

Section 71-02-01-01 is amended as follows:

71-02-01-01. Definitions.

As used in North Dakota Century Code chapter 54-52 and this article:

1. "Accumulated contributions" means the total of all of the following:
 - a. The employee account fund balance accumulated under the prior plan as of June 30, 1977.
 - b. The vested portion of the employee's "vesting fund" accumulated under the prior plan as of June 30, 1977.
 - c. The member's mandatory contributions made after July 1, 1977.
 - d. The member's vested employer contributions made after January 1, 2000, pursuant to North Dakota Century Code section 54-52-11.1.
 - e. The interest on the sums determined under subdivisions a, b, c, and d, compounded annually at the rate of five percent from July 1, 1977, to June 30, 1981, six percent from July 1, 1981, through June 30, 1986, and one-half of one percent less than the actuarial interest assumption from July 1, 1986, to the member's ~~termination of employment~~ withdrawal from the plan or retirement.
 - f. The sum of any employee purchase or repurchase payments.
2. "Actuarial equivalent" means a benefit calculated to be of equal value to the benefit otherwise payable when computed on the basis of assumptions and methods adopted for this purpose by the board in a way that precludes employer discretion pursuant to Internal Revenue Code section 401(a)(25). Such assumptions and methods adopted by the board, and any table of adjustment factors established in accordance with the assumptions and methods, shall be incorporated herein by reference.
3. "Alternative retirement system" means the teachers' fund for retirement, the highway patrolmen's retirement system, and the teachers' insurance and annuity association of America.
4. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.
5. "Board" means the board of trustees for the public employees retirement system.
6. "Bonus" means cash compensation for services performed in addition to base salary excluding commission and shift differentials. Bonus does not include lump sum payments of sick leave provided under North Dakota Century Code section 54-06-14 or lump sum payments of annual leave or vacation pay.
- ~~67.~~ "Claim" means the right to receive a monthly retirement allowance, the receiving of a retirement allowance, or the receiving of a disability benefit.
- ~~78.~~ "Continuously employed" means any period of employment uninterrupted by voluntary or involuntary termination or discharge. A member who has taken a leave of absence approved by the member's employer, not to exceed a year unless approved by the executive director, and returns to employment shall be regarded as continuously employed for the period.
- ~~89.~~ "Contribution" means the payment into the fund as a percentage of the salary of a member.
- ~~910.~~ "Correctional officer" means a person who has completed a correctional officer course approved or certified by the North Dakota department of corrections and rehabilitation and is employed by a correctional facility as defined in North Dakota Century Code chapter 12-44.1.
- ~~4011.~~ "County judge" means a judge who was elected pursuant to North Dakota Century Code section 27-07.1-01 or an individual holding the position of county

judge, county justice, or judge of county court prior to the general election in 1982, who meets all the eligibility requirements established under North Dakota Century Code chapter 54-52.

- ~~44~~12. "Interruption of employment" is when an individual is inducted (enlists or is ordered or called to active duty into the armed forces of the United States) and leaves an employment position with a state agency or political subdivision, other than a temporary position. The individual must have left employment to enter active duty and must make application in accordance with the Uniformed Services Employment and Reemployment Rights Act.
- ~~42~~13. "Leave of absence" means the period of time up to one year for which an individual may be absent from covered employment without being terminated. At the executive director's discretion, the leave of absence may be extended not to exceed two years, or indefinitely if the leave of absence is due to interruption of employment.
- ~~43~~14. "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.
- ~~44~~15. "Normal retirement age", except for members of the national guard and law enforcement, means age sixty-five unless otherwise provided. For members of the national guard and law enforcement, normal retirement age means age fifty-five, unless otherwise provided.
- ~~45~~16. "Office" means the administrative office of the public employees retirement system.
- ~~46~~17. "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.
- ~~47~~18. "Pay status" means a member is receiving a retirement allowance from the fund.
- ~~48~~19. "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.
- ~~49~~20. "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.
- ~~20~~21. "Plan year" means the twelve consecutive months commencing July first of the calendar year and ending June thirtieth of the subsequent calendar year.
- ~~21~~22. "Prior plan" means the state employees' retirement system which existed from July 1, 1966, to June 30, 1977.
- ~~22~~23. "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.

- ~~23~~24. "Retiree" means an individual receiving a monthly retirement allowance pursuant to chapter 54-52.
- ~~24~~25. "Retirement allowance" means a reoccurring, periodic benefit from an eligible employer-sponsored retirement plan as approved by the board.
- ~~25~~26. "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.
- ~~26~~27. "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.
- ~~27~~28. "Termination of employment" for the purposes of determination for eligibility for benefit payments 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 or if reemployed by any covered employer prior to receiving a lump sum distribution of the member's account balance does not constitute termination of employment.
- ~~28~~29. "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; July 1, 2006; July 1, 2010; April 1, 2014; April 1, 2016;_____.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52

Section 71-02-02-01 is amended as follows:

71-02-02-01. Membership - General rule.

When an eligible employee becomes a member of the public employees retirement system, the following requirements apply:

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 member.
4. Upon taking a refund, future participation as a temporary member is waived.
5. A member may not ~~participate~~ contribute concurrently to the plan within any given month 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; July 1, 2006; April 1, 2016; _____.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-01, 54-52-02.9, 54-52-05

Section 71-02-03-02.5 is amended as follows:

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,~~ and actuarial factors on record and in effect with the North Dakota public employees retirement system in the month in which the member's written request is received ~~processed by the Office~~ must be used in the cost calculation. A member's written request shall be processed by the Office within 60 days of receipt. 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~~ is processed by the Office. 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 fifteenth day 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; July 1, 2006; _____.

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

Section 71-02-03-06 is amended as follows:

71-02-03-06. Conversion of sick leave.

To convert unused sick leave to service credit, the member must ~~notifiy~~submit an application to the office, in writing, no later than the end of the month in which the member is no longer eligible to accrue ~~of the amount of unused sick leave hours, unless otherwise approved by the executive director, to be converted and the~~ The member's employer must confirm the member's unused balance of accumulated sick leave as of the date the member terminates employment is no longer eligible to accrue sick leave hours. 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.

1. Aftertax payments may be accepted from the member as early as six months prior to termination when the member is no longer eligible to accrue sick leave hours, if the following requirements are met:
 - a. ~~A notice of termination or application for monthly benefits form is on file with~~employment change has been provided to the public employees retirement system.
 - b. 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.
 - c. ~~At termination, the~~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 by the fifteenth of the month following the month of the member's date of termination the member is no longer eligible to accrue sick leave hours.
2. The member's record must be updated with the additional service credit once payment is made in full ~~and the member has terminated employment.~~
3. Pretax rollover or transfer payments may be accepted from the member as early as sixty days prior to termination when the member is no longer eligible to accrue sick leave hours, if the following requirements are met:
 - a. ~~A notice of termination or application for monthly benefits form is on file with~~employment change has been provided to the public employees retirement system.
 - b. 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 the member is no longer eligible to accrue sick leave hours, 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 the public employees retirement system during the final months of employment.

- c. ~~At termination, the~~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~~the date the member is no longer eligible to accrue sick leave hours. 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~~ the member is no longer eligible to accrue sick leave hours will be added to the member's record. The member account balance will be credited with the full amount of funds from the rollover or transfer.
 - d. If an underpayment has occurred, then the remaining amount must be collected from the member by the fifteenth of the month following the month ~~of the member's date of termination~~ member is no longer eligible to accrue sick leave hours.
 - e. The retiree health credit portion must be paid as a personal aftertax payment.
4. The member's record must be updated with the additional service credit once payment is made ~~and the member has terminated employment~~ in full.

History: Effective June 1, 1996; amended effective April 1, 2002; May 1, 2004; July 1, 2006; April 1, 2008;_____.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-27

Section 71-02-04-03 is amended as follows:

71-02-04-03. Payment date - Retirement benefits.

Except for retirement options provided in section 71-02-04-02, a member's retirement benefit shall commence on the first day of the month which follows the member's eligibility for the benefit and which is at least thirty days after the date on which the member filed an application with the office. Notwithstanding any other provision in this article, benefits must begin no later than April first of the calendar year after the calendar year in which the member retires or attains the age of seventy and one-half years, whichever is later. If the member is employed but ineligible for active participation in the retirement plan, the member's benefits must begin no later than April first of the calendar year after the calendar year in which the member attains the age of seventy and one-half years. In the absence of a retirement application, benefits shall be paid based on a single life, or normal retirement for judges, payment option. Benefits must be directly deposited into a financial account identified by the member or sent to the member's last-known address. If the benefit checks are returned with no forwarding information, the benefits will remain in the fund, and will be distributed in a lump sum retroactive to the required beginning date upon location of the member. If two consecutive checks issued remain uncashed, future payments will be suspended until the member makes payment arrangements with the Office.

History: Amended effective November 1, 1990; July 1, 1994; July 1, 2000; July 1, 2010;_____.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-17

Section 71-02-04-04.1 is amended as follows:

71-02-04-04.1. Benefit modifications.

A member may elect as provided in section 71-02-04-02 to receive one of the following benefit modifications:

1. **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, and is not an option for a subsequent retirement. The payment is equal to twelve monthly payments determined under the single life annuity option. The member is permitted to choose one of the optional forms of payment as defined in section 71-02-04-04 for ongoing benefits. The ongoing benefits will be actuarially reduced to reflect the partial lump sum payment.
2. **Deferred normal retirement option.** The deferred normal retirement option will only be available to members who retire after reaching normal retirement date. This option is an irrevocable election ~~and~~ made at initial application for retirement, and is not an option for a subsequent retirement. The payment is in lieu of a lump sum equal to the amount of missed payments, without interest, retroactive to the member's normal retirement date. The member is permitted to choose one of the optional forms of payment as defined in section 71-02-04-04. The ongoing benefits will be actuarially increased to reflect the lump sum.
3. **Graduated benefit option.** The graduated benefit option will only be available to members who retire after reaching normal retirement date. This option is an irrevocable election ~~and~~ made at initial application for retirement, and is not an option for a subsequent retirement. The member is permitted to choose one of the optional forms of payment for ongoing benefits as defined in section 71-02-04-04. The ongoing benefits will be actuarially reduced to reflect the election of the graduated benefit option.

History: Effective July 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-17

Section 71-02-05-06 is amended as follows:

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

1. Application.

- a. If the member is unable or unwilling to file a public employees retirement system application for disability retirement, the member's legal representative may file the member's disability application.
- b. For the main system and the national guard and 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, 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 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 h 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 the 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.

3. Medical examination.

- a. The applicant for disability retirement shall provide the medical examination reports as requested by the medical consultant.

- b. The member is liable for any costs incurred by the member in undergoing medical examinations and completing and submitting the necessary medical examination reports, medical reports, and hospital reports necessary for initial determination of eligibility for benefits.
- c. If determined to be eligible for disability benefits, the member must be reimbursed for the cost of medical examinations specifically requested by the medical adviser and the executive director.

4. **Appeal.**

- a. If the applicant has terminated employment, the public employees retirement system shall notify the applicant in writing of the decision. If the applicant is determined not to be eligible for disability benefits, the public employees retirement system shall advise the applicant of the appeal procedure. If the applicant is determined eligible for disability benefits, benefits must be paid pursuant to subsection 5.
- b. If the applicant has not terminated employment, the applicant must be provided with a preliminary notification of the decision in writing. The preliminary notification remains in effect for a period not to exceed two hundred seventy days. If an applicant does not terminate employment within two hundred seventy days of the date of termination provided on the disability application, the application must be considered to be vacated but the applicant may reapply as provided in subsection 1.
- c. The applicant may appeal an adverse determination to the board by providing a written notice of appeal within thirty days of the date that the public employees retirement system mailed the decision.
- d. The board shall consider all appeals at regularly scheduled board meetings. The applicant must be notified of the time and date of the meeting and may attend and be represented by legal counsel. The executive director shall provide to the board for its consideration a case history brief that includes membership history, medical examination summary, and the plan administrator's conclusions and recommendations. The board shall make the determination for eligibility at the meeting unless additional evidence or information is needed. The discussion concerning disability applications must be confidential and closed to the general public.
- e. If the initial board decision is adverse to the applicant after exhausting the administrative procedure under subdivisions a and b, 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 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 appeal the final decision resulting from this procedure to the district court.

5. **Payment of annuity.** If awarded, the disability annuity is payable on, or retroactive to, the first day of the month following the member's termination from covered employment minus any early retirement benefits that have been paid.
6. **Redetermination and recertification.**
 - a. A disabled annuitant's eligibility must be recertified eighteen months after the date the first check is issued and thereafter as specified by the medical consultant unless proof of receipt of ongoing social security disability benefits is received. The executive director may waive the necessity for a recertification, based on the recommendation of the medical consultant or upon proof of receipt of ongoing social security disability benefits.
 - b. The public employees retirement system will send a recertification ~~form~~application and request for a statement of annual earnings by certified mail with return receipt to the disabled annuitant to be completed and sent back to the office. If completed recertification application has not been received by the recertification date set in the recertification request, benefits will be suspended effective the first of the month following that date. If the recertification application is not received within six months of the recertification date set in the recertification request unless an alternative date has been approved by the executive director, the member will no longer be eligible to receive disability benefits. Benefits suspended within six months of the recertification date set in the recertification request will be reinstated the first of the month following recertification by the medical consultant, or upon proof of receipt of ongoing social security disability benefits, unless an alternative date has been approved by the executive director. The regular accrued disability benefits will commence with a lump sum equal to the amount of missed payments, without interest, retroactive to the first day of the month benefits were suspended, unless otherwise approved by the ~~North Dakota public employees retirement system board~~Board.
 - c. The medical consultant may require the disabled annuitant to be reexamined by a doctor. The submission of medical reports by the annuitant, and the review of those reports by the board's medical consultant, may satisfy the reexamination requirement. Upon recertification, the disabled annuitant must be reimbursed for the cost of the required reexamination if deemed necessary by the medical consultant and the executive director.
 - d. When the member has not provided proof of receipt of ongoing social security disability benefits,~~The~~ the medical consultant will make the recertification decision. The executive director may require additional recertifications, if the facts warrant this action. The decision may be appealed to the board within ninety days of receiving the written recertification decision.
 - e. Benefit payments must be suspended immediately upon notice received from the medical consultant that the annuitant does not meet recertification requirements. The executive director shall notify the annuitant of the suspension of benefits by certified mail and shall reinstate benefits back to date of suspension if the annuitant is subsequently found to meet recertification requirements.
 - f. If it is determined that the disability annuitant was not eligible for benefits during any time period when benefits were provided, the executive

director may do all things necessary to recover the erroneously paid benefits.

History: Effective January 1, 1992; amended effective July 1, 1994; June 1, 1996; April 1, 2002; May 1, 2004; July 1, 2006; April 1, 2016;_____.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-17, 54-52-26

Section 71-02-06-01 is amended as follows:

71-02-06-01. Conditions for return.

1. The accumulated contributions of a member who terminates permanent employment:
 - a. Before accumulating three years of service credit and whose account balance is less than one thousand dollars shall be automatically refunded unless the member elects to remain in an inactive status.
 - b. After accumulating three years of service credit shall be refunded upon application filed with the executive director.
 - c. The termination date for purposes of processing an application for refund or rollover must be the last date for which a member receives salary except for a member who is on an approved leave of absence. For members who are paid salary in any month following actual separation from employment if the salary is received after the normal processing date, the termination date for purposes of processing the application must be the same date as the date that the last paycheck was issued as salary.
2. ~~Retirement contributions must be returned if a membership enrollment application form has not been filed with the office. Contributions will be returned until proper membership enrollment forms have been filed.~~

History: Amended effective November 1, 1990; June 1, 1996; July 1, 1998; July 1, 2000; May 1, 2004; July 1, 2010;_____.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-06, 54-52-17

Section 71-02-06-04 is amended as follows:

71-02-06-04. Adjustment for bonuses, profit sharing, and contributions paid in a month other than month earned.

Adjustments for the following must be made for all members:

1. Participating employers shall report bonuses or profit-sharing amounts paid when remitting the contribution associated with the bonus. Recruitment and retention bonuses under North Dakota Century Code section 54-06-31 are not eligible for consideration as salary and no contributions associated with those types of bonuses shall be submitted.
2. Bonuses or profit-sharing amounts paid by a participating employer other than pursuant to North Dakota Century Code section 54-06-31 will be retroactively prorated ~~equal to the actual compensation paid over the term of the intended bonus or profit-sharing~~ applicable prior twelve month period. Bonuses or profit-sharing amounts may not be submitted to the public employees retirement system for future months.
3. Upon receiving notice, of contributions received in a month other than the month earned, the Office will be assigned assign contributions to the appropriate month.

History: Effective June 1, 1993; amended effective June 1, 1996; July 1, 1998; July 1, 2000; April 1, 2002; April 1, 2008; _____.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-05, 54-52-06

Section 71-02-07-02 is amended as follows:

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, except as provided in subsection 1 of North Dakota Century Code section 54-52-05. Upon subsequent termination and retirement, the member is required to select the same benefit option as the option selected at initial retirement. The member's total benefit upon subsequent retirement shall equal the original benefit plus the calculated benefit for the return to work period. The member's benefit attributable to any return to work period shall be based upon service and earnings attributable to the return to work period only and be recalculated/calculated as follows:

1. The member's calculated benefit shall be based on the benefit provisions in effect at ~~final~~subsequent retirement and shall include the member's and spouse's ages, salary earned during the period of reemployment, ~~and total service credits earned before and after reemployment, and actuarial factors in effect at subsequent retirement~~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.
2. If a member dies during subsequent employment, the member's initial retirement benefit option election will apply and the date of death will be considered the subsequent retirement date. ~~The member's benefit shall be based on the benefit provisions in effect at final retirement and shall include the member's and spouse's ages, salary earned during the period of reemployment, and total service credits earned before and after reemployment, adjusted to take account of benefit payments received prior to reemployment.~~
3. If a member's spouse dies during the subsequent employment of the member, section 71-02-04-04 will apply to the member's initial and subsequent retirement benefit calculation.

History: Amended effective November 1, 1990; July 1, 1998; May 1, 2004; July 1, 2006; July 1, 2010.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-17

Section 71-02-11-04 is amended as follows:

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 no payments have been made, no credit will be awarded for benefit calculation purposes. 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. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date they became due, penalty and interest to be paid on delinquent contributions may be waived.

History: Effective September 1, 1991; amended effective May 1, 2004; July 1, 2006; July 1, 2010; April 1, 2012;_____.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-06, 54-52-17.4(5), 54-52-17.14; 38 USC 4318(a)(2)(A), 38 USC 4318(a)(2)(B), 38 USC 4318(b)(2); 20 CFR 1002.259-262

Section 71-03-03-05 is amended as follows:

71-03-03-05. Special enrollment for certain qualifying events.

An eligible employee, retiree, or surviving spouse who elects to take a periodic distribution from the defined contribution retirement plan or a monthly retirement benefit from the North Dakota public employees retirement system, North Dakota highway patrolmen's retirement system, the retirement system established by job service North Dakota, the teachers' fund for retirement, or teachers' insurance and annuity association of America - college retirement equities fund, or retirees who have accepted a retirement allowance from a participating political subdivision's retirement plan and provide verification of distribution are eligible for coverage with the health, dental, vision, or prescription drug insurance program.

1. The employee, retiree, or surviving spouse must submit application for coverage within thirty-one days from one of the following qualifying events:
 - a. The month in which the eligible employee or retiree turns age sixty-five or becomes eligible for medicare.
 - b. The month in which the eligible employee's or retiree's spouse turns age sixty-five or becomes eligible for medicare.
 - c. The month in which the eligible employee terminates employment.
 - d. The month in which the eligible retiree or surviving spouse receives the first monthly retirement benefit from one of the eligible retirement systems outlined above.
 - e. The month in which an eligible employee or retiree who is covered through a spouse's plan becomes ineligible for the spouse's plan due to divorce, death, loss of employment, reduction in hours or other events which may cause loss of coverage as determined by the board.
 - f. The month in which the eligible employee or retiree is no longer eligible for employer-sponsored insurance, including coverage provided under the Consolidated Omnibus Budget Reconciliation Act.
2. Coverage will become effective on the first day of the month following the month in which the qualifying event occurred or under subdivision a or b of subsection 1 may become effective the month in which eligibility for medicare occurs. If an application is not submitted within thirty-one days of a qualifying event, the eligible individual must be considered to have waived coverage and may not be enrolled unless the individual meets the criteria of another qualifying event. Upon a showing of good cause, the executive director may waive the thirty-one day application requirement.
3. Other individuals eligible for the health, dental, vision, or prescription drug insurance plan include a surviving spouse who is not receiving a qualified monthly retirement benefit from one of the eligible retirement systems outlined above, but who was a covered dependent on the eligible retiree's health, dental, vision, or prescription drug insurance plan at the time of the eligible retiree's death, if there is no lapse in coverage.
4. Individuals not eligible for the health, dental, vision, or prescription drug insurance plan include:
 - a. A former employee who received a refund of the employee's retirement account, including individuals in the defined contribution plan who take a cash withdrawal of the employee's account, roll their account into another qualified plan, or use the moneys in their account to purchase an annuity.
 - b. A nonspouse beneficiary (eligible for Consolidated Omnibus Budget Reconciliation Act).

- c. A deferred retiree or surviving spouse between the time in which the retiree or surviving spouse's eligibility for the Consolidated Omnibus Budget Reconciliation Act (if eligible) ends and the month in which the eligible retiree or surviving spouse receives the first monthly retirement benefit from one of the eligible retirement systems.
- d. A formerly deferred retiree who received a refund of the retiree's retirement account.
- e. A surviving spouse of a nonvested employee eligible for the Consolidated Omnibus Budget Reconciliation Act.
- f. A surviving spouse of a former employee who received a refund of the employee's retirement account.
- g. A former participating member of the defined contribution retirement program who would not qualify for one of the retirement dates set forth in subsection 3 of North Dakota Century Code section 54-52-17 if that employee was a member of the defined benefit retirement plan, unless eligible under the Consolidated Omnibus Budget Reconciliation Act, and then only for the required duration of eligibility under the Act.
- h. For the purposes of the medical and prescription drug plan, employees who first retire after July 1, 2015, and are not eligible for medicare upon their retirement and completion of any period of eligibility under the Consolidated Omnibus Budget Reconciliation Act, until such time as they or their spouse become eligible for medicare.

History: Effective October 1, 1986; amended effective November 1, 1990; July 1, 1994; June 1, 1996; July 1, 1998; July 1, 2000; May 1, 2004; April 1, 2012; April 1, 2016;_____.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-02, 54-52.1-03, 54-52.1-03.1; Pub. L. 99-272; 100 Stat. 222; 26 USC 162 et seq.

Section 71-03-05-02 is amended as follows:

71-03-05-02. Retiree billing.

Retirees receiving a monthly retirement benefit from the board in a sufficient amount to pay premium will have the total monthly premium deducted from their benefit check. ~~Retirees not paying a premium from their benefit check will receive a monthly billing.~~

History: Effective October 1, 1986; amended effective November 1, 1990; April 1, 2008; _____.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

CHAPTER 71-06-01

RETIREE HEALTH INSURANCE CREDIT

Section 71-06-01-01	Eligibility for Retiree Health Insurance Credit Applied to Premiums for Annuitants and Surviving Spouses Under the North Dakota Public Employees Retirement System, the North Dakota Highway Patrolmen's Retirement System, the Retired Judges Under North Dakota Century Code Chapter 27-17, Annuitants of the Job Service Retirement Program, and Former Participating Members of the Defined Contribution Retirement Plan Receiving Periodic Distributions [Repealed]
71-06-01-02	Calculation of Retiree Health Insurance Credit
71-06-01-03	For Retirees Receiving More Than One Benefit Entitled to Retiree Health Insurance Credit
71-06-01-04	Employer Paid Health Premiums [Repealed]
71-06-01-05	Member Contributions
71-06-01-06	Erroneous Crediting of the Retiree Health Insurance Credit [Repealed]
71-06-01-06.1	Retroactive Payment of the Retiree Health Insurance Credit [Repealed]
71-06-01-07	Optional Benefits
71-06-01-08	Vesting in Retiree Health Credit for Members of the Defined Contribution Retirement Plan
<u>71-06-01-09</u>	<u>Payment – Retiree Health Insurance Credit Benefits</u>

Section 71-06-01-09 is created as follows:

71-06-01-09. Payment - Retiree Health Insurance Credit Benefits.

Eligible retiree health insurance credit benefits that have been substantiated by the Office must be directly deposited into a financial account identified by the member or sent to the member's last-known address. If the benefit checks are returned with no forwarding information, the benefits will remain in the fund, and will be distributed in a lump sum upon location of the member. If two consecutive checks issued remain uncashed, future payments will be suspended until the member makes payment arrangements with the Office.

History: Effective _____.

General Authority: NDCC 54-52.1-03.2(b)

Law Implemented: NDCC 54-52.1-03.3