LEGISLATIVE FORMAT

NEBRASKA ADMINISTRATIVE CODE

TITLE 303, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 18

RETIREMENT SYSTEMS, PUBLIC EMPLOYEES
PUBLIC EMPLOYEES RETIREMENT BOARD

RULES AND REGULATIONS FOR
BENEFIT AND CONTRIBUTION ADJUSTMENTS

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NEBRASKA ADMINISTRATIVE CODE

TITLE 303 – PUBLIC EMPLOYEES RETIREMENT BOARD

CHAPTER 18 – BENEFIT AND CONTRIBUTION ADJUSTMENTS

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TITLE 303 – PUBLIC EMPLOYEES RETIREMENT BOARD

CHAPTER 18 – ~~RETIREMENT~~ BENEFIT AND CONTRIBUTION ADJUSTMENTS

001 Scope of the Rule

The provisions of this regulation apply to the School Employees Retirement System, the State Employees Retirement System, the Retirement System for Nebraska Counties, the Judges Retirement System, and the State Patrol Retirement System. This rule and regulation sets forth procedures by which the Nebraska Public Employees Retirement System shall adjust member benefits and employee and employer contributions as necessary to comply with Nebraska state and federal laws governing public employee retirement plans.

002 Definitions

002.01 Board means the Public Employees Retirement Board established pursuant to ~~Nebraska Revised Statute section~~ Neb. Rev. Stat. § 84-1501.

002.02 NPERS means the Nebraska Public Employees Retirement Systems; ~~which is~~ the agency that administers the retirement laws under the direction of the Board.

002.03 Benefit means the post-retirement income to be received by a member of a retirement system.

002.04 Employee Contribution means the dollar amount required to be ~~deducted~~ picked up from an active member's compensation for deposit into a retirement system to fund member benefits.

002.05 Employer means the public entity required to contribute to the State Employees Retirement System, the Retirement System for Nebraska Counties, the Judges Retirement System, the School Employees Retirement System, or the State Patrol Retirement System on behalf of its employees who are members in such retirement system.

002.06 Employer Contribution means the dollar amount required to be deposited into a retirement system by an employer to fund member benefits.

002.07 Excess Contribution means an employee contribution or employer contribution, or both, that is (a) greater than the statutorily mandated deduction from compensation, (b) greater than the statutorily mandated matching contribution required of an employer, (c) submitted on behalf of an employee that is ineligible to participate in the retirement system, or (d) improperly calculated on wages or salary representing compensation for unused sick leave or unused vacation leave converted to cash payments, insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, ~~or~~ bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements, or as otherwise defined by state law.

002.08 Insufficient Contribution means an employee contribution or employer contribution, or both, which is (a) less than the statutorily mandated deduction from compensation, (b) less than the statutorily mandated matching contribution required of an employer, (c) not timely remitted, (d) not remitted due to administrative errors on the part of the employer, (e) not remitted due to the failure of the employer to enroll the employee in the retirement system when such employee was required to be enrolled, or (f) due to a retroactive salary payment paid pursuant to court order, arbitration, or litigation and grievance settlements.

002.09 Member means an individual who has an account in one of the retirement systems.

002.09(a) Active Member means an individual who is currently employed by an employer and making employee contributions into a retirement system.

002.09(b) Inactive Member means an individual who has made employee contributions to a retirement system as an active member and has subsequently separated from service with an employer.

002.10 Retirement System means the State Employees Retirement System, the Retirement System for Nebraska Counties, the Judges Retirement System, the School Employees Retirement System, or the State Patrol Retirement System, as appropriate under the circumstances.

003 Excess Contributions

003.01 If NPERS determines that a retirement system has received an excess employee contribution, then NPERS shall return the excess employee contribution to the employer, and the employer shall return the excess employee contribution to the employee. Adjustments due to excess employee contributions shall be made within two ~~contractual or fiscal~~ years of the date the excess contribution was received by NPERS. If more than two ~~contractual or fiscal~~ years have passed since the date the contribution was received, the excess contribution shall not be adjusted.

003.02 If NPERS determines that a retirement system has received an excess employer contribution, then NPERS shall either provide a refund or credit the excess employer contribution against future employer contributions. Adjustments due to excess employer contributions shall be made within two ~~one contractual or fiscal~~ years of the date the excess contribution was received by NPERS. If more than two ~~one contractual or fiscal~~

years ~~has~~ have passed since the date the contribution was received, the excess contribution shall not be adjusted.

003.03 Under the School Employees Retirement Act, contributions made on compensation in excess of the limitations imposed by Neb. Rev. Stat. § 79-902(35) shall not be refunded pursuant to Neb. Rev. Stat. § 79-904.01(3).

004 Insufficient Contributions

004.01 Active Members

004.01(a) Except as provided in subsection 004.03, if NPERS determines that a retirement system has received insufficient contributions from an employer of an active member ~~or employer, or both~~, NPERS shall require ~~the member and/or~~ the employer ~~to~~ remit the additional required employee and employer contributions, and this amount may include interest.

004.01(b) ~~Except as provided in 004.01(c),~~ Additional employee contributions required under ~~this regulation~~ subsection 004.01(a) shall be picked up by the employer ~~through an irrevocable payroll deduction authorization,~~ and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code. The employer shall pay these employee contributions from the same source of funds which is used in paying earnings to the employee.

~~004.01(c) The additional employee contributions required pursuant to this regulation shall be deducted from the employee's compensation in equal installments over a period of time selected by the employee; provided, however, that such time period shall not exceed the lesser of (i) four times the number of pay periods over which the error occurred or (ii) five years. If the employee fails to select a time period within thirty days after such request is made, NPERS shall select a time period in accordance with this subsection.~~

004.01 (c) ~~(d)~~ Except as provided in subsection 004.03, any additional employer contribution~~, which is dependent upon an additional employee contribution,~~ shall be made in conjunction with the employee contribution. If a member in a defined benefit plan terminates employment prior to payment of the required employee contribution, then the employer shall complete payment of ~~their~~ the employee and employer share of the required contribution.

~~004.01(e) All active members utilizing the installment method of repayment must sign an irrevocable agreement stipulating that if the installment payments are not completed for any reason by the member, then NPERS shall pro-rate the member's agreement and the member will only be given service credit to the extent of the payments made by the member.~~

004.02 Inactive Members. ~~004.02(a) If NPERS determines an inactive member has made insufficient contributions, then the retirement benefits of the inactive member shall be reduced by the actuarial equivalent value of the omitted employee contributions, with interest. NPERS shall compute benefits based upon the reported salary and/or contributions received. 004.02(b)~~ Except as provided in subsection 004.03, if NPERS

determines that a retirement system has received insufficient contributions from an employer of an inactive member, then NPERS ~~may~~ shall require the employer ~~to~~ remit the additional required contributions, including interest, as necessary to make up the insufficient employee and employer contributions.

004.03 All insufficient contribution amounts required under this section shall be paid by the employer unless the Director determines it is either unreasonable or unfeasible for the employer to pay the insufficient employee or employer contributions.

004.04 All employee and employer contributions amounts required to be paid under this section shall be paid by the employer within sixty (60) days of NPERS providing notice to the employer that there is an insufficient employee or employer contribution remittance due.

005 Overpayment of Benefits

005.01 If NPERS determines that any member or beneficiary has received a retirement benefit that is in excess of the retirement benefit such member or beneficiary is entitled to receive under the governing statutory provisions, NPERS ~~shall~~ may offset future benefits as necessary to recoup the overpayment, with interest. In lieu of future offsets, the member or beneficiary ~~may~~ shall repay the overpayment to NPERS ~~immediately~~, and such repayment may include interest charges. This section is subject to the materiality amounts listed in Title 303 NAC, Chapter 3.

005.02 Reductions in future benefit payments pursuant to this regulation shall not exceed twenty-five (25%) percent of the monthly retirement benefit received by the member or beneficiary unless the member or beneficiary agrees, in writing, to a greater offset.

005.03 Failure by a member or beneficiary to repay or offset an amount of overpayment and interest charges described in subsection 005.01, will result in NPERS referring the matter to the Nebraska Attorney General's Office for collection or other enforcement action deemed appropriate by the Attorney General. If it is impractical for NPERS to initiate an offset because there are no additional future benefit payments scheduled, then NPERS will make at least three attempts during a 120 day period to contact the member or beneficiary in order to effectuate a repayment, prior to referring the matter to the Attorney General.

006 Underpayment of Benefits

~~006.01~~ If NPERS determines that any member or beneficiary has received a retirement benefit that is less than the retirement benefit such member or beneficiary is entitled to receive under the governing statutory provisions, NPERS shall ~~immediately~~ within a reasonable period of time not to exceed sixty (60) days make payment equal to the deficit amount plus interest. This section is subject to the materiality amounts listed in Title 303 NAC, Chapter 3.

007 Interest

007.01 Interest shall be assessed and collected by NPERS from any employer who submits an insufficient contribution. Interest shall be calculated from the date the employee or employer contribution was due to be remitted to NPERS until the date such contribution is remitted.

007.02 The rate of interest to be assessed on insufficient contributions, repayment of excess benefits, or paid to the member on account of deficient benefit payments, shall be the rate of regular interest as defined or determined under the County Employees Retirement Act, the Judges Retirement Act, the School Employees Retirement Act, the Nebraska State Patrol Retirement Act, or the State Employees Retirement Act, as appropriate.

008 Notice of Adjustment

008.01 If NPERS makes any adjustment pursuant to these regulations, then NPERS shall mail notice of the proposed adjustment to the member, the employer, or any other person directly affected by such adjustment within thirty (30) ~~business~~ days of the adjustment.

008.02 The notice required by this regulation shall be mailed to the last known address of the member, employer, or other affected person as reflected by the records of NPERS.

008.03 All notices of proposed adjustments shall advise the affected parties of their right to protest and appeal the proposed adjustment and the right to a formal hearing before the Board or its designated hearing officer.

009 Appeals

009.01 If a member, employer, or any other person affected by a proposed adjustment believes that such proposed adjustment is erroneous or improper, such member, employer, or other person may file a request for hearing. If the member, employer, or other affected person files a request for a hearing within thirty (30) days of the date notice of the proposed adjustment was mailed, NPERS shall suspend making the adjustment until after a hearing is held and a final decision is rendered by the Board. If no protest and request for hearing is received by NPERS within such thirty (30) day period, NPERS shall proceed to make the adjustment.

009.02 All hearings shall be held in accordance with the appeal procedures established by the Board under Title 303, Chapter 12 of the Nebraska Administrative Code, and the Administrative Procedure Act.

010 Statute of Limitations

~~010.01~~ Every claim and demand under these regulations and against NPERS or the Board shall be forever barred unless the action is brought within two years of the time at which the claim accrued.

ENABLING LEGISLATION:

NEB. REV. STAT. §§ 23-2305, 23-2305.01, 24-704, 24-704.01, 79-904, 79-904.01, 79-905, 81-2019, 81-2019.01, 84-1305, 84-1305.02, 84-1305.02, and 84-1503.