

Title 71 Retirement Board

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CHAPTER 71-02-01 DEFINITIONS

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 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.
7. "Claim" means the right to receive a monthly retirement allowance, the receiving of a retirement allowance, or the receiving of a disability benefit.
8. "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.
9. "Contribution" means the payment into the fund as a percentage of the salary of a member.
10. ~~"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.~~

44. 10. "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.

42. 11. "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.

43. 12. "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.

44. 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.

45. 14. "Normal retirement age", except for members of the national guard plan, the bureau of criminal investigation plan, and law enforcement the public safety plans, means age sixty-five unless otherwise provided. For members of the national guard plan, the plan bureau of criminal investigation plan, and the law enforcement public safety plans, normal retirement age means age fifty-five, unless otherwise provided.

46. 15. "Office" means the administrative office of the public employees retirement system.

47. 16. "Overtime" as used in ~~subsection 23 of~~ North Dakota Century Code section 54-52-01 means, for employees other than firefighters and peace officers, any hours worked over the regularly scheduled work week and not to exceed forty hours in a week which are paid either at the regular hourly rate or time and one-half. For firefighters and peace officers, overtime means hours worked over the regularly scheduled work period which are paid either at the regular hourly rate or time and one-half.

48. 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.

~~19-~~ 18. "Pay status" means a member is receiving a retirement allowance from the fund.

~~20-~~ 19. "Permanent and total disability" for members of the main retirement system, ~~and the national guard/law enforcement retirement plan, the bureau of criminal investigation plan, and the public safety plans~~ 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.~~

~~21-~~ 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.

~~22-~~ 21. "Plan year" means the twelve consecutive months commencing July first of the calendar year and ending June thirtieth of the subsequent calendar year.

~~23-~~ 22. "Prior plan" means the state employees' retirement system which existed from July 1, 1966, to June 30, 1977.

~~24-~~ 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.

~~25-~~ 24. "Retiree" means an individual receiving a monthly retirement allowance pursuant to chapter 54-52.

~~26-~~ 25. "Retirement allowance" means a reoccurring, periodic benefit from an eligible employer-sponsored retirement plan as approved by the board.

~~27-~~ 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.

~~28-~~ 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.

~~29-~~ 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.

~~30-~~ 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; July 1, 2018; April 1, 2020; _____, 2026.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52

CHAPTER 71-02-03 SERVICE CREDIT

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 while the employee is employed by a participating employer but for no longer than a fifteen-year time period.
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 following the month of the member's termination of employment date or the month of member's termination of participation in an eligible plan with a participating employer.
5. Payments are due by the fifteenth of the month to be credited for the month.
6. Payments must be greater or equal to fifty dollars per month, large enough to pay the current interest plus a portion of principal, and an amount necessary to complete the payment contract within the fifteen-year time period.

History: Effective November 1, 1990; amended effective July 1, 1994; June 1, 1996; May 1, 2004; July 1, 2006; July 1, 2010; _____, 2026.

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 submit an application to the office, no later than the end of the month in which the member is no longer eligible to accrue the sick leave hours, unless otherwise approved by the executive director. The member's employer must confirm the member's unused balance of accumulated sick leave as of the date the member is no longer eligible to accrue sick leave hours. For a member transferring from one participating employer to another participating employer without terminating eligible employment, the public employees retirement system shall 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 when the member is no longer eligible to accrue sick leave hours, if the following requirements are met:
 - a. A notice of 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. 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 the date of calculation. 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 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.~~

- ~~3.~~ 2. Pretax rollover or transfer payments may be accepted from the member as early as sixty days prior to when the member is no longer eligible to accrue sick leave hours, if the following requirements are met:
- a. A notice of 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 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. 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 the date of calculation. 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 date the member is no longer eligible to accrue sick leave hours must be added to the member's record. The member account balance must 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 the 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.~~ 3. The member's record must be updated with the additional service credit once payment is made in full.

History: Effective June 1, 1996; amended effective April 1, 2002; May 1, 2004; July 1, 2006; April 1, 2008; July 1, 2018; January 1, 2025; _____, 2026.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-27

CHAPTER 71-02-04 RETIREMENT BENEFITS

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

1. ~~Except for a national guard security officer or firefighter or a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, t~~The early retirement benefit for members of the main plan first enrolled prior to December 31, 2015January 1, 2016, and members of the national guard plan, the bureau of criminal investigation plan, the public safety plans, and the judge's retirement plan 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 of the member's early retirement benefit effective date to account for benefit payments beginning before the normal retirement date.
2. ~~For a national guard security officer or firefighter or a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, 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 of the member's early retirement benefit effective date.~~

History: Amended effective September 1, 1982; June 1, 1996; April 1, 2002; May 1, 2004; July 1, 2006; July 1, 2010; April 1, 2016; _____, 2026.

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

Law Implemented: NDCC 54-52-17

71-02-04-09.1. Dual membership limitations.

The following limitations apply when a member elects an option under subsection 1 of section 71-02-04-09.

1. Eligible service credit may be used for vesting purposes and determining when the dual member may begin drawing normal retirement benefits. A member may begin drawing retirement benefits from one fund and use the same years, and any additional years, for reaching retirement from the alternate fund if the service credit is earned at different times.
2. If a dual member elects to receive retirement benefits as provided in subsection 1 of section 71-02-04-09, the final average salary, service credit, and member's age used to calculate the benefit that is applicable at the time retirement benefits begin may not be adjusted after the benefit effective date.

3. The salary used in calculating the retirement benefit must be provided in writing by the alternate retirement system. Months not employed are excluded for the purpose of computing the final average salary. If a dual member works less than thirty-six months at retirement, the final average salary is the average salary for total months of employment.
4. Any defined contribution plan membership under section 54-52.6 is not eligible for dual membership service and vesting rights in the defined benefit plan under section 54-52.

History: Effective June 1, 1996; amended effective May 1, 2004; April 1, 2012; April 1, 2016; , 2026.

General Authority: NDCC 54-52-04, 54-52-17, 54-52-17.2

Law Implemented: NDCC 54-52-17, 54-52-17.2

CHAPTER 71-02-05 DISABILITY

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~~ all members except members of the judge's 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 member's ability to be engaged in any gainful occupation for which the ~~person~~ member 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~~ judge'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~~ consultant, 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~~ consultant 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~~ consultant 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~~ consultant 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 c and b d, 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 28-32-1542 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 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 a 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~~ a completed 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 board.
- c. The medical consultant may require the disabled annuitant to be reexamined by a doctor. The submission of medical reports by the disabled 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~~ disabled annuitant has not provided proof of receipt of ongoing social security disability benefits, 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 disabled annuitant does not meet recertification requirements. The executive director shall notify the disabled 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~~ disabled 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; July 1, 2018; _____, 2026.

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

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

71-02-05-07. Optional benefits.

For the main system, ~~and the~~ the national guard plan, the bureau of criminal investigation plan, and law enforcement retirement the public safety 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.

1. **One hundred percent joint and survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under ~~subdivision e of subsection 3 of North Dakota Century Code section 54-52-17~~ and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, provided the beneficiary is still living and has supplied a marriage certificate and the member's death certificate. Benefits terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member or, in the event of divorce, the option must be canceled and the member's benefit must be returned to the single life amount. Payment of the single life amount must commence on the first day of the month

following the spouse's death providing written notification of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.

2. **Fifty percent joint and survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under ~~subdivision e of subsection 3 of North Dakota Century Code section 54-52-17~~ and after the member's death one-half the rate of the reduced benefit will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, providing the beneficiary has supplied a marriage certificate and death certificate and is still living. Benefits terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member or, in the event of divorce, the option must be canceled and the member's benefit must be returned to the single life amount. Payment of the single life amount must commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.
3. **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 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; July 1, 2006; April 1, 2008; April 1, 2012; April 1, 2016; _____, 2026.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-06.4, 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.

1. **One hundred percent joint survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under ~~subdivision e of subsection 3 of North Dakota Century Code section 54-52-17~~ and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death,

provided the beneficiary is still living and has supplied a marriage certificate and the member's death certificate. Benefits terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member or, in the event of divorce, the option must be canceled and the member's benefit must be returned to the normal retirement amount. Payment of the normal retirement amount must commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.

2. **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 twenty-year or ten-year certain feature, as designated by the member.

History: Effective May 1, 2004; amended effective July 1, 2006; April 1, 2008; July 1, 2010; April 1, 2012; _____, 2026.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17

CHAPTER 71-02-06 CONTRIBUTIONS

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

The accumulated contributions of a member who terminates permanent employment prior to retirement:

1. ~~Before accumulating three years of service credit and whose account balance is less than one thousand dollars s~~Shall be automatically refunded as follows unless the member elects to remain in an inactive status within thirty days after the termination date:
 - a. For all members except members of the judge's retirement plan and members of the bureau of criminal investigation plan hired after July 31, 2023, if the member has less than three years of service credit and an account balance less than one thousand dollars;
 - b. For members of the judge's retirement plan, if the member has less than five years of service credit and an account balance less than one thousand dollars; and
 - c. For members of the bureau of criminal investigation plan hired after July 31, 2023, if the member has less than ten years of service credit and an account balance less than one thousand dollars.

2. For members not eligible for an automatic refund, After accumulating three years of service credit shall be refunded upon application filed with the executive director.
3. 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.

History: Amended effective November 1, 1990; June 1, 1996; July 1, 1998; July 1, 2000; May 1, 2004; July 1, 2010; July 1, 2018; _____, 2026.

General Authority: NDCC 54-52-04

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

71-02-06-06. Employer payment of employee contributions.

1. A written election submitted under subsection 3 of North Dakota Century Code section 54-52-05 shall be reported to the board a minimum of thirty-one days prior to the effective date.
2. An employer electing to pay employee monthly salary contributions under North Dakota Century Code section 54-52-05 or 54-52.6-09 may not discriminate in its contributions to eligible participating employees within the same class of employees for plan enrollment ~~plan under North Dakota Century Code section 54-52-05.~~

History: Effective July 1, 1994; amended effective May 1, 2004; April 1, 2022; _____ 2026.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-05

CHAPTER 71-02-08 PARTICIPATION BY GOVERNMENTAL UNITS

71-02-08-02. Withdrawal.

Any political subdivision may discontinue participation in the fund if the following requirements are met:

1. The political subdivision must provide the board with a copy of a resolution adopted by the governing authority authorizing the termination of participation in the fund.

2. Upon receiving a copy of the written resolution, an actuarial study must be done by the plan's actuary to determine the accrued benefit of all ~~vested~~ employees minus allocated assets from the date of participation. The interest assumption used must be two hundred basis points less than the plan's interest assumption used for funding purposes. The withdrawal liability must include an administrative expense assessment of five percent.
3. Any costs incurred by the fund, resulting from a political subdivision ceasing participation, including the actuarial fee study and the withdrawal liability, must be assessed against the political subdivision and paid in full before a political subdivision terminates its participation.
4. All employees of a political subdivision that has terminated participation in the fund must not be eligible for future benefit accruals or improvements granted to employees or former employees of participating governmental units after the date the employer's participation ceases.
5. As of the date the employer's participation ceases, all members, including members who are not otherwise vested in accordance with subsection 5 of North Dakota Century Code 54-52-17, shall be fully vested in benefits accrued up to the date the employer's participation ceases to the extent funded.
6. Notwithstanding the vesting requirements of North Dakota Century Code sections 54-52-11.1 or 54-52-17, all members have an employee who is not vested at the time an employer ceases participation has the option of taking a refund or rollover of the employee's member's accumulated contributions, including vested employer contributions, plus interest or deferred retirement.

History: Effective September 1, 1982; amended effective June 1, 1996; April 1, 2019; 2026.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-02.1

71-02-08-05. Merger of eligible employer groups.

If a merger between two or more eligible employer groups occurs, the following requirements apply:

1. Written notification must be provided to the office no later than sixty days before the merger is final.
2. When two or more employer groups merge into one, and all do not presently participate in the public employees retirement system, the units merging must decide upon one of the following:

- a. The participating employer or employers may elect to cease participation as of the date of the merger, subject to payment of any actuarial liabilities accrued. An actuarial study must be conducted at the cost of the exiting employer upon providing the public employees retirement system with written notice of the employer's election to cease participation.
- b. Subject to executing a revised participation agreement, eligible employees who have not previously ~~participated~~ been eligible for participation in any retirement plan of the employer shall be given the ~~opportunity~~ choice to participate based upon provisions of North Dakota Century Code section 54-52-02.15 or waive participation effective the date of the merger. Any person hired in an eligible position after the consolidation date must participate or any other employee mandated by the employer must participate.

History: Effective June 1, 1996; amended effective _____, 2026.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 15-10-17, 54-52-02.1

ARTICLE 71-03
UNIFORM GROUP INSURANCE PROGRAM

Chapter	
71-03-01	Bid Process
71-03-02	Health Maintenance Organization [Repealed]
71-03-03	Employee Responsibilities
71-03-04	Employer Responsibilities
71-03-05	Board Responsibilities
71-03-06	Participating Political Subdivisions Employee Responsibilities
71-03-07	Participation of Political Subdivisions Employer Responsibilities

CHAPTER 71-03-03
EMPLOYEE RESPONSIBILITIES

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

An eligible employee, retiree, or surviving spouse who ~~elects to take~~ has accepted 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 judges' retirement system, 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~~ When the eligible employee or retiree turns age sixty-five or becomes eligible for Medicare.
 - b. ~~The month in which~~ When the eligible employee's or retiree's spouse turns age sixty-five or becomes eligible for Medicare.
 - c. ~~The month in which~~ When the eligible employee terminates employment.
 - d. ~~The month in which~~ When 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~~ When an eligible employee or retiree who is covered through ~~another spouse's~~ employer sponsored 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~~ When the eligible employee or retiree is no longer eligible for employer-sponsored group insurance, including continuation coverage provided under the Consolidated Omnibus Budget Reconciliation Act of 1985.

g. When the eligible employee, retiree, or surviving spouse gets married (in such case, an employee, retiree, or surviving spouse who previously waived coverage shall enroll for coverage at the time the employee's, retiree's, or surviving spouse's spouse is enrolled).

h. When the eligible employee, retiree, or surviving spouse obtains a new dependent as a result of receiving legal guardianship or receiving a court order to provide health coverage (in such case, an employee, retiree, or surviving spouse who previously waived coverage shall enroll for coverage at the same time that the employee, retiree, or surviving spouse's eligible dependent is enrolled).

i. When the eligible employee, retiree, or surviving spouse obtains a new dependent as a result of birth, adoption, or placement for adoption (in such case, an employee, retiree, or surviving spouse who previously waived coverage shall enroll for coverage at the same time that the employee, retiree, or surviving spouse's eligible dependent is enrolled).

2. Coverage will become effective on the first day of the month following the month in which the qualifying event occurred ~~or~~ except that under subdivision a or b of subsection 1 coverage may become effective the month in which eligibility for Medicare occurs and that under subdivision i of subsection 1 coverage will become effective on the first of the month in which the event occurred. 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 continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985).
 - c. A deferred retiree or surviving spouse between the time in which the retiree or surviving spouse's eligibility for continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (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 continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985.
 - 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 for continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, 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 for continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, 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; July 1, 2018; _____, 2026.

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.

CHAPTER 71-03-04 EMPLOYER RESPONSIBILITIES

71-03-04-01. Employer contribution.

1. Each agency shall pay to the board the full amount of the employer contribution by the fifteenth of each month. The agency will verify the number of eligible employees and the level of coverage for each. An employee is eligible for an employer contribution for the month following the month of employment. If an eligible employee terminates employment prior to the effective date of coverage, no employer contribution is required. The employer contribution ends the month following the month of termination of employment. When an employee transfers from a permanent employee position to a temporary employee position without a termination of employment, the employer contribution ends the month in which the permanent employment ends. When an employee transfers from one state agency to another, the new agency is responsible for the payment of the premium for the first of the month following employment.
2. As used in this section, "termination of employment" means a severance of employment by not being on the payroll of a participating employer for a minimum of one month. Approved leave of absence does not constitute termination of employment.

History: Effective October 1, 1986; amended effective November 1, 1990; July 1, 2010; _____, 2026.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-06

CHAPTER 71-03-05
BOARD RESPONSIBILITIES

71-03-05-10. Determining amount of premium overpayments and underpayments.

1. The amount of the health premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred, or July of the earliest contract period still open, whichever is more recent.
2. The amount of the life premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred, or the first day of the first month of the earliest contract period still open, whichever is more recent.
3. The amount of the dental premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred, or the first day of the first month of the earliest contract period still open, whichever is more recent.
4. The amount of the vision premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred, or the first day of the first month of the earliest contract period still open, whichever is more recent.
5. The amount of the employee assistance premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred, or the first day of the first month of the earliest contract period still open, whichever is more recent.

History: Effective April 1, 2002; amended effective April 1, 2008; April 1, 2014; _____, 2026.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

CHAPTER 71-03-07
PARTICIPATION OF POLITICAL SUBDIVISIONS EMPLOYER RESPONSIBILITIES

71-03-07-01. Employer contribution.

1. Each employer shall pay to the board the full monthly premium amount for each eligible employee enrolled in the group insurance plan by the fifteenth of each month. The employer must verify the number of eligible employees and the level of coverage for each. An employee is eligible for an employer contribution for the month following the month of employment. If an eligible employee terminates employment prior to the effective date of coverage, no employer contribution is required. The employer contribution ends the month following the month of termination of employment. When an employee transfers from a permanent employee position to a temporary employee position without a termination of employment, the employer contribution ends the month in which the permanent employment ends. When an employee transfers from one participating employer to another, the new employer is responsible for the payment of the premium for the first of the month following employment.
2. As used in this section, "termination of employment" means a severance of employment by not being on the payroll of a participating employer for a minimum of one month. Approved leave of absence does not constitute termination of employment.

History: Effective June 1, 1996; amended effective July 1, 2010; April 1, 2022-: _____, 2026.

General Authority: NDCC ~~54-52-04, 54-52.1-03.1~~ NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

ARTICLE 71-04
DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES

Chapter	
71-04-01	Definitions
71-04-02	Plan Design
71-04-03	Employee Responsibilities
71-04-04	Retirement Board Responsibilities
71-04-05	Employer Responsibilities
71-04-06	Provider Responsibilities
71-04-07	Benefits [Repealed]
71-04-08	Qualified Domestic Relations Orders
71-04-09	Uniform Services Employment and Reemployment Rights Act

CHAPTER 71-04-05
EMPLOYER RESPONSIBILITIES

71-04-05-02. Payroll deductions.

The employer shall authorize employee payroll deductions only after receiving notification from the office. The participant agreement must indicate the date the payroll deduction is to start, the provider, and the contribution amount. Unless otherwise agreed, Ppayroll deductions must be remitted to the office within ten days after each payroll period. Along with each payment, the employer must provide the office 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; amended effective July 1, 2006; April 1, 2014; April 1, 2016; _____, 2026.

General Authority: NDCC 28-32-02, 54-52-03.2

Law Implemented: NDCC 54-52.2-02

**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**

71-05-01-01. Definitions.

As used in North Dakota Century Code chapter 39-03.1 and this article:

1. "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.
2. "Covered employment" means employment with the North Dakota highway patrol.
3. "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.
4. "Normal retirement age" means age fifty-five except as otherwise provided.
5. "Office" means the administrative office of the public employees retirement system.
6. "Overtime" as used in ~~subsection 23 of~~ North Dakota Century Code section 39-03.1-01 means any hours worked over an employee's regularly scheduled work period. Whether paid at the regular hourly rate or one and one-half times the regular rate, overtime is to be excluded as reportable retirement contributions.

7. "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.
8. "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.
9. "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.

History: Effective November 1, 1990; amended effective October 1, 1991; June 1, 1992; July 1, 2006; April 1, 2016; April 1, 2020- : _____, 2026.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1

CHAPTER 71-05-02 DISABILITY

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

1. Application.

- a. Application for disability benefits must be made within one year from the last date of covered employment on the form provided by the plan administrator.
- b. If the member is unable or unwilling to file an application, the member's employer or legal representative may file the member's disability application.
- c. 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.

2. Medical examination.

- a. The applicant for disability retirement must provide the plan administrator with medical examination reports.
- b. An initial medical examination should be completed by the member's attending or family physician on the medical examination form provided by the plan administrator. If deemed necessary by the board's medical consultant, an additional examination must be completed by a specialist in the disability involved. Available medical or hospital reports may be accepted in lieu of a medical examination report if deemed acceptable by the medical consultant.
- c. 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.

3. Medical consultant.

- a. The board will retain a medical doctor to act as its consultant on disability retirement applications.
- b. The medical consultant shall review all medical information provided by the applicant.
- c. The medical consultant will be responsible to advise the plan administrator of the medical diagnosis and whether the condition is a permanent and total disability.

4. Decision and appeal.

- a. The plan administrator shall consider applications for disability benefits and shall make a written decision whether an applicant is entitled to benefits. The decision must be mailed to the applicant's address of record.
- b. 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 plan administrator mailed the decision.
- c. 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.

- d. If the applicant has terminated employment, the plan administrator shall notify the applicant in writing of the decision. If the applicant is determined not to be eligible for disability benefits, the plan administrator 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.
 - e. 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.
 - f. If the initial board decision is adverse to the applicant, after exhausting the administrative procedure under subdivisions b and c, 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 or adopt its own findings of fact, conclusions of law and order. The applicant may under North Dakota Century Code section 28-32-4542 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. Redetermination and recertification. a. b. c. d. e. f. 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. The plan administrator may waive the necessity for a recertification based on the recommendation of the medical consultant. The plan administrator will send a recertification form 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 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. Benefits will be reinstated the first of the month following recertification by the medical consultant. The regular accrued disability benefits will commence with a lump sum equal to the amount of missed payments, without interest, retroactive to the first of the month that benefits were suspended, unless otherwise approved by the North Dakota public employees retirement system board. 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 up to four hundred dollars for the cost of the required reexamination if deemed necessary by the medical consultant and the plan administrator. The medical consultant will make the recertification decision. The executive director may require additional recertifications. The decision may be appealed to the board within ninety days of receiving the written recertification decision. Benefit payments must be suspended immediately upon notice received from the medical consultant that the annuitant does not meet recertification requirements. The plan administrator shall notify the annuitant of the suspension of benefits by certified mail and shall reinstate benefits back to the date of suspension if the annuitant is subsequently found to meet recertification requirements. 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 November 1, 1990; amended effective June 1, 1992; June 1, 1996; May 1, 2004.

General Authority: NDCC 39-03.1-06, 39-03.1-11

Law Implemented: NDCC 39-03.1-11

CHAPTER 71-05-04

SERVICE CREDIT

71-05-04-03. Repurchase of service credit and purchase of additional service credit.

To purchase additional credit or repurchase past service, a contributor must notify the public employees retirement system, in writing, of the service for which the person wishes to receive credit. In addition to the written request, the following information must be submitted, if applicable:

1. Documentation of military service by submitting a DD214 or NGB22.

2. Certification of approval by the member's employer of any leave of absence and length of that leave.
3. Verification by the former employer of previous North Dakota or out-of-state public service, or service with the federal government.
4. Statement from employee or former employer that service credit being applied for does not qualify for retirement benefits under another retirement system.

History: Effective October 1, 1991; amended effective June 1, 1996; April 1, 2002; May 1, 2004; _____, 2026.

General Authority: NDCC 39-03.1-06, 39-03.1-10.1, 39-03.1-14.1

Law Implemented: NDCC 39-03.1-08.42, 39-03.1-10.1, 39-03.1-14.1

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~~ processed by the office must be used in the cost calculation. A member's written request must be processed by the office within sixty days of receipt. 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 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 39-03.1-11.
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 39-03.1-11, 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 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 fifteenth day of the month following the month of termination.

History: Effective June 1, 1996; amended effective May 1, 2004; July 1, 2006; _____, 2026.

General Authority: NDCC 39-03.1-06, 39-03.1-10.1, 39-03.1-14.1

Law Implemented: NDCC 39-03.1-08.42, 39-03.1-10.1, 39-03.1-14.1

71-05-04-06. Crediting purchased or repurchased service.

1. For each month the system receives a payment toward a purchase contract, the member will earn a proportion of service credit.
2. Member acceptance of a service purchase contract extinguishes all pending service purchase cost estimates, excluding purchase of unused sick leave.
3. Service purchase contracts set up on a payment plan and only partially paid will have the remaining unpaid portion of service credit included when preparing the new service purchase cost calculation.

History: Effective October 1, 1991; amended effective June 1, 1996; May 1, 2004; July 1, 2010; _____, 2026.

General Authority: NDCC 39-03.1-06, 39-03.1-10.1, 39-03.1-14.1

Law Implemented: NDCC 39-03.1-08.42, 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 shall submit an application to the office of the amount of unused sick leave to be converted no later than the end of the month in which the member terminates employment, unless otherwise approved by the executive director, 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. For a member transferring from one participating employer to another participating employer without terminating eligible employment, the public employees retirement system shall 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. 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 if the following requirements are met:
 - a. A notice of termination or application for monthly benefits form is on file with 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 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 the date of calculation.
 - d. 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 confirmed with HP administration any underpayment must be collected from the member by the fifteenth of the month following the month of the member's date of termination.
 - e. The member's record must be updated with the additional service credit once payment is made in full and the member has terminated employment.

2. Pretax rollover or transfer payments may be accepted from the member as early as sixty days prior to termination if the following requirements are met:
 - a. A notice of termination or application for monthly benefits form is on file with 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, 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 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 the date of calculation. 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 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.
 - e. The retiree health credit portion must be paid as a personal aftertax payment.
3. —f. The member's record must be updated with the additional service credit once payment is made in full and the member has terminated employment.

History: Effective June 1, 1996; amended effective April 1, 2002; May 1, 2004; July 1, 2006; April 1, 2008; January 1, 2025; _____, 2026.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-30

**CHAPTER 71-05-05
NORMAL AND EARLY RETIREMENT BENEFITS**

71-05-05-08. Retirement - Dual membership.

1. If a member elects to begin drawing monthly benefits while continuing to participate in the public employees retirement system, teachers' fund for retirement, or the teachers' insurance and annuity association college retirement equities fund, the provisions of section 71-02-04-09 must apply.
2. Any defined contribution plan membership under section 54-52.6 is not eligible for dual membership service and vesting rights in the highway patrol retirement plan under 39-03.1.

History: Effective October 1, 1991; amended effective June 1, 1996; May 1, 2004; _____, 2026.

General Authority: NDCC 39-03.1-14.1(1)(c)

Law Implemented: NDCC 39-03.1-14.1

ARTICLE 71-06
RETIREE HEALTH INSURANCE CREDIT

Chapter
71-06-01 Retiree Health Insurance Credit

CHAPTER 71-06-01
RETIREE HEALTH INSURANCE CREDIT

**71-06-01-11. Erroneous payment of benefits – Overpayments,
Underpayments, and Appeals.**

1. Section 71-02-04-10 applies to overpayments of the retiree health insurance credit.
2. Section 71-02-04-11 applies to underpayments of the retiree health insurance credit.
3. A person not satisfied with repayment arrangements related to the retiree health insurance credit may appeal as provided in section 71-02-04-12.

History: Effective _____, 2026.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52.1-03.3

ARTICLE 71-08
DEFINED CONTRIBUTION RETIREMENT PLAN

Chapter	
71-08-01	Election and Transfer
71-08-02	Membership in Defined Contribution Retirement Plan
71-08-03	Disability
71-08-04	Qualified Domestic Relations Orders
71-08-05	Review Procedure
71-08-06	Uniformed Services Employment and Reemployment Rights Act
71-08-07	Additional Contributions
71-08-08	Temporary Employee Participation
71-08-09	Return to Service - Retired Member
71-08-10	Permanent Employee Participation
71-08-11	Contributions
<u>71-08-12</u>	<u>Participation by Political Subdivisions</u>

CHAPTER 71-08-02
MEMBERSHIP IN DEFINED CONTRIBUTION RETIREMENT PLAN

71-08-02-01. Membership of individuals who become employees covered under the judges' retirement plan, the highway patrol retirement plan, the teachers' fund for retirement plan, or the alternate retirement plan of the state board of higher education.

1. If a member of the defined contribution retirement plan begins employment in a position covered under the judges' retirement plan, the national guard plan, the bureau of criminal investigation plan, the public safety plans, the highway patrol retirement plan, the teachers' fund for retirement plan, or the alternate retirement plan of the state board of higher education, 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.

2. Any membership service and vesting obtained the judges' retirement plan, the main plan, the national guard plan, the bureau of criminal investigation plan, the public safety plans, the highway patrol retirement plan, the teachers' fund for retirement plan, or the alternate retirement plan of the state board of higher education, may not be used toward credited service and vesting in the defined contribution plan under section 54-52.6.

History: Effective July 1, 2000; amended effective April 1, 2002; July 1, 2006; April 1, 2020; _____, 2026.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 54-52.6-01(3)

CHAPTER 71-08-03 DISABILITY

71-08-03-01. Disability distribution.

The board will allow distribution of the participating member's vested account balance if the board determines the participating member has become totally and permanently disabled using the procedure provided in section 71-02-05-06. If approved, the disabled member has the same distribution options as provided in subdivisions a(1) and e (a)(3) of subsection 3 of North Dakota Century Code section 54-52.6-13. However, if the member chooses the periodic distribution option, the member will only be allowed to receive distributions for as long as the disability continues and the member submits the necessary documentation and undergoes medical testing required by the board, or for as long as the member participates in a rehabilitation program required by the board, or both. The board shall use the redetermination and recertification procedures provided in section 71-02-05-06 to determine whether the member remains disabled. If the board determines that a member no longer meets the eligibility definition, the board shall discontinue the disability retirement benefit.

History: Effective July 1, 2000; amended effective _____, 2026.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 54-52.6-14

CHAPTER 71-08-10 PERMANENT EMPLOYEE PARTICIPATION

71-08-10-01. Permanent employee participation.

1. Under this chapter "eligible employee" means a permanent employee who:
 - a. Meets all the eligibility requirements set by North Dakota Century Code chapter 54-52;

- b. Is at least eighteen years of age;
 - c. Becomes a participating member after December 31, 2024; and
 - d. Is not eligible to participate in the ~~law enforcement~~ public safety plans, judges' plan, highway patrol plan, teachers' fund for retirement plan, or alternative retirement program established under subsection 6 of North Dakota Century Code chapter 15-10-17 for employees of the board of higher education or state institutions under the jurisdiction of the board of higher education.
- 2. Effective January 1, 2025, the public employees retirement system defined benefit main plan maintained for employees is closed to new eligible employees. However, an employee who first becomes a participating or deferred member under North Dakota Century Code chapter 54-52 before January 1, 2025, remains in the defined benefit retirement plan under North Dakota Century Code chapter 54-52, regardless of being rehired after December 31, 2024.
 - 3. Except as otherwise provided under this section and section 71-08-02-03, effective January 1, 2025, an eligible employee who begins employment with an employer as defined under subsection 6 of North Dakota Century Code chapter 54-52-01 shall participate in the defined contribution retirement plan under North Dakota Century Code chapter 54-52.6 as provided under North Dakota Century Code chapter 54-52.6-02.1.
 - 4. This section does not impact an employee to the extent the employee is a participating member in one or more of the following enumerated plans: ~~law enforcement~~ public safety plans, judges' plan, highway patrol plan, teachers' fund for retirement plan, or alternative retirement program established under subsection 6 of North Dakota Century Code chapter 15-10-17 for employees of the board of higher education or state institutions under the jurisdiction of the board of higher education.
 - a. A participating or deferred member in the defined contribution retirement plan under North Dakota Century Code chapter 54-52.6 who becomes eligible to participate in a plan enumerated under subsection 4 shall cease participation in the defined contribution retirement plan under North Dakota Century Code chapter 54-52.6 and commence participation in the retirement plan enumerated under subsection 4.
 - b. Unless subsection 2 applies, a participating member of a retirement plan enumerated under subsection 4 who ceases participation in that plan and becomes an eligible employee under the defined contribution retirement plan under North Dakota Century Code chapter 54-52.6 shall participate in

the defined contribution retirement plan under North Dakota Century Code chapter 54-52.6.

5. An eligible employee must be enrolled in the plan within the first thirty days of employment.

History: Effective January 1, 2025; amended effective July 31, 2025; _____, 2026.

General Authority: NDCC 54-52-02.15, 54-52-04

Law Implemented: NDCC 54-52-02.15, 54-52.6-02, 54-52.6-09

CHAPTER 71-08-11 CONTRIBUTIONS

71-08-11-03. Employer payment of employee contributions.

1. A written election submitted under subsection 3 of North Dakota Century Code section 54-52.6-09 must be reported to the board a minimum of thirty-one days prior to the effective date.
2. An employer electing to pay employee monthly salary contributions under North Dakota Century Code section 54-52-05 or 54-52.6-09 may not discriminate in its contributions to eligible employees within the same class of employees for plan enrollment plan under North Dakota Century Code section 54-52.6-09.

History: Effective January 1, 2025; amended effective _____, 2026.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52.6-09

71-08-11-08. Forfeiture of rights upon distribution.

Distribution of accumulated account balance shall cancel all vesting service credit accumulated prior to the distribution and shall extinguish the right to any retiree benefits provided by North Dakota Century Code chapter 54-52.6.

History: Effective _____, 2026.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52.6-13

CHAPTER 71-08-12 PARTICIPATION BY POLITICAL SUBDIVISIONS

71-08-12-01. Participation.

A political subdivision may choose to extend the benefits of the defined contribution plan to its employees by agreeing to abide by the defined contribution plan and rules developed by the retirement board, executing an administrative agreement, and

submitting a copy of a signed resolution adopted by the governing authority electing to appoint the retirement board to administer its defined contribution retirement plan.

History: Effective _____, 2026.

General Authority: 54-52-04

Law Implemented: NDCC 54-52-02.1

71-08-12-02. Withdrawal.

1. A political subdivision may discontinue participation in the defined contribution retirement plan by providing the board a written resolution adopted by the governing authority authorizing the termination of participation in the defined contribution retirement plan. The resolution must be provided to the board at least 60 days prior to the effective date of discontinuation and discontinuation must always occur on the first working day of a month.
2. The employees in the defined contribution retirement plan must be considered to have terminated from the plan as of the date the employer terminates participation in the plan. Employee deferrals and employer contributions must stop, and benefits must be made payable. All employees shall be 100% vested in the employee and employer contributions as of the effective date of discontinuation.

History: Effective _____, 2026.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-02.1, 54-52-02.15

71-08-12-03. Merger of eligible employer groups.

If a merger between two or more eligible employer groups occurs, the following requirements apply:

1. Written notification must be provided to the office no later than sixty days before the merger is final.
2. When two or more employer groups merge into one, and all do not presently participate in the public employees retirement system, the units merging must decide upon one of the following:
 - a. The participating employer or employers may elect to cease participation in the defined contribution plan as of the date of the merger.
 - b. Subject to executing a revised participation agreement, eligible employees who have not previously been eligible for participation in any retirement plan of the employer shall be given the choice to participate

or waive participation effective the date of the merger. Any person hired in an eligible position after the consolidation date must participate or any other employee mandated by the employer must participate.

History: Effective _____, 2026.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-02.1