

**CHAPTER 243. MEMBERSHIP, CREDITED SERVICE, CLASSES OF  
SERVICE AND ELIGIBILITY FOR BENEFITS**

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**Notes of Decisions**

*Retroactive Application*

Retroactive application of provisions of the Retirement Code, 71 Pa.C.S. §§ 5101—5956, without a clear and manifest expression of such intent by the Legislature is a violation of the principle codified in section 1926 of the Statutory Construction Act of 1972, 1 Pa.C.S. *Olsen v. State Employes' Retirement Board*, 688 A.2d 255 (Pa. Cmwlth. 1997).

**§ 243.1. Conditions of mandatory and optional membership.**

The Commonwealth employes listed in section 5301(a)(1)—(11) of the code (relating to mandatory and optional membership) shall have the option to elect membership or nonmembership in the System. The election of membership or nonmembership is irrevocable and shall be final and binding in the absence of an interruption to Commonwealth service. The election shall be made within 30 days of the effective date of employment.

**Source**

The provisions of this § 243.1 amended October 15, 1976, 6 Pa.B. 2565. Immediately preceding text appears at serial page (25937).

**§ 243.2. Temporary and seasonal employes.**

(a) In those cases where an individual is employed on a temporary basis with a predetermined date of termination which is less than one year, although that may occur more than 100 days or 750 hours after the initial date of employment, such employe shall not be eligible for membership based thereon. Such employe shall not be prohibited from purchasing such service in the future should he become a permanent employe. This provision shall be inapplicable to provisional employes since that term pertains to civil service and not retirement.

(b) All employes hired to perform services on a permanent basis, as defined in the personnel rules, irrespective of the category of the position which they currently occupy, whether temporary or not, shall be deemed Commonwealth employes for retirement purposes. In all cases of doubt, the Board will determine

whether a particular individual is eligible for membership. Persons who are members of the System by virtue of complying with any of the minimums established in section 5301(a) of the code (relating to mandatory and optional membership) shall not be disqualified from continuing membership by virtue of a change in the method of compensation.

#### Source

The provisions of this § 243.2 amended March 12, 1976, 6 Pa.B. 449. Immediately preceding text appears at serial page (18751).

#### Law Reviews

*Annual Survey of Selected Court Decisions: Labor and Employment Law: Simmonds v. State Employees' Retirement System*, Hensel, Susan. 6 Widener J. Public L. 811 (1997).

### § 243.3. Optional alternate retirement program.

School employees, limited to certain designated employees and officers of The Pennsylvania State University, Indiana University of Pennsylvania, the State System of Higher Education and the Department of Education, shall be permitted to join an optional alternate retirement program in lieu of membership in the system. The program shall be an independent retirement program approved by the employing agency head, provided that the employer is not contributing at a rate greater than that provided in section 5508(b) of the code (relating to actuarial cost method).

#### Source

The provisions of this § 243.3 amended April 15, 2005, effective April 16, 2005, 35 Pa.B. 2275. Immediately preceding text appears at serial page (245700).

### § 243.4. Credited State service.

(a) In the case of a member who withdraws his total accumulated deductions, his membership and service credits shall be cancelled.

(b) Credited State service shall be available to a member on leave without pay on March 1, 1974, or thereafter, who is studying under a Federal Grant approved by the head of his department; provided the program of study is job related. The application for credit shall be approved by the head of the department stating the statutory basis for the Federal Grant and guaranteeing employer contributions for the service. Credited State service shall also be granted mem-

bers on leave without pay for service rendered to the Federal Government or another State or local government under the act of January 5, 1971 (Pub. L. No. 91—648) (5 U.S.C.A. §§ 3371—3376); provided, that the member, in both cases, returns from the leave without pay status to State service for at least 1 year, and further provided that the member is not entitled to retirement credits or benefits for such service from any other governmental agency. The Board shall be provided with assurances that the department, which grants the leaves, shall pay the employer contributions required under section 5507 of the code (relating to contributions by the Commonwealth and other employers) in addition to the requirement that the employe pay the regular member contributions required by the member under section 5501 of the code (relating to regular member contributions for current service). The service will not be credited in excess of 2 years under any circumstances.

(c) From and after January 1, 1976, in computing credited State service of a member for the determination of benefits, a member will receive credit for 1 year of State service for being employed and contributing based thereon for a period of 1,650 hours. If a member is employed and contributes therefore for less than 1,650 hours, he will be credited with a fractional portion of a year which corresponds to the number of hours compensated in relation to 1,650 hours.

(d) Intervening military service will be disallowed or cancelled in those instances where the required military tour of duty has been voluntarily extended beyond the time of military obligation, with or without the implied or express consent of the employing agency.

(e) If the Board finds that any State service has been improperly credited, it will cause the credit to be cancelled and accumulated deductions attributable thereto refunded to the member.

#### Source

The provisions of this § 243.4 amended March 12, 1976, 6 Pa.B. 449. Immediately preceding text appears at serial page (18752).

#### Cross References

This section cited in 4 Pa. Code § 243.10 (relating to eligibility for annuities).

### § 243.5. Retention and reinstatement of service credits.

In the event of a subsequent return to State service of a former member whose membership has been cancelled, any reinstatement of former credited service will be without social security integration supplement credits, regardless of any supplemental coverage previously credited. Any State employe who discontinues his service and does not withdraw his total accumulated deductions and who was a member of a class of service, other than Class A, prior to March 1, 1974, shall retain his membership in that class to the date of discontinuance of such service. All service rendered thereafter will be credited as Class A service. The returning

member, who has not withdrawn his accumulated deductions, shall be eligible to continue accruing SSI supplement credits only if he has returned to active membership within 6 months of his previous termination.

**Source**

The provisions of this § 243.5 amended March 12, 1976, 6 Pa.B. 449. Immediately preceding text appears at serial page (18753).

**§ 243.6. Creditable nonstate service.**

(a) *Nonintervening military service.* Credit for nonintervening military service will be available for all qualified military service actually rendered, as defined in this section, for which purchase shall be requested but, in no event, exceeding 5 years of the service, provided the member has 3 years of credited State service subsequent to the military service for which credit is requested. Members shall be limited to one purchase of not less than 1 year of the nonintervening military service unless the total service actually rendered was less than 1 year.

(b) *Ineligibility for nonintervening military service.* A member is not eligible for credit for nonintervening military service if the service entitles him to receive now or in the future, or if he is receiving, retirement benefits for service under another governmental agency or private employer, including a retirement program approved by the employer, under section 5301(a)(12) of the code (relating to mandatory and optional membership), irrespective of the fact that the member may have actual military service in excess of the minimum amount necessary to qualify him for a Federal pension. The crediting of nonintervening military service will be available to anyone, including one who is or was in a National Guard or any other reserve component who, at the time of application is uncertain, because of length of service, whether he would be eligible for retirement benefits for the service from the Federal government or any other governmental agency, private employer or employer approved plan provided under section 5301(a)(12) of the code, at that time or in the future; provided that the crediting of the service may be cancelled, and the accumulated deductions attributable thereto, refunded to the member if, at the time of retirement or termination of service, or earlier, if the Board is so notified by the member, it is found that the member would be entitled to retirement benefits from the other public or private pension plans for the military service. The Board may require the member to furnish such information as it deems necessary to determine the eligibility of a member for the purchase of nonintervening military service or for the cancellation thereof.

(c) *Active military service.* Military service shall be limited to active military service rendered only to the Armed Forces of the United States.

(d) *Ineligibility for creditable nonstate service.* Creditable nonstate service in any public school or educational institution in any other state or territory or area under United States jurisdiction or service as an administrator, teacher or instruc-

tor in the field of education rendered to an agency or department of the United States Government shall exclude service rendered to the CCC, WPA, Peace Corps, VISTA, among others, or service entitling an employe to receive, now or in the future, any private employer or governmental pension or other employer approved pension program funded, in whole or in part, by any such employer. The Board will, in all instances, determine eligibility for creditable nonstate service.

(e) *Restrictions.* Creditable nonstate service under section 5304(c)(4) of the code (relating to creditable nonstate service) shall be limited to those State employes whose service with prior governmental employers was transferred or absorbed by the Commonwealth under the provisions of prior law.

(f) *Active members.* Reinstatement of creditable service and the purchase of creditable State and nonstate service shall be available only to active members as set forth in § 241.1 (relating to definitions). The creditable service shall also be available to active multiple service members under sections 5303 and 5304 of the code (relating to retention and reinstatement of service credits). Duplicate purchases of the service in both the Public School Employees' Retirement System and this System is prohibited.

#### Source

The provisions of this § 243.6 amended March 12, 1976, 6 Pa.B. 449; amended August 3, 2001, effective August 4, 2001, 31 Pa.B. 4170. Immediately preceding text appears at serial pages (232848) to (232849).

#### Notes of Decisions

##### *Field of Education*

Because claimant's duties at the National Science Foundation were very similar to the duties of a college or university administrator and claimant's decisions regarding funding of research and evaluation of projects had a direct impact on graduate education, claimant's employment with NSF was creditable nonstate service for which claimant could purchase retirement credit. *Seliga v. State Employees' Retirement System*, 682 A.2d 77 (Pa. Cmwlth. 1996).

#### § 243.7. Social Security integration credits.

Those members with accrued social security integration credits on March 1, 1974, may continue to earn Social Security integration credits until service is terminated. Those members in continuous service who terminate after March 1, 1974, may continue to accrue Social Security integration credits if they return to active membership in the System within 6 months, provided they have not withdrawn their accumulated deductions. Those members who have vested, or are in receipt of an annuity, and return to State service after March 1, 1974, shall have their Social Security integration credits restored, to the extent previously earned, and may continue accruing Social Security integration credits for service rendered thereafter.

Social Security integration credits may be restored only to the extent allowed in this section. In all cases, Social Security integration credits shall not be avail-

able for any State or nonstate service applied for and purchased after March 1, 1974, regardless where or when the service may have been performed.

**Source**

The provisions of this § 243.7 amended March 12, 1976, 6 Pa.B. 449. Immediately preceding text appears at serial page (18754).

**§ 243.8. [Reserved].**

**Source**

The provisions of this § 243.8 deleted May 26, 2006, effective May 27, 2006 36 Pa.B. 2515. Immediately preceding text appears at serial page (281500).

**§ 243.9. Eligibility points.**

An active member of the System shall accrue one eligibility point for each year of credited service as a member of Public School Employees' Retirement System or this System. In the event a member has a fractional part of a year of credited State service, as it relates to 1,650 hours, he shall be entitled to accrue a corresponding fractional portion of eligibility points in order to entitle him to benefits. In the case of a part-time State employe, eligibility points shall be accrued on the basis of time worked in relation to 1,650 hours, irrespective of the calendar period during which the member is such an employee.

**Source**

The provisions of this § 243.9 adopted March 12, 1976, 6 Pa.B. 449.

**§ 243.10. Eligibility for annuities.**

(a) An active member or an inactive member on leave without pay, whose original date of membership is prior to October 7, 1975, who achieves superannuation age, irrespective of service, shall be eligible to receive a superannuation annuity or death benefit based thereon. An active member or an inactive member on leave without pay, whose effective date of original membership is October 7, 1975, or thereafter, shall be entitled to a superannuation annuity or death benefit only if he has 3 or more years of credited State or School service or State and School service.

(b) An annuity shall be based upon proper eligibility points only and, in the event a vestee or active member does not have sufficient eligibility points to qualify for benefits, he shall be entitled to a refund of his accumulated deductions standing at the time the application for benefits is made, or sooner, if the member provides prior notification to the Board.

(c) This section shall apply in the case of cancellation of eligibility points under the provisions of § 243.4(a) (relating to credited State service) and in any other case where the Board finds that the State or nonstate service was improperly credited.

**Source**

The provisions of this § 243.10 adopted March 12, 1976, 6 Pa.B. 449.

**§ 243.11. Eligibility for vesting.**

A member under superannuation retirement age with ten or more eligibility points may elect to vest his retirement benefits only upon discontinuance of service, provided the election is made within a period of 90 days thereafter.

**Source**

The provisions of this § 243.11 amended March 12, 1976, 6 Pa.B. 449. Immediately preceding text appears at serial page (18755).

**§ 243.12. Eligibility for death benefits.**

A member who has terminated State service who has not filed an application for withdrawal of contributions having ten or more eligibility points, or being eligible for a superannuation retirement allowance, shall, in the absence of applying for an annuity, be entitled to death benefits, except under the following circumstances:

- (1) If a member has not filed an application for vesting or annuity within 90 days after termination of State service, while under superannuation age, he shall not be eligible for death benefits in excess of his own accumulated deductions.
- (2) If a member has terminated State service over superannuation age with three or more years of credited State or School service or State and School service, or a vestee having attained superannuation age, has failed to file an application for annuity benefits within 90 days after termination of service or attainment of superannuation age, as the case may be, he shall be ineligible for death benefits in excess of his own accumulated deductions.

**Source**

The provisions of this § 243.12 amended March 12, 1976, 6 Pa.B. 449. Immediately preceding text appears at serial page (18755).

**§ 243.13. Eligibility for refunds.**

(a) *Active member.* The election by an active member to receive only his total accumulated deductions upon termination of service shall be an unconditional waiver to receive any benefit to which he would otherwise be entitled.

(b) *Vestee.* Any vestee may elect to receive only his total accumulated deductions at any time subsequent to vesting with interest credited to the date of the election. This election shall be an unconditional waiver of any other benefit to which he would otherwise be entitled.

(c) Upon application, any active member or one on leave without pay, may elect to receive by refund all his social security integration accumulated deductions and thereby have all his credits attributable thereto and benefits payable

thereon cancelled, and shall not, under any circumstances, be entitled to accrue any future social security integration supplement credits.

**Source**

The provisions of this § 243.13 amended March 12, 1976, 6 Pa.B. 449. Immediately preceding text appears at serial page (18756).

**§ 243.14. Eligibility for benefits.**

(a) A member who has terminated State service having attained 35 eligibility points shall be eligible for a superannuation retirement allowance, irrespective of age, upon filing of the proper application therefor. Any member who has terminated State service having attained ten or more eligibility points who has not yet reached superannuation age, shall be eligible for an early retirement allowance or vesting.

(b) In the case of an early retirement allowance, the applicable reduction factor shall be determined on the basis of the number of years and months the member is from attaining superannuation age, that is, age 60 or 50, as the case may be, or attainment of 35 eligibility points, whichever would be achieved earlier had he continued in active State service.

(c) In the case of a vestee, he shall be eligible for an unreduced superannuation retirement allowance at the beginning of the month following the date he would have achieved superannuation age; that is, age 60 or 50, as the case may be, or attainment of 35 eligibility points, whichever would be achieved earlier had he continued in active State service. In the event a vestee elects early retirement or dies, the applicable reduction factor shall be determined on the basis of the number of years and months he is from such date at the effective date of application for early retirement, or date of death, as the case may be.

(d) For the purpose of determining the date on which a member would have achieved 35 eligibility points under either subsection (b) or (c), had he continued in active State service, one eligibility point will be assumed for each year, irrespective of any former class of membership.

**Source**

The provisions of this § 243.14 adopted March 12, 1976, 6 Pa.B. 449.

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