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Proposed Legislation

[Arizona Revised Statutes Annotated](#)

[Title 38. Public Officers and Employees \(Refs & Annos\)](#)

[Chapter 5. Social Security and Retirement](#)

[Article 4. Public Safety Personnel Retirement System \(Refs & Annos\)](#)

A.R.S. § 38-842

§ 38-842. Definitions

Effective: August 9, 2017

[Currentness](#)

In this article, unless the context otherwise requires:

1. “Accidental disability” means a physical or mental condition that the local board finds totally and permanently prevents an employee from performing a reasonable range of duties within the employee’s job classification and that was incurred in the performance of the employee’s duty.
2. “Accumulated contributions” means, for each member, the sum of the amount of the member’s aggregate contributions made to the fund and the amount, if any, attributable to the employee’s contributions before the member’s effective date under another public retirement system, other than the federal social security act, and transferred to the fund minus the benefits paid to or on behalf of the member.
3. “Actuarial equivalent” means equality in present value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest assumptions adopted by the board.
4. “Alternate payee” means the spouse or former spouse of a participant as designated in a domestic relations order.
5. “Alternate payee’s portion” means benefits that are payable to an alternate payee pursuant to a plan approved domestic relations order.
6. “Annuitant” means a person who is receiving a benefit pursuant to [§ 38-846.01](#).

7. “Average monthly benefit compensation” means the result obtained by dividing the total compensation paid to an employee during a considered period by the number of months, including fractional months, in which such compensation was received. For an employee who becomes a member of the system:

(a) Before January 1, 2012, the considered period shall be the three consecutive years within the last twenty completed years of credited service that yield the highest average.

(b) On or after January 1, 2012 and before July 1, 2017, the considered period is the five consecutive years within the last twenty completed years of credited service that yield the highest average. In the computation under this paragraph, a period of nonpaid or partially paid industrial leave shall be considered based on the compensation the employee would have received in the employee’s job classification if the employee was not on industrial leave.

(c) On or after July 1, 2017, the considered period is the five consecutive years within the last fifteen completed years of credited service that yield the highest average. In the computation under this paragraph, a period of nonpaid or partially paid industrial leave shall be considered based on the compensation the employee would have received in the employee’s job classification if the employee was not on industrial leave.

8. “Board” means the board of trustees of the system, who are the persons appointed to invest and operate the fund.

9. “Catastrophic disability” means a physical and not a psychological condition that the local board determines prevents the employee from totally and permanently engaging in any gainful employment and that results from a physical injury incurred in the performance of the employee’s duty.

10. “Certified peace officer” means a peace officer certified by the Arizona peace officer standards and training board.

11. “Claimant” means any member or beneficiary who files an application for benefits pursuant to this article.

12. “Compensation” means, for the purpose of computing retirement benefits, base salary, overtime pay, shift differential pay, military differential wage pay, compensatory time used by an employee in lieu of overtime not otherwise paid by an employer and holiday pay paid to an employee by the employer for the employee’s performance of services in an eligible group on a regular monthly, semimonthly or biweekly payroll basis and longevity pay paid to an employee at least every six months for which contributions are made to the system pursuant to § 38-843, subsection D. Compensation does not include, for the purpose of computing retirement benefits, payment for unused sick leave, payment in lieu of vacation, payment for unused compensatory time or payment for any fringe benefits. In addition, compensation does not include, for the purpose of computing retirement benefits, payments made directly or indirectly by the employer to the employee for work performed for a third party on a contracted basis or any other type of agreement under which the third party pays or reimburses the employer for the work performed by the employee for that third party, except for third party contracts between public agencies for law enforcement, criminal, traffic and crime suppression activities training or fire, wildfire, emergency medical or emergency management activities or where the employer supervises the employee’s performance of law enforcement, criminal, traffic and crime suppression activities training or fire, wildfire, emergency medical or emergency management

activities. For the purposes of this paragraph, “base salary” means the amount of compensation each employee is regularly paid for personal services rendered to an employer before the addition of any extra monies, including overtime pay, shift differential pay, holiday pay, longevity pay, fringe benefit pay and similar extra payments.

13. “Credited service” means the member’s total period of service before the member’s effective date of participation, plus those compensated periods of the member’s service thereafter for which the member made contributions to the fund.

14. “Cure period” means the ninety-day period in which a participant or alternate payee may submit an amended domestic relations order and request a determination, calculated from the time the system issues a determination finding that a previously submitted domestic relations order did not qualify as a plan approved domestic relations order.

15. “Depository” means a bank in which all monies of the system are deposited and held and from which all expenditures for benefits, expenses and investments are disbursed.

16. “Determination” means a written document that indicates to a participant and alternate payee whether a domestic relations order qualifies as a plan approved domestic relations order.

17. “Determination period” means the ninety-day period in which the system must review a domestic relations order that is submitted by a participant or alternate payee to determine whether the domestic relations order qualifies as a plan approved domestic relations order, calculated from the time the system mails a notice of receipt to the participant and alternate payee.

18. “Direct rollover” means a payment by the system to an eligible retirement plan that is specified by the distributee.

19. “Distributee” means a member, a member’s surviving spouse or a member’s spouse or former spouse who is the alternate payee under a plan approved domestic relations order.

20. “Domestic relations order” means an order of a court of this state that is made pursuant to the domestic relations laws of this state and that creates or recognizes the existence of an alternate payee’s right to, or assigns to an alternate payee the right to, receive a portion of the benefits payable to a participant.

21. “Effective date of participation” means July 1, 1968, except with respect to employers and their covered employees whose contributions to the fund commence thereafter, the effective date of their participation in the system is as specified in the applicable joinder agreement.

22. “Effective date of vesting” means the date a member’s rights to benefits vest pursuant to [§ 38-844.01](#).

23. “Eligible child” means an unmarried child of a deceased member or retired member who meets one of the following qualifications:

(a) Is under eighteen years of age.

(b) Is at least eighteen years of age and under twenty-three years of age only during any period that the child is a full-time student.

(c) Is under a disability that began before the child attained twenty-three years of age and remains a dependent of the surviving spouse or guardian.

24. “Eligible groups” means only the following who are regularly assigned to hazardous duty:

(a) Municipal police officers who are certified peace officers.

(b) Municipal firefighters.

(c) Paid full-time firefighters employed directly by a fire district organized pursuant to § 48-803 or 48-804 or a joint powers authority pursuant to § 48-805.01 with three or more full-time firefighters, but not including firefighters employed by a fire district pursuant to a contract with a corporation.

(d) State highway patrol officers who are certified peace officers.

(e) State firefighters.

(f) County sheriffs and deputies who are certified peace officers.

(g) Game and fish wardens who are certified peace officers.

(h) Police officers who are certified peace officers and firefighters of a nonprofit corporation operating a public airport

pursuant to §§ 28-8423 and 28-8424. A police officer shall be designated pursuant to § 28-8426 to aid and supplement state and local law enforcement agencies and a firefighter's sole duty shall be to perform firefighting services, including services required by federal regulations.

- (i) Police officers who are certified peace officers and who are appointed by the Arizona board of regents.
- (j) Police officers who are certified peace officers and who are appointed by a community college district governing board.
- (k) State attorney general investigators who are certified peace officers.
- (l) County attorney investigators who are certified peace officers.
- (m) Police officers who are certified peace officers and who are employed by an Indian reservation police agency.
- (n) Firefighters who are employed by an Indian reservation firefighting agency.
- (o) Department of liquor licenses and control investigators who are certified peace officers.
- (p) Arizona department of agriculture officers who are certified peace officers.
- (q) Arizona state parks board rangers and managers who are certified peace officers.
- (r) County park rangers who are certified peace officers.

25. "Eligible retirement plan" means any of the following that accepts a distributee's eligible rollover distribution:

- (a) An individual retirement account described in [section 408\(a\) of the internal revenue code](#).¹
- (b) An individual retirement annuity described in [section 408\(b\) of the internal revenue code](#).

- (c) An annuity plan described in [section 403\(a\) of the internal revenue code](#).
 - (d) A qualified trust described in [section 401\(a\) of the internal revenue code](#).
 - (e) An annuity contract described in [section 403\(b\) of the internal revenue code](#).
 - (f) An eligible deferred compensation plan described in [section 457\(b\) of the internal revenue code](#) that is maintained by a state, a political subdivision of a state or any agency or instrumentality of a state or a political subdivision of a state and that agrees to separately account for amounts transferred into the eligible deferred compensation plan from this plan.
26. “Eligible rollover distribution” means a payment to a distributee, but does not include any of the following:
- (a) Any distribution that is one of a series of substantially equal periodic payments made not less frequently than annually for the life or life expectancy of the member or the joint lives or joint life expectancies of the member and the member’s beneficiary or for a specified period of ten years or more.
 - (b) Any distribution to the extent the distribution is required under [section 401\(a\)\(9\) of the internal revenue code](#).
 - (c) The portion of any distribution that is not includable in gross income.
 - (d) Any distribution made to satisfy the requirements of [section 415 of the internal revenue code](#).
 - (e) Hardship distributions.
 - (f) Similar items designated by the commissioner of the United States internal revenue service in revenue rulings, notices and other guidance published in the internal revenue bulletin.
27. “Employee” means any person who is employed by a participating employer and who is a member of an eligible group but does not include any persons compensated on a contractual or fee basis. If an eligible group requires certified peace officer status or firefighter certification and at the option of the local board, employee may include a person who is training to become a certified peace officer or firefighter.

28. “Employers” means:

(a) Cities contributing to the fire fighters’ relief and pension fund as provided in §§ 9-951 through 9-971 or statutes amended thereby and antecedent thereto, as of June 30, 1968 on behalf of their full-time paid firefighters.

(b) Cities contributing under the state police pension laws as provided in §§ 9-911 through 9-934 or statutes amended thereby and antecedent thereto, as of June 30, 1968 on behalf of their municipal policemen.

(c) The state highway patrol covered under the state highway patrol retirement system.

(d) The state, or any political subdivision of this state, including towns, cities, fire districts, joint powers authorities, counties and nonprofit corporations operating public airports pursuant to §§ 28-8423 and 28-8424, that has elected to participate in the system on behalf of an eligible group of public safety personnel pursuant to a joinder agreement entered into after July 1, 1968.

(e) Indian tribes that have elected to participate in the system on behalf of an eligible group of public safety personnel pursuant to a joinder agreement entered into after July 1, 1968.

29. “Fund” means the public safety personnel retirement fund, which is the fund established to receive and invest contributions accumulated under the system and from which benefits are paid.

30. “Local board” means the retirement board of the employer, who are the persons appointed to administer the system as it applies to their members in the system.

31. “Member”:

(a) Means any full-time employee who meets all of the following qualifications:

(i) Who is either a paid municipal police officer, a paid firefighter, a law enforcement officer who is employed by this state including the director thereof, a state firefighter who is primarily assigned to firefighting duties, a firefighter or police officer of a nonprofit corporation operating a public airport pursuant to §§ 28-8423 and 28-8424, all ranks designated by the Arizona law enforcement merit system council, a state attorney general investigator who is a certified peace officer, a county attorney investigator who is a certified peace officer, a department of liquor licenses and control investigator who is a certified peace officer, an Arizona department of agriculture officer who is a certified peace officer, an Arizona state parks board ranger or manager who is a certified peace officer, a county park ranger who is a certified peace officer, a person who is a certified peace officer and who is employed by an Indian reservation police agency, a firefighter who is employed by an Indian

reservation firefighting agency or an employee included in a group designated as eligible employees under a joinder agreement entered into by their employer after July 1, 1968 and who is or was regularly assigned to hazardous duty or, beginning retroactively to January 1, 2009, who is a police chief or a fire chief.

(ii) Who, on or after the employee's effective date of participation, is receiving compensation for personal services rendered to an employer or would be receiving compensation except for an authorized leave of absence.

(iii) Whose customary employment is at least forty hours per week or, for those employees who customarily work fluctuating workweeks, whose customary employment averages at least forty hours per week.

(iv) Who is engaged to work for more than six months in a calendar year.

(v) Who, if economic conditions exist, is required to take furlough days or reduce the hours of the employee's normal workweek below forty hours but not less than thirty hours per pay cycle, and maintain the employee's active member status within the system as long as the hour change does not extend beyond twelve consecutive months.

(vi) Who has not attained age sixty-five before the employee's effective date of participation or who was over age sixty-five with twenty-five years or more of service prior to the employee's effective date of participation.

(b) Does not include an employee who is hired on or after July 1, 2017, who makes the irrevocable election to participate solely in the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter² and who was not an active, an inactive or a retired member of the system or a member of the system with a disability on June 30, 2017.

32. "Normal retirement date" means:

(a) For an employee who becomes a member of the system before January 1, 2012, the first day of the calendar month immediately following the employee's completion of twenty years of service or the employee's sixty-second birthday and the employee's completion of fifteen years of service.

(b) For an employee who becomes a member of the system on or after January 1, 2012 and before July 1, 2017, the first day of the calendar month immediately following the employee's completion of either twenty-five years of service or fifteen years of credited service if the employee is at least fifty-two and one-half years of age.

(c) For an employee who becomes a member of the system on or after July 1, 2017, the first day of the calendar month immediately following the employee's completion of fifteen years of credited service if the employee is at least fifty-five

years of age.

33. “Notice of receipt” means a written document that is issued by the system to a participant and alternate payee and that states that the system has received a domestic relations order and a request for a determination that the domestic relations order is a plan approved domestic relations order.

34. “Ordinary disability” means a physical condition that the local board determines will prevent an employee totally and permanently from performing a reasonable range of duties within the employee’s department or a mental condition that the local board determines will prevent an employee totally and permanently from engaging in any substantial gainful activity.

35. “Participant” means a member who is subject to a domestic relations order.

36. “Participant’s portion” means benefits that are payable to a participant pursuant to a plan approved domestic relations order.

37. “Pension” means a series of monthly amounts that are payable to a person who is entitled to receive benefits under the plan but does not include an annuity that is payable pursuant to [§ 38-846.01](#).

38. “Personal representative” means the personal representative of a deceased alternate payee.

39. “Physician” means a physician who is licensed pursuant to title 32, chapter 13 or 17.³

40. “Plan approved domestic relations order” means a domestic relations order that the system approves as meeting all the requirements for a plan approved domestic relations order as otherwise prescribed in this article.

41. “Plan year” or “fiscal year” means the period beginning on July 1 of any year and ending on June 30 of the next succeeding year.

42. “Regularly assigned to hazardous duty” means regularly assigned to duties of the type normally expected of municipal police officers, municipal or state firefighters, eligible fire district firefighters, state highway patrol officers, county sheriffs and deputies, fish and game wardens, firefighters and police officers of a nonprofit corporation operating a public airport pursuant to [§§ 28-8423](#) and [28-8424](#), police officers who are appointed by the Arizona board of regents or a community college district governing board, state attorney general investigators who are certified peace officers, county attorney investigators who are certified peace officers, department of liquor licenses and control investigators who are certified peace officers, Arizona department of agriculture officers who are certified peace officers, Arizona state parks board rangers and managers who are certified peace officers, county park rangers who are certified peace officers, police officers who are certified peace officers and who are employed by an Indian reservation police agency or firefighters who are employed by an

Indian reservation firefighting agency. Those individuals who are assigned solely to support duties such as secretaries, stenographers, clerical personnel, clerks, cooks, maintenance personnel, mechanics and dispatchers are not assigned to hazardous duty regardless of their position classification title. Since the normal duties of those jobs described in this paragraph are constantly changing, questions as to whether a person is or was previously regularly assigned to hazardous duty shall be resolved by the local board on a case-by-case basis. Resolutions by local boards are subject to rehearing and appeal.

43. “Retirement” or “retired” means termination of employment after a member has fulfilled all requirements for a pension, for an employee who becomes a member of the system on or after January 1, 2012 and before July 1, 2017, attains the age and service requirements for a normal retirement date or for an employee who becomes a member of the system on or after July 1, 2017 attains the age and credited service requirements for a normal retirement date. Retirement shall be considered as commencing on the first day of the month immediately following a member’s last day of employment or authorized leave of absence, if later.

44. “Segregated funds” means the amount of benefits that would currently be payable to an alternate payee pursuant to a domestic relations order under review by the system, or a domestic relations order submitted to the system that failed to qualify as a plan approved domestic relations order, if the domestic relations order were determined to be a plan approved domestic relations order.

45. “Service” means the last period of continuous employment of an employee by the employers before the employee’s retirement, except that if such period includes employment during which the employee would not have qualified as a member had the system then been effective, such as employment as a volunteer firefighter, then only twenty-five percent of such noncovered employment shall be considered as service. Any absence that is authorized by an employer shall not be considered as interrupting continuity of employment if the employee returns within the period of authorized absence. Transfers between employers also shall not be considered as interrupting continuity of employment. Any period during which a member is receiving sick leave payments or a temporary disability pension shall be considered as service. Notwithstanding any other provision of this paragraph, any period during which a person was employed as a full-time paid firefighter for a corporation that contracted with an employer to provide firefighting services on behalf of the employer shall be considered a service if the employer has elected at its option to treat part or all of the period the firefighter worked for the company as a service in its applicable joinder agreement. Any reference in this system to the number of years of service of an employee shall be deemed to include fractional portions of a year.

46. “State” means the state of Arizona, including any department, office, board, commission, agency or other instrumentality of the state.

47. “System” means the public safety personnel retirement system established by this article.

48. “Temporary disability” means a physical or mental condition that the local board finds totally and temporarily prevents an employee from performing a reasonable range of duties within the employee’s department and that was incurred in the performance of the employee’s duty.

Credits

Added by Laws 1968, Ch. 85, § 1. Amended by Laws 1971, Ch. 74, § 2; Laws 1971, Ch. 143, § 1, eff. July 1, 1972; Laws 1971, Ch. 174, § 3; Laws 1972, Ch. 135, § 1; Laws 1973, Ch. 97, § 3; Laws 1974, Ch. 170, § 2; Laws 1977, Ch. 60, § 1; Laws 1977, Ch. 86, § 1; Laws 1980, Ch. 146, § 1; Laws 1982, Ch. 266, § 1; Laws 1983, Ch. 300, § 4; Laws 1986, Ch. 88, § 1; Laws 1988, Ch. 19, § 3, eff. March 31, 1988; Laws 1988, Ch. 267, § 1; Laws 1989, Ch. 197, § 1; Laws 1990, Ch. 325, § 1; Laws 1990, Ch. 411, § 2; Laws 1991, Ch. 156, § 1; Laws 1992, Ch. 228, § 1; Laws 1992, Ch. 341, § 1; Laws 1994, Ch. 130, § 1; Laws 1995, Ch. 32, § 15, eff. March 30, 1995; Laws 1995, Ch. 205, § 3; Laws 1996, Ch. 351, § 22; Laws 1997, Ch. 239, § 7; Laws 1997, Ch. 239, § 8, eff. Oct. 1, 1997; Laws 1999, Ch. 50, § 3; Laws 1999, Ch. 327, § 21; Laws 2000, Ch. 329, § 1; Laws 2001, Ch. 353, § 2; Laws 2002, Ch. 335, § 2; Laws 2004, Ch. 325, § 1; Laws 2006, Ch. 264, § 6; Laws 2007, Ch. 87, § 3; Laws 2008, Ch. 227, § 1; Laws 2009, Ch. 35, § 10; Laws 2009, 3rd S.S., Ch. 6, § 15; Laws 2010, Ch. 118, § 3; Laws 2010, Ch. 200, § 30, eff. April 28, 2010; Laws 2011, Ch. 27, § 25; Laws 2011, Ch. 347, § 2; Laws 2011, Ch. 357, § 24; Laws 2012, Ch. 66, § 4, eff. Aug. 2, 2012, retroactively effective to July 20, 2011; Laws 2013, Ch. 203, § 2; Laws 2015, Ch. 64, § 1; Laws 2016, Ch. 2, § 3; Laws 2017, Ch. 266, § 1.

Footnotes

¹ Internal Revenue Code sections may be found in Title 26 of U.S.C.A.

² Section 38-865 et seq.

³ Section 32-1401 et seq. or 32-1800 et seq.

A. R. S. § 38-842, AZ ST § 38-842

Current through legislation effective June 7, 2019 of the First Regular Session of the Fifty-Fourth Legislature (2019).

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Notes Of Decisions (40)

Absence

Military service should be considered an absence authorized by an employer, and, if the employee returns upon termination of military service, employee's absence should not be considered as interrupting his continuity of employment. Op.Atty.Gen. No. 74-33-L.

Accumulated contributions

Where public safety personnel retirement system member terminated his employment after termination of his temporary disability pension and applied for refund of his accumulated contributions, benefits paid would have to be apportioned among the sources of contribution to the benefits, and, therefore, member's pro rata share of the disability benefits paid to the member should be offset against the member's accumulated contributions so that the refund to the terminating member will be an amount equal to his contributions minus his pro rata share of disability benefits received. Op.Atty.Gen. No. 180-211, [1980 WL 28092](#).

Hazardous duty

Game and fish department employee whose 20 years of employment included time spent away from being regularly assigned to hazardous duty as a game and fish warden would not have accumulated the years of service required to be eligible for normal retirement under the public safety personnel retirement system. Op.Atty.Gen. No. 74-26.

Election of benefits

Former paragraphs of statute defining an "employee" entitled to a retirement pension as any person who is a member of a group of public safety personnel regularly assigned to hazardous duty, and defining a "member" as any employee, excluding stenographic and clerical personnel, being paid full time as a municipal policeman, fireman, or law enforcement officer employed by state, is ambiguous and, when considered with § 38-842 paragraphs of a mandatory statute, must be construed as also excluding cooks and bottle washers as not being regularly assigned to hazardous duty. [Fund Manager, Public Safety Personnel Retirement System v. Pima County Sheriff Public Safety Personnel Retirement System Bd. \(App. Div.2 1985\) 145 Ariz. 47, 699 P.2d 921](#). [Public Employment 385](#)

Individual who, though sworn in by sheriff as a deputy sheriff, worked exclusively during entire time of her employment as a cook, whose duties included supervision of kitchen help at county jail, was not an "employee" under paragraphs of former statute and was not entitled to a retirement pension under Public Safety Personnel Retirement System inasmuch as she never carried a weapon, went out on a patrol, made an arrest, conducted a criminal investigation, nor engaged in any kind of hazardous duty whatsoever. [Fund Manager, Public Safety Personnel Retirement System v. Pima County Sheriff Public Safety Personnel Retirement System Bd. \(App. Div.2 1985\) 145 Ariz. 47, 699 P.2d 921](#). [Public Employment 385](#)

Public employee who, prior to his retirement, has worked under several systems, including public safety personnel retirement system, has right to elect benefits under one specific system under which he has worked, and all his benefits and his widow's benefits would then be computed under the specific system elected. Op.Atty.Gen. No. 69-8.

Members

Members - In general

A person not regularly assigned to hazardous duty is not eligible for membership in the public safety personnel retirement system. Op.Atty.Gen. No. 179-228, [1979 WL 23295](#).

An employee who has reached the age of 65 prior to his effective date, may not be considered for membership in the public safety personnel retirement system under a joinder agreement, even though he has sufficient years of service to qualify retirement on said effective date. Op.Atty.Gen. No. 70-3-L.

Campus security guards, members

Salary that full-time state university police officer received for part-time teaching at university was not part of his system-eligible compensation for purposes of determining his retirement benefits under the Public Safety Personnel Retirement System, of which university was a member, as teaching salary was not generated from officer's regular assignment to hazardous duty. [Loftus v. Arizona State University Public Safety Personnel Retirement System Local Bd.](#) (App. Div.1 2011) 227 Ariz. 216, 255 P.3d 1020, review denied. Education 1122(1); Public Employment 395

Before local board of university regents could include its campus security guards in state public safety personnel retirement system, board was required to determine that guards in question were regularly assigned to hazardous duties and were within one of expressly enumerated groups of eligible employees. [Arizona Bd. of Regents for and on Behalf of University of Arizona v. State ex rel. State of Ariz. Public Safety Retirement Fund Manager Adm'r](#) (App. Div.1 1989) 160 Ariz. 150, 771 P.2d 880. Education 1122(1); Public Employment 385

Members - Campus security guards

Salary that full-time state university police officer received for part-time teaching at university was not part of his system-eligible compensation for purposes of determining his retirement benefits under the Public Safety Personnel Retirement System, of which university was a member, as teaching salary was not generated from officer's regular assignment to hazardous duty. [Loftus v. Arizona State University Public Safety Personnel Retirement System Local Bd.](#) (App. Div.1 2011) 227 Ariz. 216, 255 P.3d 1020, review denied. Education 1122(1); Public Employment 395

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Drug control district special agents, members

Drug control district special agents who joined the public safety personnel retirement system prior to August 27, 1977 were entitled to participate in the system, but whether post-August 27, 1977 district employees should continue in the system was a question left to the local board's judgment. Op.Atty.Gen. No. 180-191, [1980 WL 28072](#).

Arizona drug control district special agents who joined the public safety personnel retirement system between 1975 and 1977 would be entitled to participate in the system, and the appropriate local retirement board would have authority to determine whether district employees who joined the system between 1977 and 1980 were eligible to participate in the system or should have been covered under the state retirement plan, but district employees hired after July 31, 1980, would not be entitled to participate in the system. Op.Atty.Gen. No. 180-191, [1980 WL 28072](#).

Members - Drug control district special agents

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Fire fighters, members

Fire fighters employed by fire districts may not be members of public safety personnel retirement system merely on account of such employment. Op.Atty.Gen. No. I85-035, [1985 WL 70360](#).

Members - Fire fighters

Fire fighters employed by fire districts may not be members of public safety personnel retirement system merely on account of such employment. Op.Atty.Gen. No. I85-035, [1985 WL 70360](#).

Game and fish department, members

Game and fish commission could reasonably find that position of director of game and fish department is eligible for public safety personnel retirement system membership, and commission should execute an amendment to the game and fish joinder agreement with fund manager of the system to include position of game and fish department director in the system. Op.Atty.Gen. No. I82-006, [1982 WL 43817](#).

Members - Game and fish department

Game and fish commission could reasonably find that position of director of game and fish department is eligible for public safety personnel retirement system membership, and commission should execute an amendment to the game and fish joinder agreement with fund manager of the system to include position of game and fish department director in the system. Op.Atty.Gen. No. I82-006, [1982 WL 43817](#).

Indian tribes, members

Under statutes relating to public safety personnel retirement system, (§ 38-841 and this section) the only employers who may elect to extend system coverage to their employees are the state or its political subdivisions; therefore, the fund manager may not enter into a joinder agreement with the Navajo tribe to provide system coverage to the tribe's employees, since the Navajo tribe is not a political subdivision of the state. Op.Atty.Gen. No. I82-131, [1982 WL 43872](#).

Members - Indian tribes

Under statutes relating to public safety personnel retirement system, (§ 38-841 and this section) the only employers who may elect to extend system coverage to their employees are the state or its political subdivisions; therefore, the fund manager may not enter into a joinder agreement with the Navajo tribe to provide system coverage to the tribe's employees, since the Navajo tribe is not a political subdivision of the state. Op.Atty.Gen. No. 182-131, [1982 WL 43872](#).

Police pension act

Member who elected to be retired under Police Pension Act of 1937, § 16-1808, could receive a monthly pension benefit during period of reemployment by state or a political subdivision thereof. Op.Atty.Gen. No. 69-26.

Member who elected to retire under 1952 amendment to Police Pension Act of 1937, § 16-1808, would not be entitled to receive a monthly pension during period he was employed by state, a county, or a municipality. Op.Atty.Gen. No. 69-26.

Member who elected to retire under 1964 amendment to Police Pension Act of 1937, § 16-1808, would be entitled to receive a monthly pension benefit unless he were reemployed by municipality which had formerly employed him. Op.Atty.Gen. No. 69-26.

Reemployment, generally

Public safety personnel retirement system retiree, who was reemployed as superintendent of the department of liquor licenses and control, was not reemployed by an "employer" within the public safety personnel retirement system and, therefore was not subject to the limitations of § 38-849 providing that a nondisabled retired member should not receive pension payments and contribution should not be made on his account when reemployed by an "employer". Op.Atty.Gen. No. 177-237, [1977 WL 22161](#).

Fund manager of public safety personnel retirement system must immediately inform local board under which benefits originated of any benefit payments which the fund manager thinks are being improperly continued during the reemployment of a retired member such notification will afford local board the opportunity to correct the matter, and fund manager could then proceed to recover any wrongfully paid benefits. Op.Atty.Gen. No. 177-237, [1977 WL 22161](#).

Reinstatement

Department of Public Safety communications technician, who was formerly participating member of Public Safety Personnel Retirement System, but whose position was subsequently deleted from positions covered by system, and who quit but was reemployed within two years in former position, was entitled to reinstatement as member in system without transferral of his reinstated service credits to State Retirement System. [Norton v. Arizona Dept. of Public Safety Local Retirement Bd. \(1986\) 150 Ariz. 303, 723 P.2d 652](#). [Public Employment 400](#); [States 64.1\(1\)](#)

Posthumously reinstated highway patrolman's widow would be entitled to survivor's death benefits pursuant to statute relating to survivor's benefits. Op.Atty.Gen. No. 178-64, [1978 WL 18704](#).

Service

Service - In general

A person employed by the Game and Fish Department in a position other than a fish and game warden is not an

“employee” under the Public Safety Personnel Retirement System; therefore, this section, defining the term “service,” does not apply to employment in a position other than fish and game warden. Op.Atty.Gen. No. I86-101, [1986 WL 81355](#) .

Game and fish department employee had a single retirement account with the public safety personnel retirement system (PSPRS) and his Arizona state retirement system (ASRS) account should have been transferred to his PSPRS account, where employee had been first employed by department on September 16, 1967, and was enrolled as a participant in the ASRS, and his account with that system continued until October 13, 1974 when he became eligible for coverage under PSPRS and thereafter maintained a PSPRS account and, on February 7, 1976, requested that his ASRS account be transferred into his PSPRS account, and the game and fish commission had affected, on July 1, 1971, participation in the PSPRS pursuant to a joinder agreement authorized by § 38-841. Op.Atty.Gen. No. I77-206, [1977 WL 22133](#) .

Where, for a period from September 16, 1967, to July 16, 1971, game and fish department employee would have been qualified as a member of the public safety personnel retirement system (PSPRS) but, for a period from July 16, 1971, to October 13, 1974, the employee’s position would not have qualified him as a PSPRS member, prior period of employment would be considered as service under the PSPRS, but only 25% of his service during the second period could be considered as PSPRS service. Op.Atty.Gen. No. I77-206, [1977 WL 22133](#) .

Military service may be considered as “service” under the Public Safety Personnel Retirement System. Op.Atty.Gen. No. 74-33-L.

Time spent by game and fish department employee prior to his becoming a member of the public safety personnel retirement system in positions not included in one of the classes of employment covered under the system in the joinder agreement between the system and the department, would be calculated at 25% for determining “service”. Op.Atty.Gen. No. 74-26.

Credit is given for all service, as defined in and calculated under § 38-842.20, accumulated by a member prior to the date of his becoming a member, and, for service accumulated after membership commences, credit is given under § 38-842.7 and, consequently, § 38-845, only for periods of service during which the member received compensation and made contributions to the retirement fund. Op.Atty.Gen. No. 74-26.

Credited service

Game and fish warden’s “credited service” under Public Safety Personnel Retirement System did not include his former term of employment with county sheriff’s department, which did not participate in System during his tenure, despite sheriff’s department’s subsequent participation in System and warden’s change of employment from sheriff’s department to Game and Fish Department. [Alexander v. Fund Manager, Public Safety Personnel Retirement System \(App. Div.1 1990\) 166 Ariz. 589, 804 P.2d 122](#) . [Public Employment 400](#) ; [Sheriffs And Constables 28](#)

Retirement assets attributable to game and fish warden’s previous employment with county sheriff’s department, which had not participated in Public Safety Personnel Retirement System during his tenure, was not subject to transfer to System when warden’s subsequent employer, Game and Fish Department, elected to permit wardens to participate in System, unless warden withdrew retirement assets attributable to his service with sheriff’s department, tendered that amount plus accumulated interest to System, and paid unfunded liability; Local Public Safety Retirement Board of Game and Fish Department was not obligated to transfer benefits in question to System. [Alexander v. Fund Manager, Public Safety Personnel Retirement System \(App. Div.1 1990\) 166 Ariz. 589, 804 P.2d 122](#) . [Public Employment 392](#) ; [Sheriffs And Constables 28](#)

Military service is “credited service” for public safety personnel retirement system purposes if it occurs prior to member’s

effective date, and, if it occurs after member's effective date, it would be considered "credited service" only if member received "compensation" from an "employer" as defined in this section and contributes to the public safety personnel retirement system fund during the period of military service. Op.Atty.Gen. No. 74-33-L.

Credit is given for all service, as defined in and calculated under § 38-842, accumulated by a public safety personnel retirement system member prior to the date of his becoming a member, and, for service accumulated after membership commences, credit is given under § 38-842 and, consequently, § 38-845 only for periods of service during which the member received compensation and made contributions to retirement fund. Op.Atty.Gen. No. 74-26.

Service - Credited service

Game and fish warden's "credited service" under Public Safety Personnel Retirement System did not include his former term of employment with county sheriff's department, which did not participate in System during his tenure, despite sheriff's department's subsequent participation in System and warden's change of employment from sheriff's department to Game and Fish Department. [Alexander v. Fund Manager, Public Safety Personnel Retirement System \(App. Div.1 1990\) 166 Ariz. 589, 804 P.2d 122 . Public Employment 400 ; Sheriffs And Constables 28](#)

Retirement assets attributable to game and fish warden's previous employment with county sheriff's department, which had not participated in Public Safety Personnel Retirement System during his tenure, was not subject to transfer to System when warden's subsequent employer, Game and Fish Department, elected to permit wardens to participate in System, unless warden withdrew retirement assets attributable to his service with sheriff's department, tendered that amount plus accumulated interest to System, and paid unfunded liability; Local Public Safety Retirement Board of Game and Fish Department was not obligated to transfer benefits in question to System. [Alexander v. Fund Manager, Public Safety Personnel Retirement System \(App. Div.1 1990\) 166 Ariz. 589, 804 P.2d 122 . Public Employment 392 ; Sheriffs And Constables 28](#)

Military service is "credited service" for public safety personnel retirement system purposes if it occurs prior to member's effective date, and, if it occurs after member's effective date, it would be considered "credited service" only if member received "compensation" from an "employer" as defined in this section and contributes to the public safety personnel retirement system fund during the period of military service. Op.Atty.Gen. No. 74-33-L.

Credit is given for all service, as defined in and calculated under § 38-842, accumulated by a public safety personnel retirement system member prior to the date of his becoming a member, and, for service accumulated after membership commences, credit is given under § 38-842 and, consequently, § 38-845 only for periods of service during which the member received compensation and made contributions to retirement fund. Op.Atty.Gen. No. 74-26.

Termination of benefits

Disability benefits which have previously been granted to department of public safety personnel shall be terminated when a member dies, when his disability in fact ceases, or when he refuses to undergo a medical examination. Op.Atty.Gen. No. 179-285, [1979 WL 23352 .](#)

Retirement

City employee was not entitled to noncommissioned position without approval of either city personnel department or city manager on ground that employee was demoted to position rather than transferred or appointed to it, where employee sought to retire from commissioned position and draw retirement benefits and continue city employment without break in service between commissioned and noncommissioned positions. [Woolison v. City of Tucson \(App. Div.2 1985\) 146 Ariz.](#)

298, 705 P.2d 1349 . [Municipal Corporations](#) 217.5 ; [Public Employment](#) 326

Accidental disability

Deputy sheriff was not entitled to accidental disability pension benefits based upon his claim of permanent disability as result of heart attack suffered while off duty; it was undisputed that biggest factors contributing to heart attack were deputy's heavy smoking, his family history of heart disease, his sedentary lifestyle, his high cholesterol levels, and his personal family problems concerning his divorce and ensuing custody battle. [Wills v. Pima County Public Safety Personnel Retirement Bd. \(App. Div.2 1987\) 154 Ariz. 435, 743 P.2d 944 .](#) [Public Employment](#) 389(4); [Sheriffs And Constables](#) 32

Reasonable range of duties

For purposes of definition of "temporary disability" under statute governing public safety retirement system, "reasonable range of duties" must be defined in context of surrounding circumstances; in rural setting with small police force, disabled officer who is unable to perform strenuous physical activity might not be able to perform "reasonable range of duties" for his department, but, in large metropolitan area, wide range of tasks are available and public policy favors maximum utilization of disabled employees. [Brodsky v. City of Phoenix Police Dept. Retirement System Bd. \(App. Div.1 1995\) 183 Ariz. 92, 900 P.2d 1228 .](#) [Municipal Corporations](#) 187(5); [Public Employment](#) 389(1)

Three-month light-duty assignment police department offered officer who suffered knee injury permitted him to perform "reasonable range of duties," so that officer was not entitled to temporary disability pension, even though officer lacked ability to make forceful arrest; there was no indication that assignment was outside those functions police officers generally perform. [Brodsky v. City of Phoenix Police Dept. Retirement System Bd. \(App. Div.1 1995\) 183 Ariz. 92, 900 P.2d 1228 .](#) [Municipal Corporations](#) 187(5); [Public Employment](#) 389(7)

Finding that police officer, who suffered knee injury, could perform three-month light-duty assignment police department offered him, so that he was not entitled to temporary disability pension, was supported by evidence that officer could be sedentary for two hours at a time, that he had made a number of four-hour airplane trips, and that rehabilitation would overcome condition. [Brodsky v. City of Phoenix Police Dept. Retirement System Bd. \(App. Div.1 1995\) 183 Ariz. 92, 900 P.2d 1228 .](#) [Municipal Corporations](#) 187(9); [Public Employment](#) 626(3)

Police officer who is temporarily unable to engage in physically strenuous activities may still be able to perform "reasonable range of duties" within police department and, thus, be ineligible for temporary disability pension. [Brodsky v. City of Phoenix Police Dept. Retirement System Bd. \(App. Div.1 1995\) 183 Ariz. 92, 900 P.2d 1228 .](#) [Municipal Corporations](#) 187(5); [Public Employment](#) 389(2)

Amendment of statute governing public safety personnel retirement system to define "temporary disability" in terms of conditions preventing employee from performing "reasonable range of duties," rather than "regularly assigned duties," narrowed that definition. [Brodsky v. City of Phoenix Police Dept. Retirement System Bd. \(App. Div.1 1995\) 183 Ariz. 92, 900 P.2d 1228 .](#) [Public Employment](#) 389(2)

Validity (4)

Proposed Legislation (4)

[2019 AZ H.B. 2088 \(NS\)](#)

2019 Arizona House Bill No. 2088, Arizona Fifty-Fourth Legislature - First Regular Session, (Apr. 29, 2019), VERSION: Introduced, PROPOSED ACTION: Amended

[2019 AZ S.B. 1452 \(NS\)](#)

2019 Arizona Senate Bill No. 1452, Arizona Fifty-Fourth Legislature - First Regular Session, (Feb. 05, 2019), VERSION: Introduced, PROPOSED ACTION: Amended

[2019 AZ S.B. 1452 \(NS\)](#)

2019 Arizona Senate Bill No. 1452, Arizona Fifty-Fourth Legislature - First Regular Session, (Feb. 04, 2019), VERSION: Filed, PROPOSED ACTION: Amended

[2019 AZ H.B. 2088 \(NS\)](#)

2019 Arizona House Bill No. 2088, Arizona Fifty-Fourth Legislature - First Regular Session, (Jan. 15, 2019), VERSION: Filed, PROPOSED ACTION: Amended

Context and Analysis (1)

Administrative Code References (1)

Public safety retirement system eligibility, see [A.A.C. R13-5-804](#).