

## **CHAPTER 71-02-04 RETIREMENT BENEFITS**

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### **71-02-04-01. Retirement benefits - Application.**

Except as provided in section 71-02-04-02 for retirement options, applications for retirement, surviving spouse, and disability benefits must be filed at the public employees retirement system office at least thirty days before the retirement date or before the commencement of benefits. A member shall file a photocopy of the member's birth certificate, and if a benefit election is an optional benefit under subsection 1 or 2 of section 71-02-04-04, the member must provide a photocopy of the spouse's birth certificate and marriage certificate with the office. A surviving spouse shall file a photocopy of the surviving spouse's birth certificate, deceased spouse's birth certificate and certified copy of the death certificate, and marriage certificate if a benefit election is under subdivision b of subsection 6 of North Dakota Century Code section 54-52-17. If a birth certificate is not available, a member or surviving spouse may submit other documentation based on policy and procedure adopted by the board.

**History:** Amended effective November 1, 1990; July 1, 1994; May 1, 2004; April 1, 2014.

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

**Law Implemented:** NDCC 54-52-17

### **71-02-04-02. Special retirement options - Application.**

1. A member may elect a retirement option by filing an application with the office no less than thirty days prior to the beginning date of benefit payments. An application may be filed later than thirty days if approved by the executive director upon receiving sufficient evidence that the application was delayed by the member's employer.
2. A member may revoke the election of an optional benefit as provided in subsection 1 and make a new election, if such revocation is received in writing before the first retirement check is cashed but no later than fifteen days after the first retirement check has been issued. If the member changes the member's election less than fifteen days prior to the named beginning date of benefits, the first retirement payment may be delayed up to two months. Any delayed payment must be adjusted to include any deferred retirement payments. If the member's first retirement payment is paid by direct deposit and the member wishes to revoke the election of

the benefit, then the member must immediately notify the public employees retirement system of the member's election. The benefit will only be revoked if the public employees retirement system is able to reverse the direct deposit paid to the bank within the bank reversal window.

3. A member may not revoke the elected benefit after receiving and cashing the first benefit check or if paid by direct deposit, after the bank reversal window has expired, unless, the member can provide sufficient evidence to the executive director that the factual basis by which the election was made later proved to be incorrect and such was due in part to representation or misrepresentations made by the employer or the office.

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

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

**Law Implemented:** NDCC 54-52-17

#### **71-02-04-02.1. Application processing.**

The termination date for purposes of processing an application for retirement benefits 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 when 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:** Effective June 1, 1996.

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-17

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

Except for retirement options provided in section 71-02-04-02, a member's retirement benefit shall commence on the first day of the month which follows the member's eligibility for the benefit and which is at least thirty days after the date on which the member filed an application with the office. Notwithstanding any other provision in this article, benefits must begin no later than April first of the calendar year after the calendar year in which the member retires or meets minimum distribution rules provided in subsection 2 of North Dakota Century Code section 54-52-28, whichever is later. If the member is employed but ineligible for active participation in the retirement plan, the member's benefits must begin no later than April first of the calendar year after the calendar year in which the member meets minimum distribution rules provided in subsection 2 of North Dakota Century Code section 54-52-28. In the absence of a retirement application, benefits shall be paid based on a single life, or normal retirement for judges, payment option. Benefits must be directly deposited into a financial account identified by the member or sent to the member's last-known address. If the benefit checks are returned with no forwarding information, the benefits will remain in the fund, and will be distributed in a lump sum retroactive to the required beginning date upon location of the member. If two consecutive checks issued remain uncashed, future payments will be suspended until the member makes payment arrangements with the office.

**History:** Amended effective November 1, 1990; July 1, 1994; July 1, 2000; July 1, 2010; July 1, 2018; April 1, 2022.

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

**Law Implemented:** NDCC 54-52-17

#### **71-02-04-03.1. Payment date - Retirement benefits for late retirees.**

Except for retirement options provided in sections 71-02-04-02 and 71-02-04-03, for members who are terminated and older than the age at which they reach their normal retirement date, but who have delayed or inadvertently failed to apply for retirement benefits, the regular accrued annuity benefits will

commence with a lump sum equal to the amount of missed payments, without interest, retroactive to their normal retirement date unless the deferred normal retirement option is elected or otherwise approved by the North Dakota public employees retirement system board. There will be no retroactive payment for the retiree health insurance credit program.

**History:** Effective April 1, 2002; amended effective July 1, 2006; April 1, 2008.

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

**Law Implemented:** NDCC 54-52-17

#### **71-02-04-04. Optional benefits.**

A member may elect, as provided in section 71-02-04-02, to receive one of the following optional benefits in lieu of the regular single life, or normal for judges, retirement benefit.

1. **One hundred percent joint and survivor benefit.** A member shall receive an actuarially reduced retirement benefit during the member's lifetime 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 shall 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 shall 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 shall be canceled and the member's benefit shall be returned to the single life or normal amount. Payment of the single life or normal amount shall commence on the first day of the month following receipt, in the public employees retirement system office, of written notification of the spouse's death or member's divorce. Written notification must be either a death certificate or a photocopy of the divorce decree.
2. **Fifty percent joint and survivor benefit.** A member shall receive an actuarially reduced retirement benefit during the member's lifetime 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 shall 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 shall 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 shall be canceled and the member's benefit shall be returned to the single life or normal amount. Payment of the single life or normal amount shall commence on the first day of the month following receipt, in the public employees retirement system office, of written notification of the spouse's death or member's divorce. Written notification must be either a death certificate or 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:** Amended effective September 1, 1982; November 1, 1990; July 1, 1994; May 1, 2004; July 1, 2006; April 1, 2008; July 1, 2010; April 1, 2012; April 1, 2022.

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

**Law Implemented:** NDCC 54-52-17

#### **71-02-04-04.1. Benefit modifications.**

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

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

**History:** Effective July 1, 2010; amended effective April 1, 2014; July 1, 2018.

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

**Law Implemented:** NDCC 54-52-17

#### **71-02-04-05. Designation of beneficiary.**

A member may designate a beneficiary or beneficiaries by filing such designation with the office. Except in the case of the joint and survivor option, a member shall have the right to change the member's designation of beneficiary without the consent of the beneficiary, but no such change shall be effective or binding unless it is received by the office prior to the death of the member. If a vested, married member designates a beneficiary other than or in addition to a spouse, the member's spouse's consent must be obtained before benefits can be paid other than to the member's spouse.

**History:** Amended effective November 1, 1990; April 1, 2002.

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

**Law Implemented:** NDCC 54-52-17

#### **71-02-04-06. Lack of a designated beneficiary.**

Repealed effective July 1, 1994.

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

The early retirement benefit for members of the main plan first enrolled prior to January 1, 2016, and members of the national guard plan, the bureau of criminal investigation plan, the public safety plan, and the judges' plan 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) the member is younger than the age at

which the member would be at the member's normal retirement date to account for benefit payments beginning before the normal retirement 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; July 1, 2026.

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

**Law Implemented:** NDCC 54-52-17

**71-02-04-08. Assignment or alienation of plan benefits.**

Repealed effective July 1, 2006.

**71-02-04-09. Dual membership - Receipt of retirement benefits while contributing to the teachers' fund for retirement, the highway patrolmen's retirement system, or the teachers' insurance and annuity association of America - college retirement equities fund.**

Dual members must select one of the following options:

1. Begin receiving retirement benefits from one plan prior to ceasing employment covered by the alternate plan, subject to termination of employment or termination of participation.
2. Begin receiving retirement benefits from one plan and begin work in a job covered by the alternate plan. If this option is chosen, benefits will be calculated based on the method provided in subsection 2 of North Dakota Century Code section 54-52-17.2.
3. Continue as a dual member and begin receiving retirement benefits from both plans after ceasing employment.

**History:** Effective June 1, 1996; amended effective May 1, 2004; April 1, 2014.

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

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

**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 North Dakota Century Code chapter 54-52.6 is not eligible for dual membership service and vesting rights in the defined benefit plan under North Dakota Century Code chapter 54-52.

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

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

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

#### **71-02-04-10. Erroneous payment of benefits - Overpayments.**

1. An "overpayment" means a payment of money by the public employees retirement system that results in a person receiving a higher payment than the person is entitled to under the provision of the retirement plan of membership.
2. A person who receives an overpayment is liable to refund those payments upon receiving a written explanation and request for the amount to be refunded. All overpayments must be collected using the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like gains. If the cost of recovering the amount of the overpayment is estimated to exceed the overpayment, the repayment is considered to be unrecoverable.
3. If the overpayment of benefits was not the result of any wrongdoing, negligence, misrepresentation, or omission by the recipient, the recipient may make repayment arrangements subject to the executive director's approval within sixty days of the written notice of overpayment with the minimum repayment amount no less than fifty dollars per month. If repayment arrangements are not in place within sixty days of the date of the written notice of overpayment, the executive director shall offset the amount of the overpayment from the amount of future retirement benefit payments so that the actuarial equivalent of the overpayment is spread over the benefit payment period.
4. If the overpayment of benefits was the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the recipient, the recipient is liable to pay simple interest charges at the rate of six percent on the outstanding balance to compensate the fund for lost earnings, from the time the erroneous benefit was paid through the time it has been refunded in full. Recovered funds are first applied to interest and, if any amount is left over, that amount is applied to principal. The recipient may make repayment arrangements, subject to the executive director's approval, within sixty days of the written request for refund with the minimum repayment amount no less than fifty dollars per month. If repayment arrangements are not in place within sixty days of the date of the written notice of overpayment, the executive director shall offset the amount of the overpayment from the amount of future retirement benefit payments so that the actuarial equivalent of the overpayment is spread over the benefit payment period.
5. If an individual dies prior to fully refunding an erroneous overpayment of benefits, the public employees retirement system must make application to the estate of the deceased to recover the remaining balance.

**History:** Effective June 1, 1996; amended effective April 1, 2002; July 1, 2006; April 1, 2008; July 1, 2010; April 1, 2022.

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

**Law Implemented:** NDCC 39-03.1-25, 54-52-17

#### **71-02-04-11. Erroneous payment of benefits - Underpayments.**

1. An "underpayment" means a payment of money by the public employees retirement system that results in a person receiving a lower payment than the person is entitled to under the provisions of the retirement plan of membership.

2. If an underpayment occurs, the amount of the lump sum payment must be paid within sixty days of the discovery of the error.
3. If the underpayment of benefits was not the result of any wrongdoing, negligence, misrepresentation, or omission by the employer or recipient, the underpayment of benefits is to include simple interest at the rate of six percent from the time the underpayment occurred.
4. If the underpayment of benefits was the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the employer or recipient, the underpayment of benefits will not include simple interest.
5. If an individual dies prior to receiving the underpayment of benefits, the public employees retirement system must pay the designated beneficiary on record or, in the absence of a designation of beneficiary, to the estate.

**History:** Effective June 1, 1996; amended effective May 1, 2004; April 1, 2008; April 1, 2022.

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

**Law Implemented:** NDCC 39-03.1-25, 54-52-17

#### **71-02-04-12. Erroneous payment of benefits - Appeals.**

1. A person not satisfied with repayment arrangements made under section 71-02-04-10 may appeal the executive director's decision in writing to the board. The written request must explain the basis of the appeal and must be received in the office within sixty days of the executive director's written decision.
2. The board may release a person from liability to refund an overpayment, in whole or in part, if it determines:
  - a. The receipt of overpayment is not the fault of the recipient.
  - b. It would be contrary to equity and good conscience to collect the refund.

**History:** Effective June 1, 1996.

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

**Law Implemented:** NDCC 39-03.1-25, 54-52-17

#### **71-02-04-13. Reduced benefit option.**

A participating member may enter into an agreement with the retirement board to receive an actuarially adjusted monthly retirement benefit to accommodate the less than full payment for years of service credit necessary to meet the normal retirement date, if the following criteria are met:

1. The participating member is within seventy-two months of obtaining the normal retirement date.
2. The service cannot be purchased prior to the participating member drawing a retirement benefit because it would be in violation of 26 U.S.C. 415 or limits of purchasing additional service credit found under subsection 10 of North Dakota Century Code section 54-52-17.4.
3. The participating member must have completed all other types of purchases the participating member is eligible for prior to entering into the reduced benefit agreement.
4. The participating member's reduced benefit agreement must indicate a benefit option election. If a benefit election is an optional benefit under subsection 1 or 2 of section 71-02-04-04, the reduced benefit is payable over the lifetime of both the member and surviving spouse.

**History:** Effective June 1, 1996; amended effective July 1, 1998; April 1, 2002; May 1, 2004; April 1, 2020.

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 39-03.1-11, 54-52-17