

# PHILADELPHIA BOARD OF PENSIONS AND RETIREMENT

## REGULATION NO. 1

**WHEREAS**, The Board of Pensions and Retirement is empowered by Section 8-407 of the Home Rule Charter and Section 22-107 of the Public Employees Retirement Code<sup>1</sup> ("Retirement Code") to make all necessary regulations to carry into effect the provisions of the Retirement Code; and

**WHEREAS**, Section 22-1202(2)("Hearing Panel") of the Retirement Code provides that the Board may appoint any three members of the Board as a hearing panel to conduct any hearing, which panel shall take testimony and prepare a recommendation that shall be forwarded to the Board for its consideration; and

**WHEREAS**, The Local Agency Law, 2 Pa.C.S. §§551-555, governs certain matters concerning the conduct of adjudications of administrative agencies of Pennsylvania political subdivisions, of which the Board is one; and

**WHEREAS**, No other law provides specific guidance as to the procedural requirements by which Board hearings may be conducted; and

**WHEREAS**, The Board has determined it appropriate to adopt a regulation in order to provide its staff, members of the Public Employees Retirement System, and attorneys who appear before hearing panels of the Board a specific and consistent statement of the procedure for Board adjudications;

**NOW THEREFORE**, The Board of Pensions and Retirement hereby adopts this Regulation No. 1, relating to Board adjudications.

**1.0 Appeals to the Board.** Under Section 22-1202(1) of the Retirement Code, any member or beneficiary may appeal any decision of the Board's staff to the full Board. Any such appeal must be in writing addressed to the Executive Director, Board of Pensions & Retirement, 16<sup>th</sup> Floor, Two Penn Center Plaza, Philadelphia, PA 19102 and must be postmarked no later than 30 days after the date of the decision that is the subject of the appeal.

**1.1 Status for Hearing Request.** If the Board has formally voted, at a public meeting, to deny an application for benefits or to deny an appeal from a decision of the Board's staff, the person who made the application or appeal may request a hearing before a panel of the Board.

---

<sup>1</sup> Title 22 of the Philadelphia Code, the Public Employees Retirement Code, supersedes all prior statutes and Ordinances and incorporates the plans and provisions set forth therein. See Section 22-108, Statutes and Ordinances Superseded. Accordingly, this amended regulation refers only to the Public Employees Retirement Code.

780108  
DEPARTMENT OF RECORDS  
2014 MAR 21 PM 12:26

**1.2 Request Procedure.** Hearing requests must be in writing addressed to the Executive Director, Board of Pensions & Retirement, 16<sup>th</sup> Floor, Two Penn Center Plaza, Philadelphia, PA 19102, and must be postmarked no later than 30 days after the date of the decision that is the subject of the hearing. Requests that meet these requirements shall be automatically granted by the Board's staff and a hearing shall be scheduled, except as provided in ¶1.13 below or unless otherwise directed by vote of the Board.

**1.2.1 Scheduling of Hearings.** Within 60 days of receipt of an applicant's appeal, the Board's staff will schedule a hearing and notify all parties of the hearing date. The Executive Director shall provide notice to the parties, who shall be expected to appear. Failure to appear for such a hearing will result in application of the procedure outlined in Paragraph 1.7.1 below, including the possibility of denial of further continuances and the Board proceeding to final decision in the absence of a party.

**1.3 Board-directed Hearing.** The Board may also, on its own motion, refer any application to a hearing without otherwise voting on the application.

**1.4 Composition of Panels.** Panels shall be constituted by the Board's staff, as directed by the Executive Director. Each panel shall consist of three Board members, provided that at least one panel member shall be a member elected to the Board by the employees in the civil service and at least one panel member shall be an ex officio Board member from the Administrative and Executive Branch of the City or his or her designee. In the event of a last-minute unavailability of a scheduled panel member, a hearing may proceed with two panel members, if all parties to the hearing agree.

**1.5 Content of Record.** All documents on file with the Board prior to the hearing shall be part of the record before the panel. The record shall be available for inspection by the applicant and the City at any time during regular office hours upon written request received no later than 3 business days prior to the hearing.

**1.6 Submissions.** All submissions to the Board relating to a hearing must be received by the Board no later than 10 business days prior to the hearing. The submissions must include page numbers and a Table of Contents indexing the documents submitted. The Board may, upon sufficient cause shown, extend any such deadline. Upon the scheduling of any hearing, any such deadlines shall be stated in a letter from the Board provided to all participants advising as to the date and time of the hearing.

**1.7 Pre-hearing Procedural Communications.** All communications to the Board requesting any change in these procedures, such as a request for a continuance or a ruling on an interpretation of these procedures or other law, must be in writing addressed as provided in ¶1.2 above. Any such communications must be received by the Board no later than 5 business days before the hearing or deposition, except that an exception may be granted by the Executive Director, in his/her sole discretion.

**1.7.1 Continuances.** Where a party is unable to attend a scheduled hearing, the party may request a continuance from the Board's Executive Director, by giving 5 business days notice and the reason for the request. An applicant will be entitled to two continuances after which

the applicant will be assigned a date certain for his or her hearing. No further continuances will be granted, absent compelling circumstances. Where a party fails to appear for a hearing and has also failed to give advance notice of nonappearance as provided in ¶1.7 above, or where a party fails to appear for a hearing after having been assigned a hearing date certain, the Board has the discretion to proceed with the hearing in the absence of that party and to close the record and proceed to a final decision without giving that party any further opportunity for a hearing, except that the Board may grant an exception upon sufficient cause shown.

**1.8 Counsel for Parties.** At the hearing, the applicant shall have the right to be represented by counsel or to appear without counsel. The assigned legal advisor to the Board shall be available to the hearing panel to give advice on evidentiary objections and questions of proper procedure.

**1.9 Conduct of the Hearing.** In accordance with the Local Agency Law, the conduct of the hearing shall not be bound by technical rules of evidence, and all relevant evidence of reasonably probative value may be heard, except as otherwise explained in ¶1.9.1. Reasonable examination and cross-examination shall be permitted.

**1.9.1 Receipt of Evidence and Depositions.** The Board presumes that, in the absence of a specific objection, all parties at the hearing impliedly stipulate that any non-opinion documents, such as treatment reports, tests, and hospital admission records, will be admissible as if properly authenticated under the business records exception to the hearsay rule without the necessity of testimony by a custodian or other witness as to the identity and the mode of preparation of those documents. Affidavits when notarized, and personnel records may also be admitted on the same conditions. The Board may obtain stipulations from parties that documents that express an opinion may also be admitted as if the author were present and testifying. Should an applicant decline such stipulation, the Board may take testimony by deposition. The deposition testimony of medical doctors shall be the only professional medical opinions considered by the Board when deciding the application; no other documentary evidence of medical opinions shall be considered. Where it is necessary for a member of the Board's Medical Panel or other doctor, or a City employee to testify at a deposition or hearing, the Board or the City, as appropriate, may provide counsel to ensure appropriate direct and cross examination and observance of the rules of evidence to the extent appropriate to a local agency hearing.

**1.10 Close of the Record.** At the close of each hearing, the hearing examiner shall announce the date when the record shall be closed, which shall be immediately, unless a party has additional evidence to submit and shows good cause why that evidence could not be submitted at or before the hearing. Otherwise, during the remaining period during which the record is open, any applicant, the City, or the Board may submit any reasonably relevant documentary evidence, provided that each participant shall receive a copy of any such submission.

**1.11 Transcript.** Hearings shall be stenographically reported by a reporter provided by the Board, and a transcript of the report shall be a part of the record and the sole official transcript of the proceeding.

**1.12 Recommendations of Panel Members.** Following the close of the record, each panel member shall complete a form recording his or her recommendation to the Board as to the resolution of the matter. After all recommendations have been submitted, the panel members' recommendations shall be reported at the next regular monthly meeting of the Board, along with the transcript of the hearing. The file on the matter shall be available for review by any Board member prior to and during the Board meeting. The Board shall consider, but shall not be bound by, the recommendations of the panel in making a final decision on the application.

**1.13 Additional Hearings.** If there has already been one hearing on a matter before the Board, a request for a second hearing before the Board's final decision shall only be granted by vote of the Board. In making a second request, the applicant shall identify the additional evidence to be presented at the second hearing and the reason why that evidence was not produced at the first hearing, or provide other substantial justification for a second hearing. After the Board's final decision on a matter, requests for a second hearing shall be considered to be requests for reconsideration under ¶1.14 below.

**1.14 Reconsideration.** The Board's decision on a matter following a hearing and based on the record at the time of the Board's vote shall be final. If a party in a matter desires to apply to the Board for reconsideration of such a decision, the party must apply in writing to the Executive Director at the address in ¶1.2 above, postmarked no later than 10 days after the date of the Board's decision (as evidenced either by the Board's vote or the letter to applicant reporting the Board's decision, whichever is later). The application must identify the additional evidence, law or other information to be presented upon reconsideration, the reason why such material was not produced before the Board's vote on the matter, and the reason why the applicant believes the additional evidence, law, or other information is sufficient justification for the Board to change its decision.

**1.15 Findings.** In the event of an appeal to the Court of Common Pleas of a final decision of the Board, the legal advisor to the Board shall, subject to the direction and review of Chairperson of the Board, draft Findings of Fact and Conclusions of Law, which Chairperson of the Board, or designee, shall approve and sign on behalf of the Board.

Originally effective August 22, 1994

Amended by revising ¶1.8, effective May 25, 1995

Amended by revising ¶1.7, and adding new ¶¶1.7a and 1.9a, effective January 17, 1997

Amended by adding new ¶1.0, effective August 19, 1997

Amended by adding new ¶1.2a, and revising ¶¶1.0, 1.2, 1.4, and 1.15 by vote of the Board December 18, 2003, effective February 12, 2004.

Amended by revising ¶¶1.0, 1.2.1, 1.5, 1.6, 1.7, 1.7.1, 1.8, 1.9, 1.9.1, and 1.12 by vote of the Board December 5, 2013, effective \_\_\_\_\_, 2014.

**PHILADELPHIA BOARD OF PENSIONS AND RETIREMENT**

**REGULATION NO. 2**

**SUBMISSION OF TAX INFORMATION**

**WHEREAS,** The Board of Pensions and Retirement is empowered by Section 8-407 of the Home Rule Charter and Section 111.1 of the Municipal Retirement System Ordinance to make all necessary regulations to carry into effect the provisions of the Retirement System Ordinance; and

**WHEREAS,** The Ordinance of July 12, 1993 (Bill No. 589), amended both the Retirement System Ordinance and the Plan 1987 Ordinance to provide that recipients of disability retirement benefits who met certain requirements as to effective dates were required to provide the Board with their federal income tax returns for every year in which they received benefits or face termination of their benefit (see Sections 206.3(c) and 207.7 of the Retirement System Ordinance, as amended, and Sections 111.3(c) and 111A.6 of the Plan 1987 Ordinance, as amended); and

**WHEREAS,** The Board has determined it appropriate to adopt a regulation in order to establish a procedure for notification of noncompliance with this requirement and a mechanism for the terminations mandated by the Ordinances;

**NOW THEREFORE,** The Board of Pensions and Retirement hereby adopts this Regulation No. 2, relating to submission of tax information by recipients of disability retirement benefits.

**2.1 Documentation Required.** The various ordinance sections amended by Bill No. 589 require that members subject to the requirement must submit to the Board their "federal income tax returns." This phrase means the complete package that the member files with the Internal Revenue Service, including the Form 1040, 1040A, or 1040EZ, and any accompanying schedules, W-2 Forms, 1099 Forms, and the like, including any amended or corrected filings. Copies of these forms may be either delivered in person (in which case the Board will provide a receipt) or sent by mail and addressed to the Executive Director, Board of Pensions & Retirement, 20th Floor, Two Penn Center Plaza, Philadelphia, PA 19102.

**2.2 Deadline for Filing.** The applicable tax returns, including all forms, schedules, and supporting documents required by Paragraph 2.1 above, must be received by the Board no later than May 1 of the calendar year following the calendar year in which falls the last day of the member's tax year for purposes of his federal tax return. For example, for the typical individual whose tax year is the calendar year, for income earned in calendar year 1996, the last day of his tax year is December 31, 1996; his federal tax return is due to be mailed by April 15, 1997; and copies must be received by the Board by May 1, 1997. The Board will send an initial request for the tax returns no earlier than the February 1 immediately preceding the May 1 deadline for any year.

**2.3 Extensions.** Where the member has obtained from the Internal Revenue Service an extension of the date to file his federal tax returns, a copy of documentation of that extension must be received by the Board by May 1 of the year following the calendar year in which falls the last day of the member's tax year for purposes of his federal tax return. The applicable tax returns must then be received by the Board within 15 days of the expiration of the filing extension.

**2.4 Reminders.** In the event that a member has not fully complied with this requirement by the May 1 deadline or any deadline imposed by Paragraph 2.3 above, at some point not less than 30 days after such deadline, the Executive Director of the Board, or his designee, shall send a reminder letter to the member. The reminder letter will notify the member that he must, within 30 days of the date of the letter, either fully comply with the requirement or submit a written appeal to the Executive Director challenging the application of the requirement to that member. The reminder letter shall state that within the 30 days, the member, or his/her authorized representative, may make an appointment to review the Board's file on this matter, during normal working hours. No additional reminders are required, but additional reminders may be sent, at the discretion of the Executive Director, or as the Board may direct.

**2.5 Failure to Respond.** If, after more than 30 days after being sent the reminder letter provided for in Paragraph 2.4 above or the last of any further reminder letters the Executive Director has chosen to send, the member has either failed to respond, or has notified the Board that he intends neither to provide the required forms nor to appeal, the member will be considered to have waived the appeal provided for in Bill No. 589, and the matter will be listed for the next practicable meeting of the Board for a vote on suspension of the member's benefit.

**2.6 Appeals to the Board.** The various ordinance sections amended by Bill No. 589 require that benefit payments shall not cease until after resolution of "an appeal to the Board." The Board shall provide such appeals as follows. If, within 30 days after being sent the reminder letter provided for in Paragraph 2.4 above or the last of any further reminder letters the Executive Director has chosen to send, the member submits to the Board a written appeal stating why he or she should not have to comply with the requirement, the Executive Director, or his designee, will prepare a recommendation to the Board, and the Executive Director shall send a copy of the staff recommendation to the member with a cover letter stating that the member will have 10 days from the date of that letter to respond in writing. After 10 days, the matter will be listed for the next practicable meeting of the Board for a vote on the appeal. The appeal will be decided on the basis of documents provided by the member and the staff. If the Board rejects the appeal, the retirement benefit of the member shall be suspended for one year or until the Board determines that the member has complied with the requirement for the applicable period. Such suspension will be the final action of the Board. The Executive Director shall send the member a letter reporting such action and notifying the member of his or her right to appeal such action to the Court of Common Pleas.

**2.7 Effect of Suspension.** The various ordinance sections amended by Bill No. 589 require that a member who fails to provide the required forms "shall have his benefits terminated." This means that if the retirement benefit of a member has been suspended under Paragraphs 2.5 or 2.6 above, then the member shall not be entitled to receive a retirement benefit for the year following the Board action. Any benefit the member is receiving at the time of any such determination shall immediately cease. Each one-year suspension shall be for failure to comply with the requirement for a particular tax year, and shall not prohibit the member from receiving a benefit in any other period. Moreover, at any time after the commencement of a suspension, upon the member providing full compliance for the tax year in question, the Board shall pay, in lump sum, the suspended benefit, less any offset, such as that required by application of the income offset provision.

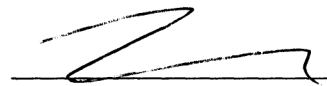
Approved 12/19/95  
Became effective midnight 2/2/96

7801  
MAR 21 PM 12:27  
DEPARTMENT OF RECORDS

# PHILADELPHIA BOARD OF PENSIONS AND RETIREMENT

## REGULATION NO. 2

Board of Pensions and Retirement Regulation No. 2, attached, is rescinded, by vote of the Board at its Meeting of December 5, 2013.



Francis X. Bielli, Esq.

Executive Director

Board of Pensions and Retirement

Date:

780111

DEPARTMENT OF RECORDS  
2014 MAR 21 PM 12:27



# **PHILADELPHIA BOARD OF PENSIONS AND RETIREMENT**

## **REGULATION NO. 3**

### **REFUND OF CONTRIBUTIONS**

**WHEREAS**, The Board of Pensions and Retirement is empowered by Section 8-407 of the Home Rule Charter and Section 22-107 of the Public Employees Retirement Code (“Retirement Code”) to make all necessary regulations to carry into effect the provisions of the Code<sup>1</sup>; and

**WHEREAS**, The Retirement System is funded by employee contributions from active employees<sup>2</sup>, employer contributions from the City, and investment return on the assets of the System; and

**WHEREAS**, Section 22-902 of the Retirement Code provides that all eligible employees paid out of the Treasury of the City shall pay, by payroll deduction, contributions to the Retirement System; and

**WHEREAS**, Section 22-903 of the Retirement Code provides that members may, under certain conditions, be refunded their employee contributions; and

**WHEREAS**, The Board has determined it appropriate to adopt a regulation in order to memorialize the Board’s procedure and formalize the Board’s past and present interpretations of the provisions relating to the refund of contributions;

**NOW THEREFORE**, The Board of Pensions and Retirement hereby adopts this amended Regulation No. 3, relating to the refund of contributions under the Retirement Code.

**3.1 Entitlement to Refund.** Entitlement to a refund exists if the employee separates before becoming eligible to receive “death, disability or retirement” benefits. Accordingly, those phrases are interpreted to create three classes of members, as follows:

**3.1.1 Members not entitled to any benefit.** Members who separate and are not vested and not of retirement age under their plan may withdraw their contributions if they have not been awarded an Ordinary Disability retirement benefit.

**3.1.2. Vested Members.** Members who separate from employment and are vested but below Minimum Retirement Age (not including early retirement) under the applicable section of

---

<sup>1</sup> Title 22 of the Philadelphia Code, the Public Employees Retirement Code, supersedes all prior statutes and Ordinances and incorporates the plans and provisions set forth therein. See Section 22-108, Statutes and Ordinances Superseded. Accordingly, this amended regulation refers only to the Public Employees Retirement Code.

<sup>2</sup> For the purposes of this regulation, “employees” refers to any active employee of the City of Philadelphia or of any quasi-governmental agency identified by Ordinance.

their plan relating to service retirement may withdraw their contributions if they have not been awarded an Ordinary Disability benefit, but will be advised that they would thereby lose their right to a separation service pension upon later reaching retirement age, and their rights upon any re-employment are not assured (see Paragraph 3.5 below).

**3.1.3 Members entitled to a benefit.** Members who separate on or after reaching the Minimum Retirement Age under their plan, employees who have applied for early retirement, or members who have been awarded an Ordinary Disability retirement benefit, may not withdraw their contributions.

**3.2 Option to leave contributions in the System.** Pursuant to Section 22-903 of the Retirement Code (“shall at the written request of the member be repaid”) and Section 22-203(b).(3) (“Employees who, upon separation from employment with the City . . . did not withdraw their pension contributions”) the Board will refund the member’s contributions only if requested in writing by the member. Members who are not yet entitled to retire may choose to leave their contributions in the system upon separation, and thereby preserve their membership in the plan they are in upon separation

**3.2.1 Exception for Minimum Refunds.** The staff of the Board may, upon the separation of any nonvested employee with \$100 or less in accrued contributions, automatically refund the contributions without the necessity of contacting the employee for a decision on disposition of the funds.

**3.3 Effect of Refund of Contributions.** Upon a member’s receipt of a refund of his or her contributions, all rights in the Municipal Retirement System cease and he or she is no longer a member of the System. The former member will not be permitted to reverse his or her decision in any way, including by paying back the contributions, nor will he or she be entitled to apply for any other pension benefit . Similarly, the rights of any beneficiary or survivor based on that former member’s service cease. If the former member is later reinstated to City employment, he or she may be permitted to purchase service credit for the prior service under certain conditions, depending on the applicable pension legislation at the time of re-employment (see Paragraph 3.5 and 3.6 below).

**3.3.1 Rescinded.**

**3.4 Acknowledgements.** The Board’s staff shall design and put into use appropriate forms for members to sign upon withdrawing contributions, to acknowledge the effect of such refund .Such forms shall expressly advise members that withdrawal of contributions will cut off their ability to apply for Service Connected or Ordinary Disability benefits.

**3.5 Repurchase of Prior Service.** Except as provided in Paragraph 3.6below, the right of a rehired employee to purchase service credit for prior City service shall be governed by the applicable provisions of whatever ordinance governs at the time of re-hire, currently Retirement Code §22-803 Re-hired employees who had withdrawn their contributions may be subject to any intervening changes in legislation.

**3.6 Repurchase permitted by court order, Civil Service Commission order, arbitration award, collective bargaining agreement, settlement, or the like.** Upon receipt of any court order, Civil Service Commission Order, arbitration award, collective bargaining agreement, settlement, or the like that provides for reinstatement of a separated employee, the Board's staff shall review the document to determine the effect on the employee's pension rights. Where such a document either implicitly or explicitly provides for retroactive pension service credit for a period for which the employee either made no contributions or received a refund of the contributions but is silent on the terms of the employee repaying such contributions, the Board shall bill the employee, by letter sent by certified mail, for the respective contributions. The employee shall be allowed, and the letter shall so state, 90 days from the date of the letter to make full payment of any needed contributions for any past service, subject to the provisions of Section 22-806, Installment Payments. Any reinstated employee who does not make timely full payment in accordance with this Regulation shall be denied the credit for the associated service, and shall be treated as having a break in service for that period. Beyond the 90 day period, employees may purchase pension credit for such periods pursuant to Section 22-803 of the Retirement Code. Further, any employee who fails to repay necessary contributions within 90 days will become a member of the applicable plan in effect on the date of reinstatement, and any rights that the employee may have had in a previous plan shall cease. Notwithstanding any other language in this paragraph, where any order, award, or agreement provides for back pay to be paid by the City for a period for which the employee is to be "made whole" or accorded full pension rights, the employee will not be billed for the employee pension contributions for that period, if the contributions can be, and are, deducted from any back pay payments.

**3.7 Rescinded.**

**3.8 Issues not addressed.** This regulation explicitly does not address the tax consequences of the payment, refund or repayment of contributions, nor does it address attachments of contributions or offsets against contributions.

Approved by the Board January 15, 1998

Effective February 27, 1998

Amended by deleting references to predecessor Ordinances throughout, revising §§ 3.1, 3.1.2, 3.1.3., 3.2, 3.3, 3.4, 3.5, 3.6, and rescinding §§ 3.3.1 and 3.7 by vote of the Board December 5,, 2013, effective \_\_\_\_\_, 2014.

780110

DEPARTMENT OF RECORDS  
2014 MAR 21 PM 12:26

# PHILADELPHIA BOARD OF PENSIONS AND RETIREMENT

## REGULATION NO. 4

Board of Pensions and Retirement Regulation No. 4, attached, is rescinded, by vote of the Board at its Meeting of January 24, 2014.



Francis X. Bielli, Esq.  
Executive Director  
Board of Pensions and Retirement

Date:

780116

DEPARTMENT OF RECORDS  
2014 MAR 21 PM 12:27

**PHILADELPHIA BOARD OF PENSIONS AND RETIREMENT**

**REGULATION NO. 4**

**PAYMENT OF CONTRIBUTIONS FOR PRIOR OVERTIME EARNINGS**

**WHEREAS,** The Board of Pensions and Retirement is empowered by Section 8-407 of the Home Rule Charter and Section 22-107 of the City of Philadelphia Public Employees Retirement Code ("Retirement Code") to make all necessary regulations to carry into effect the provisions of the Retirement Code; and .

**WHEREAS,** The Retirement Code as enacted January 13, 1999 now makes it possible for certain members to have overtime earnings included as part of their average final compensation where such members were not able to have their overtime earnings included in their average final compensation previously; and

**WHEREAS,** Inclusion of overtime earnings in compensation for pension purposes are not available to a member unless the member has made employee contributions on overtime earnings for that period; and

**WHEREAS,** The Board has determined it appropriate to adopt a regulation in order to allow certain members (current employees and retirees who retired since the legislative change) who have earned overtime in the past which they were not previously eligible to include as part of their average final compensation and for which employee contributions were not deducted to pay the appropriate pension contribution;

**NOW THEREFORE,** The Board of Pensions and Retirement hereby adopts this Regulation No. 4, relating to overtime earnings.

**4.1 Overtime for Nonrepresented Employees and for Employees formerly in "Plan M".**

**4.1.0 Background and Eligibility.** Upon the adoption of the Retirement Code through the Ordinance approved January 13, 1999 (Bill No. 980843), which incorporated a change previously made by the Ordinance approved January 8, 1999 (Bill No. 960598), a change was made in the calculation of "average final compensation" for employees in Plan J and Plan Y. See Code §§22-105(6)(a) and 22-105(9)(a)(3). Formerly, nonrepresented employees in Plan J and municipal employees in Plan Y who were hired between January 8, 1987 and October 1, 1992 (who were formerly in Plan M) and some others could not count overtime toward "average final compensation." Accordingly, employee contributions were not deducted from any overtime earnings for such employees, and such overtime earnings did not count in the calculation of those employees' average final compensation, on which the pension is calculated. Also, formerly, when any employee transferred from a represented position to a nonrepresented position and retired from the nonrepresented position, that employee's overtime earnings were excluded when calculating the employee's average final compensation, even if the employee had earned overtime during that part of the period in which the employee was in a represented position, because, upon retirement, average final compensation was determined based on the position in which the employee was at the time of retirement.

With the approval of the Retirement Code, however, overtime was no longer excluded from "average final compensation" for the above employees. Accordingly, employees in Plan J and Plan Y who were active as of January 8, 1999 who had not had employee contributions deducted from their paychecks for such prior overtime service, may now pay pension contributions, as follows:

**4.1.1. Calculation.** Any member in Plan J or Plan Y who so desires and who is currently active or, if retired, has a retirement effective date on or after January 8, 1999, may have their overtime earnings for any prior year considered as pensionable earnings for the purpose of calculating "average final compensation." Such member must file an application with the Board and provide the Board with documentation--if not otherwise available through City records--of overtime earned for the earliest year desired and each subsequent year through the last pay period in 1999 for which the member had

overtime earnings on which no pension contributions were deducted. Once the employee selects the earliest year for which overtime earnings are to be considered as pensionable earnings, such employee must make the appropriate pension contributions for each subsequent year thereafter through the last pay period in 1999 for which the member had overtime earnings on which no pension contributions were deducted. The Board will then bill the employee for the amount calculated as the total of (a) and (b), as follows:

(a) the difference between

- (1) the amount of contributions paid by the employee during that period of employment and
- (2) the amount of contributions he or she would have paid during that period of employment if overtime was included as part of the employee's pensionable earnings; plus

(b) interest at the rate of nine (9) per cent per annum compounded annually, for each year's pension contributions, calculated from the first day of the next calendar year for the previous year's pension contributions to the date of application under Subsection (a); provided that for any application filed with the Board within 180 days of the effective date of this regulation, the interest under this subsection shall be waived. Any installment interest under Code §22-806 shall not be waived.

Approved by the Board September 16, 1999  
Became effective October 20, 1999

7801  
DEPARTMENT OF RECORDS  
2014 MAR 21 PM 12:27

# PHILADELPHIA BOARD OF PENSIONS AND RETIREMENT

## REGULATION NO. 5

Board of Pensions and Retirement Regulation No. 5, attached, is rescinded, by vote of the Board at its Meeting of December 5, 2013.



Francis X. Bielli, Esq.  
Executive Director  
Board of Pensions and Retirement

Date:

780113

DEPARTMENT OF RECORDS  
2014 MAR 21 PM 12:27



**PHILADELPHIA BOARD OF PENSIONS AND RETIREMENT**

**REGULATION NO. 5**

**HEROIC ACTION EXEMPTION TO CODE SECTION 22-401(4)(2)(c)**

**WHEREAS,** The Board of Pensions and Retirement is empowered by Section 8-407 of the Home Rule Charter and Section 22-107 of the City of Philadelphia Public Employees Retirement Code ("Retirement Code") to make all necessary regulations to carry into effect the provisions of the Retirement Code; and

**WHEREAS,** Section 22-401(4)(2)(c) of the Retirement Code provides that police members receiving a service-connected disability pension must provide the Board with copies of their federal income tax returns, and those who earn outside income are subject to a reduction, or "offset," in their disability pension based on their outside income.; and

**WHEREAS,** The Act 111 Interest Arbitration Award effective July 1, 1996, the Award effective July 1, 1998 and the Award effective July 1, 2000 which incorporated certain terms of the 1996 award provided that the above requirements shall not apply to police members who receive service-connected disability retirement benefits either as an immediate result of the violent conduct of a third party that was directed toward the officer or a member of the public or as an immediate result of performing other heroic action in an emergency situation in the line of duty; and

**WHEREAS,** The above awards also provided that the Board shall in its sole discretion determine eligibility for this exemption; and

**WHEREAS,** Pending before City Council is Bill No. 00536, adding a new subsection 22-401(4)(d) to the Retirement Code authorizing the Board to implement the terms of the above Arbitration Awards and to adopt regulations to define terms and provide for procedures;

**NOW THEREFORE,** The Board of Pensions and Retirement hereby adopts this Regulation No. 5, relating to the "heroic action exemption."

## **5.1 Application**

**5.1.1. Form required.** The heroic action exemption will be considered only upon application by the member, upon the form adopted by the Board. The form to be used will be that attached to this regulation, as it may be revised from time to time, in the sole discretion of the Executive Director of the Board.

**5.1.2. Deadline and filing.** In order for an application to be considered, the form adopted by the Board must be completed by the member and on file with the Board no later than the date of the member's retirement interview with Pension Board staff, except that the Executive Director may extend this deadline by 14 calendar days, upon good cause shown.

## **5.2 Fact-gathering**

**5.2.1. The file.** The applicant may submit any documentary evidence to support his or her application. In addition, the Board may request or receive information from the employee's Department or any other Department, which shall be included in the file.

## **5.3 Consideration by the Board**

**5.3.1. Procedure.** Except when not practicable, the Board shall list for final vote an application for the heroic action exemption for the same Board meeting as its initial consideration on the application for service-connected disability pension from the same member. A member may, under Board Regulation No. 1.1, appeal an adverse ruling to a hearing. In this way, a member who is denied both the pension and the exemption may, if desired, appeal both determinations to the same hearing.

## **5.4 Effect of determination**

**5.4.1. Exemption.** Upon being determined to meet the heroic action exemption, a member shall not be subject to any of the requirements of Code Section 22-401(4)(2)(c), including the income offset on any outside income and the requirement to provide the Board with copies of federal income tax returns. The Board shall send no notices of the tax return requirement to a member who has been granted the exemption.

**5.5 Definitions.** In applying the Ordinance, the Board shall award the exemption upon criteria using the following definitions for terms in Code Section 22-401(4)(.2)(d), as added by Bill No. 00536, and as it may be amended from time to time:

**5.5.1 "Immediate result"** is defined to mean that the heroic action or violent action of a third party was the final incident precipitating the disability. In other words, if an officer who is not disabled by a heroic action at the time but subsequently suffers a later injury (not under "heroic" conditions) to the same part of the body, and the doctors advise that the cumulative effect of both injuries disabled the officer, that officer would not be entitled to the exemption.

**5.5.2 "Violent conduct"** is defined to mean one of the following:

- i. An attempt or threat to inflict injury on another person, along with an apparent ability to do so, or
- ii. Any display of force that would give the victim reason to fear immediate bodily harm or that does result in bodily harm, or
- iii. Any action that by its nature is so forceful and uncontrolled that the actor should know that other persons are being recklessly endangered.

**5.5.3 "Third party"** is defined to mean any person other than the disabled officer. (The "second party" is considered to be the public as a theoretical entity.)

**5.5.4 "Directed toward"** is defined to include only intentional actions. For example, an accidental collision by another automobile (which would also fail the definition of "violent conduct") would not be an action "directed toward" the person with whom the driver collided.

**5.5.5 "Other heroic action"** is defined to involve action in which the officer exhibits bravery by proceeding in the face of obvious or known danger to himself or others, or by placing himself or herself in danger in order to stop a crime, save a person from death or bodily harm or otherwise accomplish a task that would be his duty as a police officer even if the danger were not present.

**5.5.6 "Emergency situation in the line of duty"** is defined to mean either an unanticipated situation or a situation that clearly involves danger to the officer or others and where the officer is taking affirmative police action.

**5.6 Effective Date.** This regulation shall take effect upon the enactment of Bill No. 00536, provided that all the requirements of Charter Section 8-407 have been met.

Approved by Board of Pensions & Retirement – October 19, 2000  
Became effective – December 6, 2000  
Bill No. 00536 approved – December 6, 2000

780114

DEPARTMENT OF RECORDS  
MAR 29 PM 12:27

**APPENDIX – Application Form**

**BOARD OF PENSIONS AND RETIREMENT**  
**APPLICATION FOR HEROIC ACTION EXEMPTION**  
**(Plan B or Plan D only)**

I, \_\_\_\_\_, Payroll Number \_\_\_\_\_,  
print or type name

am applying for a service-connected disability pension from the City of Philadelphia Municipal Retirement System. In the event such a pension is approved, this form indicates whether I wish to apply for the “heroic action exemption.”

**Check one:**

- ☐ I am applying for the “Hero Exemption” exception from application of the obligation to provide tax returns and be subject to income offset, in Code Section 22-401(4)(c).
- ☐ I am not applying for the “Hero Exemption”. [Checking this box, or failing to check either box, means that you forever give up the ability to apply for the exemption.]

My disability is the result of the following condition, illness, injury, loss of function, combination thereof:

---

---

---

780115

2019 MAR 21 PM 12:27

DEPARTMENT OF RECORDS

---

As a result of the above incapacity, I am unable to perform the following job-related functions or activities:

---

---

---

I claim that the above-stated incapacity was caused by the following on-duty accident(s) or working condition(s) [List dates of all accidents and duties being performed at the time; for working conditions, list beginning and ending dates of the period that you worked under those conditions and duties being performed during that period]:

---

---

---

---

---

Signature of member

---

Date

