Public Employees' Retirement System

Board of Trustees

August 24, 2010

Regulatory Change

Regulation 49 **Conditions for Existing Military Service at No Cost and Qualified Military Service Due to Interruption of Employment Available Upon Payment of Required Employer and Employee Contributions**

The proposed amendment to Regulation 49 is to clarify that active duty for training, whether more or less than the service time for which a DD-214 would normally be issued is eligible for service credit at no cost provided adequate documentation is provided to PERS indicating the branch of service in which the member served on active duty, the member's dates of service and the member's discharge status.

The effective date of this amended regulation will be December 1, 2010. **Staff requests the Board's initial approval of the proposed amendment.**

Chapter 49 Conditions for Existing Military Service at No Cost and Qualified Military Service Due to Interruption of Employment Available Upon Payment of Required Employer and Employee Contributions

100 Purpose

The purpose of this regulation is to provide information to the member regarding the types of military service that are eligible for service credit under the retirement systems administered by PERS and at what cost, if any.

101 Background information

Service credit for certain active duty military service has been available at no cost to members of the Public Employees' Retirement System (PERS) and the Mississippi Highway Safety Patrol Retirement System (MHSPRS) for many years. Service qualifying for credit at no cost under PERS and the MSHPRS are discussed below. (Note that the law provides that military service used in the calculation of benefits of a retirement system administered by PERS may not be used in another such system.)

Credit for military service is different in the Municipal Retirement Systems. Each municipality with a separate retirement system has the option to enact changes in the military service provision that allows credit to members at no cost.

The following information describes eligible active duty military service available at no cost to members of the PERS and the MHSPRS in addition to qualified military service based on interrupted employment under the Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA). The provisions for interrupted employment under USERRA apply to members of all retirement systems administered by PERS, including the Mississippi Highway Safety Patrol Retirement System, the Municipal Retirement Systems, and the Optional Retirement Plan.

102 Military Service Available at No Cost to Member (PERS and MHSPRS Members Only)

1. Description of Active Duty Military Service Available at No Cost

To be eligible to receive credit for Active Duty military service (including Active Duty for Training for which a DD214 or comparable documentation is available), the member must:

a. Have served on **Active Duty** as follows:

(i) For PERS:

- In an eligible branch of the U. S. Armed Forces (Army, Air Force, Navy, Marine Corps, or Coast Guard), or in the Commissioned Corps of the United States Public Health Service prior to 1972*, or in maritime service during periods of hostility in World War II;

(ii) For MHSPRS:

- In an eligible branch of the U. S. Armed Forces (Army, Air Force, Navy, Marine Corps, or Coast Guard) or in maritime service during periods of hostility in World War II;

b. Have not received a dishonorable discharge, which for purposes of this regulation includes a discharge for bad conduct, or discharge due to court martial, or discharge under other than honorable conditions;

c. Have entered or returned to state service after discharge from qualifying military service;

d. Be vested in his or her retirement system:

(i) a member who joined PERS before July 1, 2007, must have a minimum of four (4) years of membership service credit in PERS;

(ii) a member who joined PERS on or after July 1, 2007, must have a minimum of eight (8) years of membership service credit;

(iii) or a member of the MHSPRS must have a minimum of five (5) years of membership service credit;

e. Not have credit for this service in any other retirement system administered by PERS;

f. Not have overlapping service credit for the same period of time.

Service credit for service in the Commissioned Corps of the United States Public Health Service is only available to those members who retire on or after July 1, 2002.

2. Limitations

If eligible, the member may receive up to a **maximum of four (4) years** of active duty military service credit at no cost. This period may be extended if proof is furnished that the member was retained in the Armed Forces during World War II or in maritime service during World War II by causes beyond the member's control and without opportunity of discharge.

3. Certification

a. The member must submit to PERS a copy (not the original) of his/her military DD214 discharge form (or other documentation acceptable to PERS) which verifies:

(i) That the service was Active Duty (including Active Duty for Training);

(ii) The eligible branch of the Armed Forces or Commissioned Corps in which the member served;

(iii) The member's dates of service; and

(iv) The member's discharge status.

b. If the member does not have a copy of his/her DD214, he/she may obtain one by contacting the:

National Personnel Record Center
9700 Page Boulevard
St. Louis, MO 63132

4. Special Note regarding National Guard or Reserve Service

If the member is or was a member of the National Guard or in the Reserve Service and was activated into the Armed Forces of the United States (or Commissioned Corps of the United States Public Health Service prior to 1972) as verified by a DD214, he/she may be eligible for free service as noted above. However, weekend drills and annual

two-week training periods are not eligible for credit. Note also, that military service is not allowed for periods during which the member received credit for employment with his/her public employer. (Special Note: Neither the National Guard NGB Form nor the U.S. Army Reserve Personnel Center Chronological Statement of Retirement Points will be accepted to establish eligibility for Active Duty military service.)

5. **Military Service Performed after Withdrawal from State Service**
Military service performed after the member withdraws from covered public service or retires does not qualify for service credit under this section. In order to have military service considered for service credit, the member must enter or return to covered state service **after** discharge from active duty in the Armed Forces (or from service in the Commissioned Corps of the United States Public Health Service prior to 1972). Should the member enter active duty after retirement and later return to covered state service, no service credit for active duty military service is available for any period in which the member was drawing a retirement allowance.

103 Military Service Credit for Public Service Interrupted by Qualified Military Service Upon Payment of Employer and Employee Contributions

1. **Description of Service Which May Be Eligible**
The Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA) requires employers to reemploy and preserve job security, pension and welfare benefits for "qualified" employees whose employment was interrupted by military service. If qualified interrupted military service does not meet the qualifications for Active Duty military service available to the member at no cost as noted above, a member may be awarded credit for time spent in the military that interrupted public service provided that the appropriate employee and employer contributions (and interest, if applicable) are paid.

   a. Service in the "Uniformed Services" means the performance of duty on a voluntary or involuntary basis in a Uniformed Service under competent authority and includes active duty, active and inactive duty for training, National Guard duty under Federal statute, and a period during which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform such duty. The term also includes a period for which a person is absent from employment to perform funeral honors duty as authorized by law. In addition, service as an intermittent disaster-response appointee upon activation of the National Disaster Medical System or as a participant in an authorized training program is deemed service in the Uniformed Services in accordance with Public Law 107-188. The definition of "Uniformed Services" shall conform to the definition as provided from time to time pursuant to federal law.

   b. Uniformed Service means any of the following:

   (i) the Army, Navy, Air Force, Marine Corps, Coast Guard, or any reserve components of such services;

   (ii) the National Guard or Air National Guard;

   (iii) the Commissioned Corps of the United States Public Health Service; or

   (iv) any other category of persons designated by the President in time of war or emergency.

2. **Limitations**

The member must have worked for an employer covered by one of the retirement systems administered by PERS, have left that employer for a **military leave of absence**, and returned to work for the same public employer within three months of discharge or release from the "Uniformed Services."

a. **To qualify to purchase this service, the member must have:**

(i) Held a job with the state or other public employer participating in the Public Employees' Retirement System, Mississippi Highway Safety Patrol Retirement System, one of the Municipal Retirement Systems, or the Optional Retirement Plan administered by PERS immediately prior to entering the uniformed services; and

(ii) Given written or verbal notice (or verification upon return where such notice could not be provided), to the member's public employer that he/she was leaving the job for military training or service; and

(iii) Not exceeded the five-year cumulative limit on periods of service or the period to complete an initial enlistment, or such other period as provided under applicable federal law; and

(iv) Have been discharged under honorable conditions or as otherwise provided by applicable federal law (Note that the following types of service do not qualify for purchase under USERRA: a. where the member separated from the service with a dishonorable or bad conduct discharge; b. where the member separated from the service under other than honorable conditions; c. where a member was dismissed or discharged from the service as the result of a court martial; or d. where the member was dropped from the rolls due to absence without authority for more than three months or imprisoned by a civilian court.); and

(v) Reported back to the same public employer within 90 days after the member's discharge, unless he/she was hospitalized for or convalescing from a service-connected injury or illness in which case the deadline for reporting to work may be extended for up to two years; and

(vi) Met any other requirements provided by applicable federal law.

b. **Military Service Performed after withdrawal from state service**

No military service is available for service credit under this provision after the member leaves covered public service or retires. In order to begin drawing a retirement allowance the individual must have withdrawn or terminated from service. To have military service considered for service credit, the member must have left state service for the purpose of entering the military and later returned to covered state service after discharge from qualifying service under USERRA. Should the member enter military service after retirement or termination of employment and later return to covered state service, no service credit for such military service is available under this section.

(SPECIAL NOTE: Weekend drills and temporary annual training periods for which the employee is granted paid leave under State Law, e.g., summer camp, do not qualify for purchase under this provision as contributions have already been made on compensation paid during such periods. Further, a

member may not receive additional service credit for periods of time for which he/she has already received service credit, i.e., where the individual is on paid personal leave. Where periods of public and qualified military service overlap, such may not result in more than one year of service credit being awarded during the same fiscal year.)

c. Payment

(i) To obtain a cost statement, the member's employer shall complete and submit a FORM 25D, (Determination of Entitlement to Purchase Pension Service Credit under the Veteran's Reemployment Rights Laws which certifies the employee's eligibility to purchase service), and a FORM 25M (Statement of Qualifying Interrupted Service) along with a copy of the member's military DD214 honorable discharge forms or other comparable documentation showing the date of entry and separation from service in the uniformed services and discharge status.

(ii) The member and his/her employer shall remit the retirement contributions that would have been due pursuant to applicable state law.

(iii) The member must make payment within a period of time beginning with the date of return to membership service and not exceeding three (3) times the member's qualified military service, but in no case shall the member have in excess of five (5) years from the date of his return to make such payment.

(iv) Employer contributions required by the employer with whom service was interrupted which are due pursuant to applicable state and federal law shall be billed to the employer for payment after the member has paid the employee contributions.

(v) Such service in defined benefit plans must be purchased in minimum increments of one-quarter year. As contributions for each quarter year of service (or multiples thereof) are received, service will be credited to the account.

d. Certification

In order to purchase service credit, the member and employer must provide the following:

(i) A certificate of service or discharge (DD214) which shows the date of entry into and the date of separation from service in the uniformed services and the discharge status; and

(ii) FORM 25D, Determination of Entitlement to Purchase Pension Service Credit under the Veteran's Reemployment Rights Laws and/or the Uniformed Services Employment and Reemployment Rights Act (USERRA); and

(iii) FORM 25M, Statement of Qualifying Interrupted Service certifying the salary the member would have earned during the period the member was out of service as a public employee by reason of service in the uniformed services.

(History: Adopted July 1, 2001; amended July 1, 2002; amended June 21, 2005, to be effective August 1, 2005; amended effective April 1, 2007; amended and

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