





New Jersey Administrative Code

-  **New Jersey Administrative Code**
-  **TITLE 17. Treasury – General**
-  **CHAPTER 2 PUBLIC EMPLOYEES' RETIREMENT SYSTEM**
-  **SUBCHAPTER 2. ENROLLMENT**

17:2-2.3 Ineligible persons

(a) The following classes of persons are ineligible for membership in the System:

1. Motor vehicle agents and their non-State employees;
2. Licensing agents of the Fish and Game Division and their non-State employees;
3. Any person paid from State, county, local public, or Federal funds who is a member of or required to join the Federal Civil Service Retirement System on total salary;
4. Any employee who is provisionally appointed to a Civil Service position is considered as an employee with temporary employment status and is ineligible to establish membership until the employee receives a regular Civil Service appointment, or has one year of continuous service. This does not apply to anyone who is already enrolled as a member or is a retiree from the System. Breaks in service of less than 30 days do not negate the continuity of service;
5. Any employee who is employed on a seasonal basis. Seasonal employment is a category of occasional employment in which the employer, consistent with past practices, does not expect to lead to permanent employment and is not a temporary position as defined under N.J.A.C. **17:2-2.4**(d). To qualify as seasonal employment, work periods shall not extend beyond six consecutive months for locations that report contributions on a 12-month basis, or five consecutive months for locations that report contributions on a 10-month basis, and severance of the employer/employee relationship shall occur during breaks in employment; and such breaks shall exceed 30 consecutive days;
6. Any person not in the career, senior executive and unclassified service, or a regular budgeted position, who is employed on an on-call basis and works on average less than 10 days a month throughout the regular work year of the employer. This type of employment is temporary employment which is not continuous;
7. Any retired member who returns to a PERS covered position or positions for which the aggregate compensation is less than the aggregate calendar year compensation limit for exclusion from membership pursuant to

N.J.S.A. 43:15A-57.2b. Retired members shall notify their employer or employers when the aggregate calendar year compensation limit will be reached, so that the retired members may be reenrolled in the PERS. If the contractual or regularly budgeted compensation for the position or positions exceeds the calendar year compensation limit, the retired member shall be reenrolled in the PERS as of the beginning of their employment. A retired member who is employed on an hourly basis shall be reenrolled in the PERS as soon as the compensation received exceeds the calendar year compensation limit. For the purposes of this paragraph, a "retired member" is a former member who has terminated all employment covered by the retirement system, who has not received compensation from employment covered by the retirement system for at least 30 consecutive calendar days, who is not receiving a disability retirement allowance and whose retirement benefit has become due and payable as provided in N.J.A.C. **17:2-6.2**;

8. Any person who is employed in an intermittent title. The designation "intermittent" shall be used for those titles in the career service in which work responsibilities are characterized by unpredictable work schedules and which do not meet the normal criteria for regular year-round, full-time or part-time assignments;

9. Any temporary employee hired under the Workforce Investment Act of 1998. Temporary employees hired under the Workforce Investment Act shall be deemed to be Job Training Partnership Act (JTPA) employees and, therefore, ineligible for PERS membership pursuant to N.J.S.A. 43:15A-7h;

10. Any retired member, as defined in (a)7 above, who returns to employment with an institution of higher education in a teaching position covered by the PERS pursuant to N.J.S.A. **43:15A-57.2**;

11. Any retired member, as defined in (a)7 above, who becomes employed by the State Department of Education in a position of critical need as determined by the State Commissioner of Education, or becomes employed by a board of education in a position of critical need as determined by the superintendent of the district on a contractual basis for a term of not more than one year pursuant to N.J.S.A. **43:15A-57.2**. The retired member so reemployed may renew a contract for one additional year, pursuant to N.J.S.A. **43:15A-57.2**, provided that the total period of employment with any individual board of education does not exceed a two-year period. The cancellation, reenrollment and additional retirement allowance provisions and the compensation limitations shall apply if the retired member becomes employed within 120 days of retirement in a position with the employer from which the member retired;

12. Any official who commences service in a State or local elective public office on or after July 1, 2007, except for

those who established membership in the PERS prior to July 1, 2007 based on service while continuously serving in the same elected office;

13. Any official who is directly appointed by the Governor as of July 1, 2007, to serve at the Governor's pleasure during his or her term of office; also, an official whose gubernatorial appointment requires the advice and consent of the Senate, or who is appointed in a substantially similar fashion by a local entity (county, municipality, etc.). A member who enrolled in the PERS prior to July 1, 2007, and whose membership has not expired pursuant to the provisions of N.J.S.A. 43:15A-7(e) or 8(a), shall continue as a PERS member while serving in that appointed position;

14. Any employee working under a Professional Services Contract as of January 1, 2008, as defined by N.J.S.A. 40A:11-5, 18A:18A-5, 18A:64A-25.5 and 43:15A-7.2; and

15. Any independent contractor as set forth in regulation or policy of the Federal Internal Revenue Service.

Amended by R. 1981 d. 58, effective February 20, 1981.

See: 12 N.J.R. 554(b), 13 N.J.R. 247(b).

(a)4: delete "is not paid"; add "does not earn wages", "of a year", and "is considered . . . community".

Amended by R. 1983 d. 7, effective February 7, 1983.

See: 14 N.J.R. 1150(a), 15 N.J.R. 162(d).

Treatment of provisional appointments and seasonal/occasional employment.

Amended by R. 1989 d. 312, effective June 19, 1989.

See: 21 N.J.R. 437(b), 21 N.J.R. 1743(a).

Added eligibility to establish membership in PERS with one year of continuous service, without regular Civil Service appointment, to (a)4.

Temporary employment defined and excluded, at (a)6.

Amended by R. 1998 d. 321, effective July 6, 1998.

See: 30 N.J.R. 1025(a), 30 N.J.R. 2513(c).

In (a), added 7.

Amended by R. 1999 d. 290, effective August 16, 1999.

See: 31 N.J.R. 1580(a), 31 N.J.R. 2366(a).

In (a), substituted references to non-State employees for references to employees in 1 and 2, added the last sentence in 4, rewrote 5, substituted a reference to calendar year compensation for a reference to annual compensation in the first sentence, substituted "calendar days, who is not receiving a disability retirement allowance" for "days," following "consecutive" in the last sentence, and substituted references to calendar year compensation and calendar year compensation limits for references to compensation and compensation limits throughout 7, and added 8.

Administrative change.

See: 32 N.J.R. 2925(a).

Amended by R. 2001 d. 117, effective April 2, 2001.

See: 32 N.J.R. 4239(a), 33 N.J.R. 1114(a).

In (a), added 9.

Amended by R. 2004 d. 225, effective June 21, 2004.

See: 36 N.J.R. 619(a), 36 N.J.R. 3066(a).

In (a), inserted "or is a retiree from the System" at the end of the second sentence in 4, rewrote 7, added 10 and 11.

Amended by R. 2005 d. 75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

In (a), rewrote 7.

Amended by R. 2010 d. 149, effective July 19, 2010.

See: 41 N.J.R. 4667(a), 42 N.J.R. 1612(b).

In the introductory paragraph of (a), substituted "System" for "system"; in (a)5, inserted the first occurrence of "in", updated the N.J.A.C. reference and substituted the first semicolon for a comma; in (a)10, deleted "and" from the end; in (a)11, deleted a comma following "reenrollment" and substituted a semicolon for a period at the end; and added (a)12 through (a)15.