1. A temporary employee must submit a completed participation agreement ~~before becoming a member. Application must be completed~~ within six months of the date of hire as a temporary employee or within six months of a change in status from a permanent to temporary position. If no application is made and filed with the office, an irrevocable waiver of participation will occur for as long as the employee is in temporary status.

2. Contributions for temporary employees must be submitted no later than the sixth working day of the month for the previous month's salary.

3. Delinquent payments of over thirty days, for reasons other than leave of absence or seasonal employment, will result in termination of eligibility to participate as a temporary member ~~for the remainder of the plan year~~.

4. Upon taking a refund, future participation as a temporary member is waived.

5. A member may not participate as both a permanent and a temporary member. Permanent employment has precedence.

6. Elected officials of participating counties and elected state officials, at their individual option, must enroll or waive participation in writing within six months of taking office or beginning a new term. If no application is made and filed with the office, an irrevocable waiver of participation will occur until the official makes application within six months from the start of a new term.

History: Amended effective September 1, 1982; November 1, 1990; September 1, 1992; June 1, 1996; July 1, 1998; May 1, 2004.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-01(3), 54-52-02.9, 54-52-05

71-02-03-02.2. Payment. The total dollar amount for the purchase or repurchase may be paid in a lump sum or on a monthly, quarterly, semiannual, or annual basis. Payments may be subject to contribution limitations established under 26 U.S.C. 415. Payments must begin within ninety days of the date the written cost confirmation is prepared. If the installment method is used, the following conditions apply:

1. Simple interest at the actuarial rate of return must accrue monthly on the unpaid balance. Interest is calculated from the fifteenth of each month.

2. The installment schedule may extend for as long as the employee is employed by a participating employer.

3. Installment payments may be made by a payroll deduction where available. However, it is the responsibility of the member to initiate and terminate the payroll deduction.

4. Payments may only be received until the fifteenth of the month ~~in which the member retires or takes a lump sum refund~~ <u>following the month of the member's termination date with a participating employer.</u>

5. Payments are due by the fifteenth of the month to be credited for the month.

History: Effective November 1, 1990; amended effective July 1, 1994; June 1, 1996; May 1, 2004.
General Authority: NDCC 54-52-02.6, 54-52-04, 54-52-17, 54-52-17.2, 54-52-17.4
Law Implemented: NDCC 54-52-02.6, 54-52-17, 54-52-17.2, 54-52-17.4

71-02-03-02.5. Costs. If purchasing under North Dakota Century Code section 54-52-02.6 or subdivision d of subsection 1 of North Dakota Century Code section 54-52-17.4, the cost will be the higher of the amount refunded to the member plus interest at the actuarial rate of return or the actuarial cost to provide the credit. All other types of service purchases must be actuarially determined. An actuarial cost must be calculated by applying actuarial factors to the amount of retirement and retiree health insurance credit being purchased by the member. The member's current age, average salary, and current credited service on record with the North Dakota public employees retirement system in the month in which the member's written request is received must be used in the cost calculation. The amount of retirement and retiree health insurance credit being purchased must be calculated using the benefit formulas in place at the time the written request is received from the member. When calculating the cost, enhancements to the benefit formula must be considered to be in place at the time the law is signed by the governor.

The member's average salary shall be calculated as follows:

1. For members working full time with more than twelve months of service credit, by using the calculation found in subsection 2 of North Dakota Century Code section 54-52-17.

2. For members working full time with less than twelve months of service credit, by using the calculation found in subsection 2 of North Dakota Century Code section 54-52-17, but disregarding any month in which the member was paid less than a full-month salary. A full-month salary is the compensation the member and the member's employer agreed the member would be paid for working a full month.

3. For members who have not yet received a full-month salary, the member's average salary shall equal the member's full-month salary, as defined in subsection 2.

4. For members working part time, by using the applicable calculations found in subsections 1 and 2, but using a monthly salary equal to the equivalent of the salary the member would have received if the member was working full time.

The retirement board must adopt actuarial assumptions necessary to determine the actuarial factors for the cost calculation. The assumptions must be reviewed concurrently with the assumptions for the retirement program.

Upon receipt of the written request from the member, and all required documentation, a written cost confirmation must be prepared and mailed to the member. The cost stated in the confirmation letter is valid for a period of ninety days from the date of the letter unless the contributor terminates employment with a participating employer. If the contributor terminates employment, then the cost stated in the confirmation letter is valid only until the earlier of the end of the ninety day period or the 15th of the month following the month of termination.

History: Effective July 1, 1994; amended effective June 1, 1996; July 1, 2000; April 1, 2002; May 1, 2004.
General Authority: NDCC 54-52-02.6, 54-52-04, 54-52-17, 54-52-17.2, 54-52-17.4
Law Implemented: NDCC 54-52-02.6, 54-52-17, 54-52-17.2, 54-52-17.4

71-02-03-06. Conversion of sick leave. To convert unused sick leave to service credit, the member must notify the office, in writing, of the amount of unused sick leave to be converted and the member's employer must confirm the member's unused balance of accumulated sick leave as of the date the member terminates employment. For members transferring from one participating employer to another participating employer without terminating eligible employment, the public employees retirement system will record unused sick leave of a participating member if the new employer certifies that it will not transfer that leave. The certification must include documentation from the previous employer detailing the number of hours of sick leave. The public employees retirement system must receive the certification within sixty days after the member leaves employment with the former employer. One month of service credit must be awarded for each one hundred seventy-three and three-tenths hours of unused accumulated sick leave. The employer and employee contributions rates used to calculate the cost must be the rate of the retirement program of the member at termination.

After-tax p~~P~~ayments may be accepted from the member as early as six months prior to termination if the following requirements are met:

1. A notice of termination or application for monthly benefits form is on file with the public employees retirement system.
2. A written certification by the member's employer, as to the member's unused balance of accumulated sick leave as of the date the member wishes to begin payment, is on file with the public employees retirement system.
3. At termination, the sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave confirmed by the member's employer, and the member's final average salary as of that date. If there is a difference between the sick leave conversion payment amount and the amount the member has paid, any overpayment must be refunded to the member and any underpayment must be collected from the member within sixty days of termination.

The member's record must be updated with the additional service credit once payment is made in full and the member has terminated employment.

Pre-tax Rollover/Transfer Payments may be accepted from the member as early as sixty days prior to termination if the following requirements are met:

1. A notice of termination or application for monthly benefits form is on file with the public employees retirement system.

2. A written certification by the member's employer, as to the member's projected unused balance of accumulated sick leave no sooner than sixty days prior to the date of termination, is on file with the public employees retirement system. This certification must also include a certification by the employer of the projected salaries to be reported to NDPERS during the final months of employment.

3. At termination, the sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave confirmed by the member's employer, and the member's final average salary as of that date. If there is a difference between the sick leave balance or conversion payment amount and the amount the member has paid, then only the amount of sick leave available as of the termination date will be added to the member's record. The member account balance will be credited with the full amount of funds from the rollover/transfer.

4. If an underpayment has occurred, then the remaining amount must be collected from the member within sixty days of termination.

5. The retiree health credit portion must be paid as a personal after-tax payment.

The member's record must be updated with the additional service credit once payment is made and the member has terminated employment.

History: Effective June 1, 1996; amended effective April 1, 2002; May 1, 2004.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-17.8, 54-52-27

71-02-03-07. Employer purchase of service credit or sick leave program. An employer may elect to purchase up to five years of service credit for an employee ~~or~~ and purchase an employee's unused sick leave that meets the requirements of section 71-02-03-08. Before offering a purchase program to its employees, the employer must create a program and an employer must document the program in writing and submit a copy to the public employees retirement system. The governing authority of the employer shall also submit to the executive director of the public employees retirement system a letter indicating:

1. The program meets all the requirements of the North Dakota Century Code.

2. The program meets all applicable federal requirements.

3. The employer agrees to remit to the public employees retirement system a lump sum payment of the cost of the purchase upon being billed.

4. The employer has not given the employee the option of a cash payment in lieu of the employer purchase.

5. The employer shall clearly specify who is eligible for the program and indicate if the program is intended to be permanent or will be for a specific time period only.

6. The employer agrees that all purchases for service credit will be based upon actuarial cost as determined by the public employees retirement system and all unused sick leave purchases will be based upon the computation specified in the North Dakota Century Code. The employer also agrees that all purchases will be completed no later than the employee's retirement or sixty days from the date the employer and employee agree to the purchase, whichever comes first.

7. The employer agrees that in offering such a program the employer will direct each employee interested in the program to first apply to the employer's authorized agent who will then certify the eligibility of the member, the amount of service credit to be purchased or sick leave to be converted, and send such certification to the public employees retirement system. The employer also agrees that the employer's authorized agent will coordinate the program, authorize all purchases in writing to the public employees retirement system, and be the focal point for communications between the public employees retirement system, the employer, and the employee.

8. The employer agrees that for each employee certified to be eligible to have service credit purchased or sick leave converted, the employer will first obtain from the employee authorization for the public employees retirement system to share confidential information with the employer.

9. The employer certifies that in offering the program, the employer is making it available to all employees or a specified class of employees on a nondiscriminatory basis.

When an employer files the above letter with the public employees retirement system, it may offer the program to its employees. An employer may terminate this program at any time upon the governing authority of the employer sending to the executive director of the public employees retirement system a letter indicating when the program is to be canceled.

History: Effective May 1, 2004.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-17.4, 54-52-29

71-02-03-08. Eligible sick leave. An employer or a member may only purchase unused sick leave that has not been previously purchased by a former employer or the member. ~~Further, eligible sick leave may not exceed a total of eight hours times the number of months of permanent employment with the current employer or service in the retirement plan.~~

History: Effective May 1, 2004.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-27

CHAPTER 71-02-04
RETIREMENT BENEFITS

Section
71-02-04-01 Retirement Benefits - Application
71-02-04-02 Special Retirement Options - Application
71-02-04-02.1 Application Processing
71-02-04-03 Payment Date - Retirement Benefits
71-02-04-03.1 Payment Date - Retirement Benefits for Late Retirees
71-02-04-04 Optional Benefits
71-02-04-05 Designation of Beneficiary
71-02-04-06 Lack of a Designated Beneficiary [Repealed]
71-02-04-07 Amount of Early Retirement Benefit
71-02-04-08 Assignment or Alienation of Plan Benefits
71-02-04-09 Dual Membership - Receipt of Retirement Benefits While Contributing to the Teachers' Fund for Retirement, the Highway Patrolmen's Retirement System, or the Teachers' Insurance and Annuity Association of America-College Retirement Equities Fund
71-02-04-09.1 Dual Membership Limitations
71-02-04-10 Erroneous Payment of Benefits - Overpayments
71-02-04-11 Erroneous Payment of Benefits - Underpayments
71-02-04-12 Erroneous Payment of Benefits - Appeals
71-02-04-13 Reduced Benefit Option

71-02-04-03.1. Payment date - Retirement benefits for late retirees. Except for retirement options provided in sections 71-02-04-02 and 71-02-04-03, for members who are terminated and older than the age at which they reach their ~~the~~ normal retirement ~~age~~date, but who have delayed or inadvertently failed to apply for retirement benefits, the regular accrued annuity benefits will commence with a lump sum equal to the amount of missed payments, without interest, retroactive to ~~the~~ their normal retirement ~~age~~date unless otherwise approved by the North Dakota public employees retirement system board. There will be no retroactive payment for the retiree health insurance credit program.

History: Effective April 1, 2002
General Authority: NDCC 54-52-04, 54-52-17
Law Implemented: NDCC 54-52-17

71-02-04-04. Optional benefits. A member may elect, as provided in section 71-02-04-02, to receive one of the following optional benefits in lieu of the regular single life retirement benefit.

4. **~~Five~~Twenty-year or ten-year certain option.** A member may elect an option which is the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a ~~five~~twenty-year or ten-year certain feature, as designated by the member.

History: Amended effective September 1, 1982; November 1, 1990; July 1, 1994; May 1, 2004.
General Authority: NDCC 54-52-04, 54-52-17
Law Implemented: NDCC 54-52-17

71-02-04-04(5). Partial Lump Sum Option.

The partial lump sum option will only be available to members who retire on or after reaching normal retirement date. This option is an irrevocable election and made at initial application for retirement. The payment is equal to 12 monthly payments determined under the Single life annuity option. The member is permitted to choose one of the optional forms of payment, excluding the level social security income option, for ongoing benefits. The ongoing benefits will be actuarially reduced to reflect the partial lump sum payment.

History:.
General Authority: NDCC 54-52-04, 54-52-17
Law Implemented: NDCC 54-52-17

71-02-04-07. Amount of early retirement benefit.

1. Except for members of the national guard~~/law enforcement retirement system~~, the early retirement benefit shall be an amount actuarially reduced from the single life retirement benefit by one-half of one
percent for each month (six percent per year) that the member is younger than the age at which the member would be at the member's normal retirement date on the date the member's early retirement benefit commences.
2. For members of the national guard~~/law enforcement retirement system,~~ the early retirement benefit must be an amount actuarially reduced from the single life retirement benefit by one-half of one percent for each month (six percent per year) that the member is younger than age fifty-five on the date the member's early retirement benefit commences.

History: Amended effective September 1, 1982; June 1, 1996; April 1, 2002;
May 1, 2004.
General Authority: NDCC 54-52-04, 54-52-17
Law Implemented: NDCC 54-52-17

71-02-04-08. ~~Assignment or alienation of plan benefits.~~ ~~Benefits provided under the plan may not be assigned or alienated except as provided in North Dakota Century Code section 54-52-17.6.~~ **Repealed.**

History: Effective July 1, 1994.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-17, 54-52-17.6

71-02-04-10. Erroneous payment of benefits - Overpayments.

1. An "overpayment" means a payment of money by the public employees retirement system that results in a person receiving a higher payment than the person is entitled to under the provision of the retirement plan of membership.
2. A person who receives an overpayment is liable to refund those payments upon receiving a written explanation and request for the amount to be refunded. All overpayments must be collected using the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like gains. If the cost of recovering the amount of the overpayment is estimated to exceed the overpayment, the repayment is considered to be unrecoverable.

3. If the overpayment of benefits was not the result of any wrongdoing, negligence, misrepresentation, or omission by the recipient, the recipient may make repayment arrangements subject to the executive director's approval within sixty days of the written request for refund. If repayment arrangements are not in place within sixty days of the date of the written notice of overpayment, the executive director shall offset the amount of the overpayment from the amount of future retirement benefit payments so that the actuarial equivalent of the overpayment is spread over the individual's benefit payment period.
4. If the overpayment of benefits was the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the recipient, the recipient is liable to pay interest charges at the rate of six percent on the outstanding balance, from the time the erroneous benefit was paid through the time it has been refunded in full, plus applicable interest. <u>If repayment arrangements are not in place within sixty days of the date of the written notice of overpayment, the executive director shall offset the amount of the overpayment from the amount of future retirement benefit payments so that the actuarial equivalent of the overpayment is spread over the individual's benefit payment period.</u>
5. If an individual dies prior to fully refunding an erroneous overpayment of benefits, the public employees retirement system must make application to the estate of the deceased to recover the remaining balance.

History: Effective June 1, 1996; amended effective April 1, 2002.
General Authority: NDCC 54-52-04, 54-52-17
Law Implemented: NDCC 39-03.1-25, 54-52-17

CHAPTER 71-02-05
DISABILITY

Section
71-02-05-01 Eligibility [Repealed]
71-02-05-02 Commencement of Benefit [Repealed]
71-02-05-03 Cancellation of Disability Benefit
71-02-05-04 Calculation of Disability Benefit [Repealed]
71-02-05-05 Conditions for Changing to a Disability Retirement Benefit From an Early Reduced Retirement Benefit
71-02-05-06 Determination of Disability - Procedures
71-02-05-07 Optional Benefits
71-02-05-07.1 Judges' Retirement Plan Optional Benefits
71-02-05-08 Transitional Period
71-02-05-09 Interest Accrual on Accumulated Contributions for Disabled Annuitants

71-02-05-03. Cancellation of disability benefit. When a member receiving a disability benefit attains their normal retirement ~~age~~date, that member may elect to terminate that member's disability benefits and draw retirement benefits as specified in North Dakota Century Code section 54-52-17.

History: Amended effective January 1, 1992; May 1, 2004.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-17

71-02-05-05. Conditions for changing to a disability retirement benefit from an early reduced retirement benefit. A member may elect to start receiving an early reduced retirement benefit, should the member be eligible to do so, pending a disability determination or appeal. Upon receiving a disability determination, interest accrual shall resume beginning the first of the month following notice of the determination, continuing to accrue on the annuitant's accumulated contribution until the annuitant reaches their normal retirement ~~age~~date. The disability benefit will be calculated and a differential payment made retroactive to the first day of the month following the member's termination from covered employment.

History: Effective September 1, 1982; amended effective November 1, 1990; January 1, 1992; July 1, 1998.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-17

71-02-05-06. Determination of disability - Procedures.

1. **Application.**

a. If the member is unable or unwilling to file a~~n~~ public employees retirement system application for disability retirement ~~application~~, the member's legal representative may file the member's disability application.

b. For the main system and the national guard/law enforcement system, the application must explain the cause of the disability, the limitations caused by the disability, the treatment being followed, and the effect of the disability on the individual's ability to be engaged in any gainful occupation for which the person is, or could become, reasonably fitted by education, training, or experience.

For the judges' retirement plan application must explain the cause of the disability, the limitations caused by the disability, the treatment being followed, and the effect of the disability on the individual's ability to mentally or physically fulfill the duties and responsibilities of being a judge. A judge who is determined to be disabled pursuant to subdivision a of subsection 3 of North Dakota Century Code section 27-23-03 shall file an application documenting this determination and the effective date of the disability.
c. The application must be filed with the public employees retirement system and may not be filed earlier than one hundred twenty days before the expected termination date.
2. **Medical consultant.**
a. The board may retain a medical consultant to evaluate and make recommendations on disability retirement applications.
b. The medical consultant shall review all medical information provided by the applicant.
c. The medical consultant is responsible to determine eligibility for disability benefits for applicants not approved for social security disability benefits or for judges not approved pursuant to subsection 3 of North Dakota Century Code section 27-23-03 and shall advise the executive director of the decision in writing.
Applicants who become eligible for disability benefits under the Social Security Act and who meet the requirements of subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 are eligible for benefits under subdivision e of subsection 4 of North Dakota Century Code section 54-52-17 without submitting further medical information to the medical adviser, but are subject to recertification requirements specified in this chapter. The Social Security disability award must provide proof that the member's disability was determined during member's period of eligible employment.

In determining eligibility for judges not approved pursuant to the above, the medical director shall work with a review committee composed of one supreme court judge and a district court judge to review the proposed application. In order for the application to be approved, it must have the concurrence of the medical director and at least one judge. The executive director shall appoint two judges to serve on the review committee.

71-02-05-07. Optional benefits. For the main system and national guard/law enforcement retirement plans, an individual deemed eligible for a disability benefit may elect, as provided in this section, to receive one of the following optional benefits in lieu of the regular disability benefit. Under no circumstances is an option available if the calculation of the optional benefit to which the member is entitled results in an amount which is less than one hundred dollars.

3. **~~Five~~Twenty-year or ten-year certain option.** A member may elect an option which is the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a ~~five~~twenty-year or ten-year certain feature, as designated by the member.

History: Effective January 1, 1992; amended effective July 1, 1994; May 1, 2004.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-17

71-02-05-07.1. Judges' retirement plan optional benefits. For the judges' retirement plan, an individual deemed eligible for a disability benefit may elect, as provided in this section, to receive one of the following optional benefits in lieu of the regular disability benefit. Under no circumstances is an option available if the calculation of the optional benefit to which the member is entitled results in an amount which is less than one hundred dollars.

2. **~~Five~~Twenty-year or ten-year certain option.** A member may elect an option which is the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a ~~five~~twenty-year or ten-year certain feature, as designated by the member.

History: Effective May 1, 2004.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-17

71-02-05-09. Interest accrual on accumulated contributions for disabled annuitants. Effective January 1, 1998, interest must accrue on accumulated contributions as defined in article 71-02 until the disabled annuitant reaches their normal retirement ~~age~~date, the account is closed, or until benefit payments commence to the member's beneficiary.

History: Effective July 1, 1998; amended effective May 1, 2004.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-17

CHAPTER 71-02-07
RETURN TO SERVICE

Section
71-02-07-01 Return to Service - Unretired Member [Repealed]
71-02-07-02 Return to Service - Retired Member
71-02-07-03 Return to Service - Disabled Member

71-02-07-01. Return to service - Unretired member. Repealed effective November 1, 1990.

71-02-07-02. Return to service – Retired member. The benefits of a retired member who returns to permanent employment shall be suspended without interest accruing on the suspended account, expect as provided in subsection 1 of 54-52-05. Upon subsequent termination, the member's benefit shall be recalculated as follows:

1. If the period of subsequent employment is less than two years, the member may elect:

a. A return of the member's contributions made after reemployment, and the suspended benefit restored, adjusted for the member's age at subsequent termination and for benefit payments received prior to reemployment; or

b. A recalculation of the member's benefit based on the benefit provisions in effect at the member's initial retirement, but adjusted to take account of age at final retirement, benefit payments received prior to reemployment, salary and service credits, and any benefit increases accrued during the period of subsequent employment.

2. If the period of subsequent employment is more than two years, the member's benefit shall be based on the benefit provisions in effect at final retirement and shall include the member's age and salary earned during the period of reemployment together with total service credits earned before and after reemployment, adjusted to take account of benefit payments received prior to reemployment. If a different option is selected at the second retirement date, the member and office will submit information as required to make an actuarial determination of the elected benefit and the related payment of such.

3. If a member dies during subsequent employment, the member's initial retirement benefit election will apply. If a benefit election was an optional benefit under subsection 1 or 2 of section 71-02-04-04, then the member's benefit must be recalculated based on the benefit provisions in effect at the member's initial retirement, but adjusted to take account of age at death, benefit payments received prior to reemployment, salary and service credits, and any benefit increases accrued during the period of subsequent employment.

History: Amended effective November 1, 1990; July 1, 1998; May 1, 2004.
General Authority: NDCC 54-52-04, 54-52-17
Law Implemented: NDCC 54-52-17

CHAPTER 71-02-09
REVIEW PROCEDURE

Section
71-02-09-01 Review Procedure
71-02-09-02 Formal Review Procedure

71-02-09-02. Formal review procedure. If the initial decision is adverse to the applicant after exhausting the administrative procedure under section 71-02-09-01, the applicant may file a request for a formal hearing to be conducted under North Dakota Century Code chapter 28-32. The request for a formal hearing must be filed within thirty days after notice of the initial decision has been mailed or delivered. If an appeal for a formal hearing is not filed within the thirty-day period, the initial decision of the board is final. If a request for a formal hearing is timely filed, notice of the hearing must be served at least thirty days prior to the date set for the hearing. The board shall request appointment of an administrative law judge from the office of administrative hearings to conduct the hearing and make recommended findings of fact, conclusions of law, and order. The board shall either accept the administrative law judge's recommended findings of fact, conclusions of law, and order or adopt its own findings of fact, conclusions of law, and order. The applicant may under North Dakota Century Code section 28-32-~~15~~42 appeal the final decision resulting from this procedure to the district court.

History: Effective June 1, 1996.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-04

CHAPTER 71-02-10
QUALIFIED DOMESTIC RELATIONS ORDERS

Section	
71-02-10-01	Payment in Accordance With Qualified Domestic Relations Orders
71-02-10-02	Qualified Domestic Relations Orders Procedures

71-02-10-01. Payment in accordance with qualified domestic relations orders. Retirement benefits must be paid in accordance with any qualified domestic relations order (QDRO) issued in compliance with North Dakota Century Code section 54-52-17.6.

History: Effective November 1, 1990.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-17.6

71-02-10-02. Qualified domestic relations orders procedures.

1. Upon receipt of a proposed domestic relations order, the ~~executive director~~ public employees retirement system shall send an initial notice to each person named therein, including the member and the alternate payee named in the order, together with an explanation of the procedures followed by the fund.

2. Upon receipt of a domestic relations order, the executive director shall, if the account is in pay status or begins pay status during the review, order funds segregated in a separate account of the fund or in an escrow account which the alternate payee would be entitled to by direction of the order, if ascertainable from the proposed order.

3. Upon receipt of a domestic relations order, the ~~executive director~~ public employees retirement system shall review the domestic relations order to determine if it is a qualified order as established by the model language format specified by the board.

4. The domestic relations order shall be considered a qualified order when the executive director notifies the parties the order is approved and a certified copy of the court order has been submitted to the office.

5. If the order becomes qualified, the executive director shall:

   a. Send notice to all persons named in the order and any representatives designated in writing by such person that a determination has been made that the order is a qualified domestic relations order.

   b. Comply with the terms of the order.

   c. If a segregated account or an escrow account has been

established for an alternate payee, distribute the amounts, plus interest, as provided under subdivision d of subsection 1 of section 71-02-01-01 to the alternate payee.

6. If the order is determined not to be a qualified domestic relations order or a determination cannot be made as to whether the order is qualified or not qualified within eighteen-months of receipt of such order, the ~~executive director~~ public employees retirement system shall send written notification of termination of review to all parties at least forty-five days prior to the end of the eighteen-month review period. At the end of the eighteen-month review period, the proposed order is deemed to be withdrawn and of no legal effect.

   a. If a segregated account or an escrow account has been established for an alternate payee, the executive director shall distribute the amounts in the segregated account or escrow account, plus interest at a rate determined by the board, to the person or persons who would be entitled to receive such amount in the absence of an order.

   b. If determined after the expiration of the eighteen-month period the order is a qualified domestic relations order, the qualified domestic relations order must be applied prospectively only.

History: Effective November 1, 1990; amended effective July 1, 1994.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-17.6

CHAPTER 71-02-11
UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

Section
71-02-11-01 Eligibility Requirements
71-02-11-02 Award of Service Credit
71-02-11-03 Documentation Requirements
71-02-11-04 Payment
71-02-11-05 Retired Members [Repealed]
71-02-11-06 Deceased Retirees or Members [Repealed]
71-02-11-07 Refund of Overpayments

71-02-11-01. Eligibility requirements. To be eligible to receive service credit with North Dakota public employees retirement system for military time under this chapter, a veteran must have had an interruption of employment and been discharged under honorable conditions.

History: Effective September 1, 1991; amended effective May 1, 2004.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-17.4(5), NDCC 54-52-17.14

71-02-11-02. Award of service credit.

1. An individual with eligible time may receive up to sixty months' credit upon proper application. A veteran eligible to receive service credit for military time must apply for and, if required to pay any portion of employee contribution, must purchase that time within the lesser of three times the length of active duty or five years from the date of the veteran's return to covered employment. Service credit will not be awarded until all required documentation is received by the North Dakota public employees retirement system, and payment of both the employer and the employee contributions is made in full.

2. For persons employed by a political subdivision who will or have returned from an interruption of employment, the following applies:

   a. If the employing political subdivision is not a participating employer in the North Dakota public employees retirement system and does not become one, no credit will be granted.

   b. If the employing political subdivision joins the North Dakota public employees retirement system at a date later than the interruption of employment, and purchases prior service credit for its employees while the applicant is still employed, service will be granted as provided in subsection 1 of section 71-02-11-02.

   c. If the employing political subdivision joins the North Dakota public employees retirement system while the applicant is still employed, and prior service is not purchased on behalf of the employees, no credit will be given.

d. If a political subdivision joins the North Dakota public employees retirement system after an employee has terminated, no credit may be granted to said employee for interruption of employment.

History: Effective September 1, 1991; amended effective May 1, 2004.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-17.4(5), NDCC 54-52-17.14

71-02-11-03. Documentation requirements. The burden of proof will be on the member for providing documentation necessary to determine what military time is eligible for service credit. At a minimum, the following documentation is required before service credit will be awarded:

1. The member must provide a legible copy of military discharge papers (DD214, DD215, or NGB22).

2. The member must provide proof of the last day of employment prior to reporting for active duty and the first day of employment following the return from active duty. This information must be certified by the authorized agent of the employing agency using a ~~"record of previous service"~~ "Purchase Agreement for USERRA Covered Military Active Duty" or notice of change if returning from leave of absence.

3. The members requesting service credit for extended military terms ~~discussed under subdivision c of subsection 1 of section 71-02-11-02~~ must provide a legible copy of the appropriate military papers (DD214).

4. Members who elect to purchase military time must submit a completed purchase agreement.

History: Effective September 1, 1991; amended effective May 1, 2004.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-17.4(5), NDCC 54-52-17.14

71-02-11-04. Payment. The cost for purchase of eligible military service in the North Dakota public employees retirement system and the North Dakota highway patrolmen's retirement system is as follows:

1. The cost for any required employee contributions to be paid by the member may be paid in a lump sum or in installments pursuant to the rules established for purchase or repurchase payment under subsection 1, 2, or 3 of section 71-02-03-02.2. If retirement occurs before purchase is complete, service being purchased will not be credited to the account for retirement purposes until the payment is complete. If no payments have been made, no credit will be awarded. To prevent any delay in issuing the employee's first retirement check, purchase must be completed at least thirty days prior to retirement date.

2. The employer cost will be assessed to the member's most recent

participating employer. Upon being billed by the North Dakota public employees retirement system, the participating employer will have thirty days in which to make payment in full. If, after sixty days, the employer has not made payment in full, a civil penalty on fifty dollars will be assessed, and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due.

3. If the employer contributions are paid and the member becomes delinquent for required employee contributions, then the public employees retirement system will prorate the credit the employee contributions have paid for by the member and this credit will be added to the member's file.

History: Effective September 1, 1991; amended effective May 1, 2004.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-17.4(5), NDCC 54-52-17.14

71-02-11-05. Retired members. Repealed effective May 1, 2004.

71-02-11-06. Deceased retirees or members. Repealed effective May 1, 2004.

71-02-11-07. Refund of overpayments. In the event an employee or retiree purchased military service ~~pursuant to North Dakota Century Code section 54-52-17.4~~ at a cost higher than determined above, overpayments may be refunded. Upon verification that the previously purchased military service meets the general eligibility requirements under section 71-02-11-01, a refund may be issued according to the following guidelines:

1. For a purchase paid in a lump sum:

   a. ~~If eligible military time was pre-July 1, 1966, nine and twelve-hundredths percent times the salary which purchase was computed on, times months of eligible military time, will be refunded.~~ The overpayment will be refunded to the member.

   ~~b. If eligible military time was July 1966 or after, five and twelve-hundredths percent times the salary which purchase was computed, times months of eligible military time, will be refunded.~~

   ~~c~~b. Interest on the refund amount will be paid at an annual rate of seven and five-tenths percent compounded monthly. Interest will be calculated from the month the public employees retirement system received the lump sum payment to the month in which the refund is made.

   ~~d~~c. The refund will be calculated and issued within one hundred eighty days of receiving all necessary documentation.

2. For a purchase paid in installments:

a. If employee is currently making installment payments, the purchase amount will be recalculated using ~~four percent~~ the percent of salary that the member was required to pay ~~of salary~~ times eligible months of military time being purchased. Any excess funds resulting from the recalculation will be applied towards the outstanding amount due. Should the payments made to date exceed the new contract amount, a refund of the difference will be issued within one hundred eighty days.

b. If an eligible employee or retiree has paid the installment contract in full, the purchase amount will be recalculated using ~~four percent~~ the percent of salary that the member was required to pay ~~of salary~~ times eligible months of military time being purchased. A refund of the difference between the payments actually made and what the payments should have been on the new contract amount will be made within one hundred eighty days of receiving the necessary documentation. Interest on the refund amount will be calculated at an annual rate of seven and five-tenths percent, compounded monthly, from the month in which the purchase was paid in full to the month in which the refund is issued.

History: Effective September 1, 1991.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-17.4(5), NDCC 54-52-17.14

CHAPTER 71-04-04
RETIREMENT BOARD RESPONSIBILITIES

71-04-04-04. Employer agreement. The retirement board shall establish a written agreement for all employers other than state departments, agencies, boards, or commissions which appoint the state to administer their deferred compensation plan. This agreement includes requirement for the employer to adopt the retirement board's rules, employers to make the requested payroll deductions upon proper application by the employee, remit the deductions directly to the Retirement Board along with a listing of deferred compensation deductions for all employees participating in the plan, ~~send the retirement board monthly listings of employees and their deferred compensation deductions,~~ submit all provider participant contracts to the retirement board, hold all participant account information as confidential, and notify the retirement board within thirty days of participant's termination of employment.

History: Effective April 1, 1989; amended effective April 1, 2002.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-04-10. Processing Deductions. The Retirement Board will process and remit employee deferred compensation deductions to the designated provider company within 3 business days following receipt in good order of all funds and documentation from the Employer.

CHAPTER 71-04-05
EMPLOYER RESPONSIBILITIES

71-04-05-02. Payroll deductions. The employer shall authorize employee payroll deductions only after receiving a completed and signed participant agreement. The participant agreement must be signed by a designated representative of the retirement board and indicate the date the payroll deduction is to start, the provider, and the ~~monthly~~ contribution amount. Payroll deductions must be remitted to the ~~provider prior to the tenth of each month~~ Retirement Board within 10 days after each payroll period. Along with each payment, the employer must provide the Retirement Board with a listing of deferred compensation deductions for all employees participating in the deferred compensation plan using the deferred compensation transmittal of deduction form or the approved electronic format.

History: Effective April 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-02

~~**71-04-05-03. Monthly report.** The employer shall provide the retirement board with a listing of deferred compensation deductions for all employees participating in the deferred compensation plan by the eighth day of each month. The employer must use the deferred compensation transmittal of deduction form or the approved electronic format.~~

History: Effective April 1, 1989; amended effective July 1, 1994; May 1, 2004.
General Authority: NDCC 28-32-02, 54-52.2-03.2
Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2

CHAPTER 71-04-06
PROVIDER RESPONSIBILITIES

71-04-06-06. Retirement board report. The provider shall deliver ~~semiannual~~ quarterly reports, in an approved electronic format, to the retirement board detailing the activity of each participant's account. The ~~semiannual~~ quarterly report must be delivered within thirty days of the end of ~~the reporting period~~ each calendar quarter and must include an alphabetical listing of the participants, social security numbers of the participants, the provider's contract number for the participants (if any), type of account for each participant, beginning account balance forwarded from the previous reporting period, contributions made by the participants for the current reporting period, transfers and rollovers from other eligible plans during the reporting period, investment earnings or losses added to the account (if any for the reporting period), any withdrawals made during the reporting period, administrative charges assessed against the account during the reporting period, transfers and direct rollovers to other eligible plans during the reporting period, and the account balance at the end of the reporting period. The report columns must be totaled. The ~~semiannual~~ quarterly report must include active, inactive, and accounts in payout status, with the exception of accounts which have been annuitized, and be for all payroll divisions for the plan.

History: Effective April 1, 1989; amended effective November 1, 1990; July 1, 1994; May 1, 2004.
General Authority: NDCC 28-32-02, 54-52.2-03.2
Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2

ARTICLE 71-05
HIGHWAY PATROL RETIREMENT SYSTEM

Chapter

71-05-01 Definitions
71-05-02 Disability
71-05-03 Membership
71-05-04 Service Credit
71-05-05 Normal and Early Retirement Benefits
71-05-06 Return of Contributions
71-05-07 Return to Service
71-05-08 Qualified Domestic Relations Orders
71-05-09 Indexing Final Average Salary for Vested Terminated Contributors

CHAPTER 71-05-01
DEFINITIONS

Section

71-05-01-01 Definitions

71-05-01-01. Definitions. As used in North Dakota Century Code chapter 39-03.1:

1. "Covered employment" means employment with the North Dakota highway patrol.
2. "Medical examination" means an examination conducted by a doctor licensed to practice in North Dakota that includes a diagnosis of the disability, the treatment being provided for the disability, the prognosis and classification of the disability, and a statement indicating how the disability prevents the individual from performing the duties of a highway patrolman.
3. “Normal Retirement Age” means age 55 except as otherwise provided.

~~3~~4. "Office" means the administrative office of the public employees retirement system.

~~4~~5. "Permanent and total disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months.

~~5~~6. "Plan administrator" means the executive director of the North Dakota public employees retirement system.

~~6~~7. "Substantial gainful activity" is to be based upon the totality of the circumstances including: consideration of an individual’s training, education, experience, their potential for earning at least seventy percent of their predisability earnings; and other items deemed significant on a case-by-case basis. Eligibility is based on an individual’s employability and not actual employment status.

History: Effective November 1, 1990; amended effective October 1, 1991; June 1,1992.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-07

CHAPTER 71-05-02
DISABILITY

Section
71-05-02-01 Disability Retirement Eligibility
71-05-02-01.1 Conditions for Changing to a Disability Retirement Benefit From an Early Reduced Retirement Benefit
71-05-02-02 Determination of Disability - Procedures
71-05-02-03 Aggrieved Parties' Rights [Repealed]
71-05-02-04 Optional Benefits
71-05-02-05 Interest Accrued on Accumulated Contributions for Disabled Annuitants
71-05-02-06 Cancellation of Disability Benefit

71-05-02-01 Disability retirement eligibility. A member of the highway patrol retirement system, who has completed at least one hundred eighty days of employment , is eligible for disability retirement benefits if the member became permanently and totally disabled during the period of covered employment and otherwise complies with section 71-05-02-02. A member eligible for normal retirement date shall receive the normal retirement benefit if it exceeds the disability retirement benefit.

History: Effective November 1, 1990
General Authority: NDCC 39-03.1-06, 39-03.1-11
Law Implemented: NDCC 39-03.1-11

71-05-02-01.1. Conditions for changing to a disability retirement benefit from an early reduced retirement benefit. A member may elect to start receiving an early reduced retirement benefit, should the member be eligible to do so, pending a disability determination or appeal. During this period, the member's account will be handled in the same manner as all early reduced retirement benefits. Upon receiving a disability determination, interest accrual on the member's account shall resume beginning the first of the month following notice of the determination, continuing to accrue on the annuitant's accumulated contribution until the annuitant reaches their normal retirement ~~age~~date. The disability benefit will be calculated and a differential payment made retroactive to the first day of the month following the member's termination from covered employment.

History: Effective May 1, 2004.
General Authority: NDCC 39-03.1-06, 39-03.1-11
Law Implemented: NDCC 39-03.1-11

71-05-02-04. Optional benefits. An individual deemed eligible for a disability benefit may elect, as provided in this section, to receive one of the following optional benefits in lieu of the regular disability benefit. These options are not available if the calculation of the optional benefit to which the member is entitled would result in an amount that is less than one hundred dollars.

2. **~~Five~~Twenty-year or ten-year certain option.** A member may receive the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a ~~five~~twenty-year or ten-year certain feature, as designated by the member.

History: Effective July 1, 1998; amended effective May 1, 2004.
General Authority: NDCC 39-03.1-06, 39-03.1-11

Law Implemented: NDCC 39-03.1-11.4(d)

71-05-02-06. Cancellation of disability benefit. When a member receiving a disability benefit attains their normal retirement ~~age~~date, that member may elect to terminate that member's disability benefit and draw retirement benefits as specified in North Dakota Century Code section 39-03.1-11.

History: Effective May 1, 2004.
General Authority: NDCC 39-03.1-06, 39-03.1-11
Law Implemented: NDCC 39-03.1-11

71-05-04-04.1. Costs. The cost to repurchase service credit must be calculated by applying actuarial factors to the amount of the retirement and retiree health insurance credit being purchased by the contributor or member of an alternative retirement system. The contributor's current age, average salary as calculated under subsection 2 of North Dakota Century Code section 39-03.1-11, and current credited service on record with the North Dakota public employees retirement system in the month in which the contributor's written request is received must be used in the cost calculation. The amount of retirement and retiree health insurance credit benefits being purchased must be calculated using the benefit formulas in place at the time the written request is received from the contributor. When calculating the cost, enhancements to the benefit formula must be considered to be in place at the time the law is signed by the governor.

The retirement board must adopt actuarial assumptions necessary to determine the actuarial factors for the cost calculation. The assumptions must be reviewed concurrently with the assumptions for the retirement program.

Upon receipt of the written request from the contributor, a written cost confirmation must be prepared and mailed to the individual. The cost stated in the confirmation letter is valid for a period of ninety days from the date of the letter unless the contributor terminates employment with the employer. If the contributor terminates employment, then the cost stated in the confirmation letter is valid only until the earlier of the end of the ninety day period or the 15th of the month following the month of termination.

History: Effective June 1, 1996; amended effective May 1, 2004.
General Authority: NDCC 39-03.1-06, 39-03.1-10.1, 39-03.1-14.1
Law Implemented: NDCC 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

71-05-04-04. Payment. The total dollar amount for repurchase or purchase may be paid in a lump sum or on a monthly, quarterly, semiannual, or annual basis. Payments may be subject to contribution limitations established under 26 U.S.C. 415. Payments must begin within ninety days of the date the written cost confirmation is prepared. If the installment method is used, the following conditions apply:

1. Simple interest at the actuarial rate of return must accrue monthly on the unpaid balance. Interest is calculated from the fifteenth of each month.

2. The installment schedule may extend for as long as the member is

employed by the participating employer.

3. Installment payments may be made by a payroll deduction where available. However, it is the responsibility of the contributor to initiate and terminate the payroll deduction.

4. Payments are due by the fifteenth of the month to be credited for the month.

5. Payments may only be received from a contributor until the fifteenth of the month ~~in which the contributor's last retirement contribution is received~~ following the month of the member's termination date with a participating employer.

History: Effective October 1, 1991; amended effective June 1, 1996; May 1, 2004.
General Authority: NDCC 39-03.1-06, 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1
Law Implemented: NDCC 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

71-05-04-08. Conversion of sick leave. To convert unused sick leave to service credit, the member must notify the office, in writing, of the amount of unused sick leave to be converted and the member's employer must confirm the member's unused balance of accumulated sick leave as of the date the member terminates employment. For members transferring from one participating employer to another participating employer without terminating eligible employment, the public employees retirement system will record unused sick leave of a participating member if the new employer certifies that it will not transfer that leave. The certification must include documentation from the previous employer detailing the number of hours of sick leave. The public employees retirement system must receive the certification within sixty days after the member leaves employment with the former employer.

One month of service credit must be awarded for each one hundred seventy-three and three-tenths hours of unused accumulated sick leave. The cost to convert unused sick leave into service credit must be paid with after tax employee contributions.

After-tax ~~P~~payments may be accepted from the member as early as six months prior to termination if the following requirements are met:

1. A notice of termination or application for monthly benefits form is on file with the public employees retirement system.

2. A written certification by the member's employer, as to the member's unused balance of accumulated sick leave as of the date the member wishes to begin payment, is on file with the public employees retirement system.

3. At termination, the sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave, confirmed by the member's employer, and the member's final average salary as of that date.

4. If there is a difference between the sick leave conversion payment

amount and the amount the member has paid, any overpayment must be refunded to the member and any underpayment must be collected from the member within sixty days of termination.

5. The member's record must be updated with the additional service credit once payment is made in full and the member has terminated employment.

Pre-tax Rollover/Transfer Payments may be accepted from the member as early as sixty days prior to termination if the following requirements are met:

1. A notice of termination or application for monthly benefits form is on file with the public employees retirement system.

2. A written certification by the member's employer, as to the member's projected unused balance of accumulated sick leave no sooner than sixty days prior to the date of termination, is on file with the public employees retirement system. This certification must also include a certification by the employer of the projected salaries to be reported to NDPERS during the final months of employment.

6. At termination, the sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave confirmed by the member's employer, and the member's final average salary as of that date. If there is a difference between the sick leave balance or conversion payment amount and the amount the member has paid, then only the amount of sick leave available as of the termination date will be added to the member's record. The member account balance will be credited with the full amount of funds from the rollover/transfer.

7. If an underpayment has occurred, then the remaining amount must be collected from the member within sixty days of termination.

8. The retiree health credit portion must be paid as a personal after-tax payment.

The member's record must be updated with the additional service credit once payment is made and the member has terminated employment.

History: Effective June 1, 1996; amended effective April 1, 2002; May 1, 2004.
General Authority: NDCC 39-03.1-06
Law Implemented: NDCC 39-03.1-30

71-05-04-09. Employer purchase of service credit or sick leave program. An employer may elect to purchase up to five years of service credit for an employee and purchase an employee's unused sick leave that meets the requirements of section 71-02-03-08. Before offering a purchase program to its employees the employer must create a program and document the program in writing and submit a copy to the public employees retirement system. The governing authority of the employer shall also submit to the executive director of the public employees retirement system a letter indicating:

1. The program meets all the requirements of the North Dakota Century Code.

2. The program meets all applicable federal requirements.

3. The employer agrees to remit to the public employees retirement system a lump sum payment of the cost of the purchase upon being billed.

4. The employer has not given the employee the option of a cash payment in lieu of the employer purchase.

5. The employer shall clearly specify who is eligible for the program and indicate if the program is intended to be permanent or will be for a specific time period only.

6. The employer agrees that all purchases for service credit will be based upon actuarial cost as determined by the public employees retirement system. The employer also agrees that all purchases will be completed no later than the employee's retirement or sixty days from the date the employer and employee agree to the purchase, whichever comes first.

7. The employer agrees that in offering such a program the employer will direct each employee interested in the program to first apply to the employer's authorized agent who will then certify the eligibility of the member, the amount of service credit to be purchased, and send such certification to the public employees retirement system. The employer also agrees that the employer's authorized agent will coordinate the program, authorize all purchases in writing to the public employees retirement system, and be the focal point for communications between the public employees retirement system, the employer, and the employee.

8. The employer agrees that for each employee certified to be eligible to have service credit purchased, the employer will first obtain from the employee authorization for the public employees retirement system to share confidential information with the employer.

9. The employer certifies that in offering the program, the employer is making it available to all employees or a specified class of employees on a nondiscriminatory basis.

When a employer files the above letter with the public employees retirement system, it may offer the program to its employees. An employer may terminate this program at any time upon the governing authority of the employer sending to the executive director of the public employees retirement system a letter indicating when the program is to be canceled.

History: Effective May 1, 2004.
General Authority: NDCC 39-03.1-06
Law Implemented: NDCC 39-03.1-10.2

CHAPTER 71-05-05
NORMAL AND EARLY RETIREMENT BENEFITS

Section

71-05-05-01 Normal and Early Retirement Benefits - Application
71-05-05-02 Special Retirement Options - Application
71-05-05-03 Payment Date - Regular Early and Normal Retirement Benefits
71-05-05-04 Optional Benefits
71-05-05-05 Designation of Beneficiary
71-05-05-06 Lack of a Designated Beneficiary
71-05-05-07 Amount of Early Retirement Benefit
71-05-05-08 Retirement - Dual Membership
71-05-05-09 Assignment or Alienation of Plan Benefits
71-05-05-10 Erroneous Payment of Benefits - Overpayments
71-05-05-11 Erroneous Payment of Benefits - Underpayments
71-05-05-12 Erroneous Payment of Benefits - Appeals

71-05-05-04. Optional benefits. A member may elect, as provided in section 71-05-05-02, to receive one of the following optional benefits in lieu of the regular early or normal retirement benefit.

2. **~~Five~~Twenty-year or ten-year term certain.** A member may elect an option which is the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a ~~five~~twenty-year or ten-year certain feature, as designated by the member.

History: Effective October 1, 1991.
General Authority: NDCC 39-03.1-06
Law Implemented: NDCC 39-03.1-11

71-05-05-04(3).Partial Lump Sum Opton.
The partial lump sum option will only be available to members who retire on or after reaching normal retirement date. This option is an irrevocable election and made at initial application for retirement. The payment is equal to 12 monthly payments determined under the Normal annuity option. The member is permitted to choose one of the optional forms of payment for ongoing benefits. The ongoing benefits will be actuarially reduced to reflect the partial lump sum payment.

History: Effective .
General Authority: NDCC 39-03.1-06
Law Implemented: NDCC 39-03.1-11

71-05-05-10. Erroneous payment of benefits - Overpayments.
1. An "overpayment" means a payment of money by the public employees retirement system that results in a person receiving a higher payment than the person is entitled to under the provision of the retirement plan of membership.
2. A person who receives an overpayment is liable to refund those payments upon receiving an explanation and a written request for the amount to be refunded from the executive director. All overpayments must be collected using the care, skill, prudence, and diligence under the

circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like gains. If the cost of recovering the amount of the overpayment is estimated to exceed the overpayment, the repayment is considered to be unrecoverable.

3. If an overpayment of benefits was not the result of any wrongdoing, negligence, misrepresentation, or omission by the recipient, the recipient may make repayment arrangements subject to the executive director's approval within sixty days of the written notice of overpayment. If repayment arrangements are not in place within sixty days of the date of the written notice of overpayment, ~~T~~the executive director shall offset the amount of the overpayment from the amount of future retirement benefit payments so that the actuarial equivalent of the overpayment is spread over the individual's benefit payment period.

4. If the overpayment was the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the recipient, the recipient is liable to pay interest charges at the rate of six percent on the outstanding balance to compensate the fund for lost earnings from the time the erroneous benefit was paid through the time it has been refunded in full. Recovered funds are first applied to interest, and if any amount is left over, that amount is applied to principal. If repayment arrangements are not in place within sixty days of the date of the written notice of overpayment, the executive director shall offset the amount of the overpayment from the amount of future retirement benefit payments so that the actuarial equivalent of the overpayment is spread over the individual's benefit payment period.

5. If an individual dies prior to fully refunding an erroneous overpayment of benefits, the public employees retirement system must make application to the estate of the deceased to recover the remaining balance.

History: Effective April 1, 2002.
General Authority: NDCC 32-03-04, 39-03.1-06, 54-52-04(12), 54-52-14.2
Law Implemented: NDCC 39-03.1-25

CHAPTER 71-05-08
QUALIFIED DOMESTIC RELATIONS ORDERS

Section

71-05-08-01	Payment in Accordance With Qualified Domestic Relations Orders
71-05-08-02	Qualified Domestic Relations Orders Procedures

71-05-08-01. Payment in accordance with qualified domestic relations orders. Retirement benefits must be paid in accordance with any qualified domestic relations order (QDRO) issued in compliance with subsection 4 of North Dakota Century Code section 39-03.1-11.

History: Effective October 1, 1991.
General Authority: NDCC 39-03.1-14.2
Law Implemented: NDCC 39-03.1-14.2

71-05-08-02. Qualified domestic relations orders procedures.

1. Upon receipt of a proposed domestic relations order, the ~~executive director~~ public employees retirement system shall send an initial notice to each person named therein, including the member and the alternate payee named in the order, together with an explanation of the procedures followed by the fund.

2. Upon receipt of a domestic relations order, the executive director shall, if the account is in pay status or begins pay status during the review, order funds segregated in a separate account of the fund or in an escrow account which the alternate payee would be entitled to by direction of the order, if ascertainable from the proposed order.

3. Upon receipt of a domestic relations order, the ~~executive director~~ public employees retirement system shall review the domestic relations order to determine if it is a qualified order as established by the model language format specified by the board.

4. The domestic relations order shall be considered a qualified order when the executive director notifies the parties the order is approved and a certified copy of the court order has been submitted to the office.

5. If the order becomes qualified, the executive director shall:

   a. Send notice to all persons named in the order and any representatives designated in writing by such person that a determination has been made that the order is a qualified domestic relations order.

b. Comply with the terms of the order.

c. If a segregated account or an escrow account has been established for an alternate payee, distribute the amount, plus interest, as provided under subdivision d of subsection 1 of section 71-02-01-01 to the alternate payee.

6. a. If the order is determined not to be a qualified domestic relations order or a determination cannot be made as to whether the order is qualified or not qualified within eighteen months of receipt of such order, the ~~executive director~~ public employees retirement system shall send written notification of termination of review to all parties at least forty-five days prior to the end of the eighteen-month review period. At the end of the eighteen-month review period, the proposed order is deemed to be withdrawn and of no legal effect.

b. If a segregated account or an escrow account has been established for an alternate payee, the executive director shall distribute the amounts in the segregated account orescrow account, plus interest at a rate determined by the board, to the person or persons who would be entitled to receive such amount in the absence of an order.

c. If determined after the expiration of the eighteen-month period the order is a qualified domestic relations order, the qualified domestic relations order must be applied prospectively only.

History: Effective October 1, 1991; amended effective July 1, 1994.
General Authority: NDCC 39-03.1-06
Law Implemented: NDCC 39-03.1-14.2

71-08-02-01. Membership of individuals who become employees covered under the judges retirement plan, the highway patrol retirement plan, the law enforcement plan, the teacher's fund for retirement plan or the alternate retirement plan of the board of higher education ~~of the judicial branch, the board of higher education or a state institution under the jurisdiction of the board, or the highway patrol or who become employed in a position subject to teachers' fund for retirement membership~~. If a member of the defined contribution retirement plan begins employment in a position covered under the judges retirement plan, the highway patrol retirement plan, the law enforcement plan, the teacher's fund for retirement plan or the alternate retirement plan of the board of higher education ~~becomes an employee of the judicial branch, the board of higher education, a state institution under the jurisdiction of the board, or the highway patrol or becomes employed in a position subject to teachers' fund for retirement membership~~, the member's status as a member of the defined contribution retirement plan is suspended and the member becomes a new member of the retirement plan for which that member's new position is eligible. The member's account balance remains in the defined contribution retirement plan, but no new contributions may be made to that account. The member's service credit and salary history that were forfeited as a result of the member's transfer to the defined contribution retirement plan remain forfeited, and service credit accumulation in the new retirement plan begins from the first day of employment in the new position. If the member later returns to employment that is eligible for the defined contribution plan, the member's suspension is terminated, the member again becomes a

member of the defined contribution plan, and the member's account shall resume accepting contributions. The contributions to the alternate retirement plan shall remain with that plan unless at the member's option, the member elects to transfer any available balance as determined by the provisions of the alternate retirement plan into the member's account in the defined contribution retirement plan.

History: Effective July 1, 2000; amended effective April 1, 2002.
General Authority: NDCC 28-32-02(1)
Law Implemented: NDCC 54-52.6-01(3)

CHAPTER 71-08-04
QUALIFIED DOMESTIC RELATIONS ORDERS

Section	
71-08-04-01	Payment in Accordance With Qualified Domestic Relations Orders
71-08-04-02	Qualified Domestic Relations Orders Procedures

71-08-04-01. Payment in accordance with qualified domestic relations orders. Retirement moneys must be paid in accordance with any qualified domestic relations order issued in compliance with North Dakota Century Code section 54-52.6-12.

History: Effective July 1, 2000.
General Authority: NDCC 28-32-02(1)
Law Implemented: NDCC 54-52.6-12

71-08-04-02. Qualified domestic relations orders procedures.

1. Upon receipt of a proposed domestic relations order, the ~~executive director~~ public employees retirement system shall:

   a. Send an initial notice to each person named therein, including the member and the alternate payee named in the order, with an explanation of the procedures followed by the fund.

   b. Order the funds to which the alternate payee would be entitled by direction of the order segregated into the available stable value account of the fund, if those funds are ascertainable from the proposed order.

   c. Review the domestic relations order to determine if it is a qualified order as established by the model language format specified by the board.

2. The domestic relations order shall be considered a qualified order when the executive director notifies the parties the order is approved and a certified copy of the court order has been submitted to the office.

3. If the order becomes qualified, the executive director shall:

   a. Send notice to all persons named in the order and any representative designated in writing by such person that a determination has been made that the order is a qualified domestic relations order.

   b. Comply with the terms of the order.

   c. Allow the alternate payee to choose the appropriate investment options for the alternate payee's account.

d. Allow the alternate payee to choose the same payout options allowed for the member.

4. If the order is determined not to be a qualified domestic relations order or a determination cannot be made as to whether the order is qualified or not qualified within eighteen months of receipt of such order, the ~~executive director~~ public employees retirement system shall send written notification of termination of review to all parties at least forty-five days prior to the end of the eighteen-month review period. At the end of the eighteen-month review period, the proposed order is deemed to be withdrawn and of no legal effect.

   a. If a segregated account has been established for an alternate payee, the executive director shall distribute the amounts in the segregated account in the manner required in the absence of an order.

   b. If determined after the expiration of the eighteen-month period the order is a qualified domestic relations order, the qualified domestic relations order must be applied prospectively only.

History: Effective July 1, 2000.
General Authority: NDCC 28-32-02(1)
Law Implemented: NDCC 54-52.6-12

CHAPTER 71-08-06
UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

Section
71-08-06-01 Eligibility Requirements
71-08-06-02 Award of Service Credit
71-08-06-03 Documentation Requirements
71-08-06-04 Payment
71-08-06-05 Refund of Overpayments

71-08-06-01. Eligibility requirements. To be eligible to receive service credit with the defined contribution plan for military time under this chapter, a veteran must have had an interruption of the veteran's employment and been discharged under honorable conditions.

History: Effective May 1, 2004.
General Authority: NDCC 54-52.6-04, 54-52-02
Law Implemented: NDCC 54-52.6-09.3, 54-52.6-09.4

71-08-06-02. Award of service credit. An individual with eligible time may receive up to sixty months' credit upon proper application. A veteran eligible to receive service credit for military time must apply for and, if required to pay any portion of employee contribution, purchase that time within the lesser of three times the length of active duty or five years from the date of that person's return to covered employment after an honorable discharge. Service credit will not be awarded until all required documentation is received by the North Dakota public employees retirement system and payment of both the employer and the employee contributions is made in full.

History: Effective May 1, 2004.
General Authority: NDCC 54-52.6-04, 54-52-04
Law Implemented: NDCC 54-52.6-09.3, NDCC 54-52.6-09.4

71-08-06-03. Documentation requirements. The burden of proof will be on the member for providing documentation necessary to determine what military time is eligible for service credit. At a minimum, the following documentation is required before service credit will be awarded:

1. The member must provide a legible copy of military discharge papers indicating an honorable discharge (DD214, DD215, or NGB22).

2. The member must provide proof of the last day of employment prior to reporting for active duty and the first day of employment following the return from active duty. This information must be certified by the authorized agent of the employing agency using a ~~record of previous service~~ "Purchase Agreement for USERRA Covered Military Active Duty" or notice of change if returning from leave of absence.

3. The members requesting service credit for extended military terms ~~discussed under subdivision c of subsection 1 of section 71-02-11-02~~ must provide a legible copy of the appropriate military papers (DD214).

4. A member who elects to purchase military time must submit a completed purchase agreement.

History: Effective May 1, 2004.
General Authority: NDCC 54-52-04, 54-52.6-04
Law Implemented: NDCC 54-52.6-09.3, NDCC 54-52.6-09.4

71-08-06-04. Payment. The ~~payment~~ cost for purchase of eligible military service in the defined contribution plan may be paid as follows:

1. The cost for any required employee contributions to be paid by the member ~~Payment~~ may be paid in a lump sum or in installments pursuant to the rules established for purchase or repurchase payment under subsection 3, 4, or 5 of section 71-02-03-02.2. If no payments have been made, no credit will be awarded.

2. If the member elects to make installment payments through payroll deduction, then the employer will be required to match the member contribution month by month. Upon completion of the member contributions, the employer will be required to make a final payment of all remaining employer contributions.

~~2~~3. If the member elects to make payments through any method other than payroll deductions, then upon the member completing full payment of the required member contributions, the employer cost will be assessed to the member's most recent participating employer.

~~3~~4. ~~The employer cost will be assessed to the member's most recent participating employer.~~ Upon being billed by the public employees retirement system, the participating employer will have thirty days in which to make payment in full. If, after sixty days, the employer has not made payment in full, a civil penalty of fifty dollars will be assessed, and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due.

~~3. If the employer contributions are paid and the member becomes delinquent for required employee contributions, then the public employees retirement system will prorate the credit the employee contributions have paid for by the member and this credit will be added to the member's file.~~

History: Effective May 1, 2004.
General Authority: NDCC 54-52-04, 54-52.6-04
Law Implemented: NDCC 54-52.6-09.3, NDCC 54-52.6-09.4

71-08-06-05. Refund of overpayments. If an employee purchased military service ~~pursuant to North Dakota Century Code chapter 54-52.6~~ at a cost higher than determined in this chapter, overpayments may be refunded. Upon verification that the

previously purchased military service meets the general eligibility requirements under section 71-08-06-01, a refund may be issued according to the following guidelines:

1. For a purchase paid in a lump sum:

   a. ~~If eligible military time was July 1966 or after, five and twelve-hundredths percent times the salary which the purchase was computed on, times months of eligible military time, will be refunded~~. The overpayment will be refunded to the member.

   b. ~~Interest on the refund amount will be paid at an annual rate of seven and five-tenths percent compounded monthly. Interest will be calculated from the month the public employees retirement system received the lump sum payment to the month in which the refund is made.~~

   ~~c~~. The refund will be calculated and issued within one hundred eighty days of receiving all necessary documentation.

2. For a purchase paid in installments:

   a. If the employee is currently making installment payments, the purchase amount will be recalculated using ~~four percent~~ the percent of salary that the member was required to pay times eligible months of military time being purchased. Any excess funds resulting from the recalculation will be applied toward the outstanding amount due. Should the payments made to date exceed the new contract amount, a refund of the difference will be issued within one hundred eighty days.

   b. If an eligible employee or retiree has paid the installment contract in full, the purchase amount will be recalculated using ~~four percent~~ the percent of salary that the member was required to pay times eligible months of military time being purchased. A refund of the difference between the payments actually made and what the payments should have been on the new contract amount will be made within one hundred eighty days of receiving the necessary documentation. ~~Interest on the refund amount will be calculated at an annual rate of seven and five-tenths percent, compounded monthly, from the month in which the purchase was paid in full to the month in which the refund is issued.~~

History: Effective May 1, 2004.
General Authority: NDCC 54-52-04, 54-52.6-04
Law Implemented: NDCC 54-52.6-09.3, NDCC 54-52.6-09.4

CHAPTER 71-08-07
ADDITIONAL CONTRIBUTIONS

Section
71-08-07-01 Additional Employer Contributions
71-08-07-02 Eligible Sick Leave

71-08-07-01. Additional employer contributions. An employer may elect to provide additional employer contributions to an employee's account in an amount not exceeding the equivalent of a purchase of up to five years of service credit for that employee ~~or~~ and the purchase of an employee's unused sick leave that meets the requirements of section ~~71-08-06-02~~ 71-08-07-02. Before offering such a program to its employees, an employer must create a program and document it in writing and submit a copy to the public employees retirement system. The governing authority of the employer shall also submit to the executive director of the public employees retirement system a letter indicating:

1. The program meets all the requirements of the North Dakota Century Code.

2. The program meets all applicable federal requirements.

3. The employer agrees to remit to the public employees retirement system a lump sum payment of the cost of the purchase upon being billed.

4. The employer has not given the employee the option of a cash payment in lieu of the employer purchase.

5. The employer shall clearly specify who is eligible for the program and indicate if the program is intended to be permanent or will be for a specific time period only.

6. The employer agrees that all additional employer contributions will not exceed the equivalent of a purchase of service credit as determined by the public employees retirement system and all unused sick leave purchases will be based upon the computation specified in the North Dakota Century Code. The employer also agrees that all purchases will be completed no later than the employee's retirement or sixty days from the date the employer and employee agree to the purchase, whichever comes first.

7. The employer agrees that in offering such a program the employer will direct each employee interested in the program to first apply to the employer's authorized agent who will then certify the eligibility of the member and the amount of service credit to be purchased or sick leave to be converted and send such certification to the public employees retirement system. The employer also agrees that the employer's authorized agent will coordinate the program, authorize all purchases in writing to the public employees retirement system and be the focal point for communications between the public employees retirement system, the employer, and the employee.

8. The employer agrees that for each employee certified to be eligible to have service credit purchased or sick leave converted, the employer will first obtain from the employee authorization for the public employees retirement system to share confidential information with the employer.

9. The employer certifies that in offering the program, the employer is making it available to all employees or a specified class of employees on a nondiscriminatory basis.

When an employer files the above letter with the public employees retirement system, the employer may offer the program to its employees. An employer may terminate this program at any time upon the governing authority of the employer sending to the executive director of the public employees retirement system a letter indicating when the program is to be canceled.

History: Effective May 1, 2004.
General Authority: NDCC 54-52-04, 54-52.6-04
Law Implemented: NDCC 54-52.6-09.2

71-08-07-02. Eligible sick leave. An employer may provide additional contributions equal to the purchase of an employee's unused sick leave only to the extent that it has not been previously purchased by a former employer or the member. ~~Further, eligible sick leave may not exceed a total of eight hours times the number of months of permanent employment with the current employer or service in the retirement plan.~~

History: Effective May 1, 2004.
General Authority: NDCC 54-52-04, 54-52.6-04
Law Implemented: NDCC 54-52.6-09.2

CHAPTER 71-08-08
TEMPORARY EMPLOYEE PARTICIPATION

Section
71-08-08-01 Temporary Employee Participation

71-08-08-01. Temporary Employee Participation. For each eligible temporary employee who elects to participate as such in the defined contribution plan, the following applies:

1. A temporary employee must submit a completed participation agreement within six months of the date of hire as a temporary employee or within six months of a change in status from a permanent to temporary position. If no application is made and filed with the office, an irrevocable waiver of participation will occur for as long as the employee is in temporary status.

2. Contributions for temporary employees must be submitted no later than the sixth working day of the month for the previous month's salary.

3. Delinquent payments of over thirty days, for reasons other than leave of absence or seasonal employment, will result in termination of eligibility to participate as a temporary.

4. Upon taking a refund, future participation as a temporary member is waived.

5. A member may not participate as both a permanent and a temporary member. Permanent employment has precedence.

History:
General Authority: NDCC 54-52-04, NDCC 54-52.6
Law Implemented: NDCC 54-52.6-01.3, NDCC 54-52.6-02.6

CHAPTER 71-08-09
RETURN TO SERVICE – RETIRED MEMBER

Section
71-08-09-01 Return to Service – Retired Member

71-08-09-01. The benefits of a retired member of the defined contribution plan who returns to permanent employment shall be suspended except as provided in subsection 54-52.6-02.

History:
General Authority: NDCC 54-52-04, NDCC 54-52.6
Law Implemented: NDCC 54-52.6-01.7, NDCC 54-52.6-02.7