

# ARTICLE 4. STATE EXCISE POLICE, GAMING AGENT, GAMING CONTROL OFFICER & CONSERVATION ENFORCEMENT OFFICERS' RETIREMENT PLAN

## Rule 1. Survivor Benefits

### 35 IAC 4-1-1 Death of member and beneficiary

Authority: IC 5-10-5.5-3; IC 5-10.5-4-2

Affected: IC 5-10-5.5-17

Sec. 1. Survivor Benefits. If a retired member and his beneficiary die prior to recovering contributions plus interest there is no lump sum refund payable to the estate of the last beneficiary. (*Board of Trustees of the Indiana Public Retirement System; 35 IAC 4-1-1; filed May 9, 1979, 11:31 am: 2 IR 680; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA*)

### 35 IAC 4-1-2 Death in service; compliance with the Heroes Earning Assistance and Relief Tax Act of 2008 (HEART)

Authority: IC 5-10-5.5-3; IC 5-10.5-4-2

Affected: IC 5-10-5.5-17

Sec. 2. (a) Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in Chapter 43 of Title 38, United States Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors of a member in the retirement system are entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed.

(b) Effective with respect to deaths or disabilities occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in Chapter 43 of Title 38, United States Code), to the extent permitted by Section 414(u)(9) of the Internal Revenue Code, for benefit accrual purposes, the member will be treated as having returned to employment on the day before the death or disability and then terminated on the date of death or disability. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(c) Beginning January 1, 2009, to the extent required by Sections 3401(h) and 414(u)(12) of the Internal Revenue Code, an individual receiving differential wage payments (while the individual is performing qualified military service (as defined in Chapter 43 of Title 38, United States Code)) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner. (*Board of Trustees of the Indiana Public Retirement System; 35 IAC 4-1-2; adopted Nov 20, 2009: 20091209-IR-035090927ONA; adopted Apr 26, 2013: 20130508-IR-035130167ONA*)

## Rule 2. Creditable Service

### 35 IAC 4-2-1 Re-employment after withdrawal of contributions

Authority: IC 5-10-5.5-3; IC 5-10.5-4-2

Affected: IC 5-10-5.5-7

Sec. 1. Creditable Service. If a participant in the fund terminates employment prior to accumulating 15 years of service and withdraws his monies in a lump sum he forfeits all service in the Plan. If the former participant is re-employed as an Excise Officer or Conservation Officer he must repay all withdrawn monies to receive credit for the prior service. (*Board of Trustees of the Indiana Public Retirement System; 35 IAC 4-2-1; filed May 9, 1979, 11:31 am: 2 IR 680; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA*)

### 35 IAC 4-2-2 Transfers with public employees retirement fund

Authority: IC 5-10-5.5-3; IC 5-10.5-4-2

Affected: IC 5-10-5.5-7

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Sec. 2. PERF Service. Service as a Conservation Officer, Excise Officer, Gaming Agent, or Gaming Control Officer can be transferred to PERF. Service in PERF cannot be transferred to the Plan except as specifically authorized by statute. Duplicate service cannot be granted. (*Board of Trustees of the Indiana Public Retirement System; 35 IAC 4-2-2; filed May 9, 1979, 11:31 a.m.: 2 IR 680; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA*)

**35 IAC 4-2-3 Calculation of creditable service**

Authority: IC 5-10-5.5-3; IC 5-10.5-4-2

Affected: IC 5-10-5.5-7; IC 5-10-5.5-10

Sec. 3. (a) Total service credit is the sum of all creditable service including partial years.

(b) Notwithstanding (a) [subsection (a)], a member's benefit is calculated on whole and not partial years. (*Board of Trustees of the Indiana Public Retirement System; 35 IAC 4-2-3; adopted Apr 29, 2011: 20110511-IR-035110273ONA*)

**35 IAC 4-2-4 Service purchase and buybacks**

Authority: IC 5-10-5.5-3; IC 5-10.5-4-2

Affected: IC 5-10-5.5-7.5; IC 5-10.3-7-5

Sec. 4. (a) Eligible members of the fund may purchase service under IC 5-10.3-7-5, IC 5-10-5.5-7.5, as well as prior service forfeited due to a withdrawal.

(b) The cost to purchase such service is determined at the time the member makes the contributions for such service. The fund shall provide the eligible fund member with information with respect to the cost of such service.

(c) The eligible fund member may purchase such service subject to the following:

(1) Service may be purchased in one (1) month increments. The minimum service purchase is one (1) year for a member who elects to purchase service through installment payments.

(2) Payments are subject to the terms and conditions of a finance agreement.

(3) Any such purchase may be made via a direct cash payment, a direct rollover as allowed by statute, or a combination of both.

(4) Any direct rollover may not exceed the actual cost of such service as established by the fund.

(5) Payment may be made in a lump sum or in annual installments for a period not to exceed five (5) years. Any installment may bear interest at the actuarial assumed interest rate effective on the date of the first installment.

(6) Any payments are subject to applicable Internal Revenue Service limits, and INPRS may deny an application or may limit any payments if the purchase would exceed those limitations.

(7) In the event of a payment default under the terms of the finance agreement or the purchase is not completed, a partial service credit amount will be determined by INPRS. The partial service credit amount will be based on the payments made as of the date of payment default and the cost of the service. Partial service will be credited in monthly increments. The minimum amount of partial service credit will be one (1) month. The fund member is not eligible to make service purchase payments after the date of the payment default or the date of separation of employment.

(8) In the event any annual payment is not timely made, allowing for a thirty (30) day grace period, the payment will be deemed in default under the terms of the finance agreement. The fund member is not eligible to make service purchase payments after the date of the payment default.

(9) If the member does not choose periodic payments, a lump sum payment must be received within ninety (90) days of the member receiving the cost letter. In the event the lump sum payment is not timely made, allowing for a thirty (30) day grace period, the payment will be deemed in default under the terms of the finance agreement. The fund member is not eligible to make service purchase payments after the date of the payment default.

(10) If a lump sum payment is chosen, full payment must be received within ninety (90) days of the member receiving the cost letter or the purchase defaults and no further payments may be made.

(*Board of Trustees of the Indiana Public Retirement System; 35 IAC 4-2-4; adopted Dec 13, 2013: 20131225-IR-035130565ONA*)

### Rule 3. Retirement Benefits

#### 35 IAC 4-3-1 Retirement benefits

Authority: IC 5-10-5.5-3; IC 5-10.5-4-2  
Affected: IC 5-10-5.5-15; IC 5-10-5.5-16

Sec. 1. Retirement Benefits. If a fund member dies while receiving retirement benefits, the following apply:

- (1) A surviving mother or father nominated by the retired participant to receive survivors' benefits shall be entitled to an annual survivors' allowance for life equal to fifty percent (50%) of the participant's monthly benefit.
- (2) A surviving spouse nominated by the retired participant to receive survivors' benefits shall be entitled to an annual survivors' allowance for life equal to fifty percent (50%) of the retired participant's monthly benefit. In the case of a surviving spouse who is more than five (5) years younger than the deceased participant at the time of the participant's death, the amount of the annual survivors' allowance shall be reduced actuarially, without regard to the sex of the spouse or the participant.
- (3) A surviving child eligible and nominated by the retired participant to receive survivors' benefits shall be entitled to an annual survivors' allowance equal to fifty percent (50%) of the retired participant's monthly benefit. If more than one (1) surviving child is eligible and nominated to receive survivors' benefits, the annual allowance shall be divided equally between or among such children. In all cases, the survivors' allowance to a child shall cease when the child attains the age of eighteen (18) years or marries, whichever occurs first. Where a survivors' allowance is divided between or among more than one (1) child, and payments to one (1) or more children cease, the total annual allowance payable shall be divided evenly among or between the remaining children who are eligible therefore. If there are two (2) or more surviving dependent children, the actuarial equivalent of the benefit described in this subsection shall be calculated and, considering the dependent children's attained ages, an equal dollar amount shall be determined as the monthly survivor benefit to be paid to each dependent child. Monthly survivor benefits under this subsection [subdivision] are payable until the date the dependent child becomes eighteen (18) years of age or dies, whichever is earlier.
- (4) In the event that no nomination is made by an eligible participant, or in the event that the nominated survivor predeceases the participant and no contingent survivor is nominated and an eligible participant dies, no survivors' allowance shall be payable.

*(Board of Trustees of the Indiana Public Retirement System; 35 IAC 4-3-1; filed May 9, 1979, 11:31 a.m.: 2 IR 681; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA; adopted Apr 26, 2013: 20130508-IR-035130167ONA; adopted Dec 13, 2013: 20131225-IR-035130565ONA)*

#### 35 IAC 4-3-2 Benefit payments pending appeal

Authority: IC 5-10-5.5-3; IC 5-10.5-4-2  
Affected: IC 5-10-5.5-10; IC 34-13-1-6

Sec. 2. (a) A member who elects to exercise the right to appeal an adverse decision issued by the state excise police, gaming agent, gaming control officer, and conservation enforcement officers' fund may receive benefit payments less the disputed amount while the matter is pending. Should the matter be resolved in the member's favor, future benefits will be adjusted accordingly and a lump-sum payment for past benefits due shall be issued within sixty (60) days. If, however, the necessary information has not been provided or was delayed, the sixty (60) day period will be extended accordingly.

(b) Whenever, by final decree or judgment, a sum of money is adjudged to be due to a person, the judgment shall draw an annual rate of interest as described in IC 34-13-1-6. The fund shall not pay prejudgment interest. *(Board of Trustees of the Indiana Public Retirement System; 35 IAC 4-3-2; adopted Nov 19, 2010: 20101208-IR-035100722ONA)*

#### 35 IAC 4-3-3 Administrative orders; proceedings; reviews

Authority: IC 5-10.5-4-2  
Affected: IC 2-3.5-3-4; IC 4-21.5-3-5; IC 4-21.5-3-28; IC 5-10.2; IC 5-10.3-8-5; IC 33-38-6-23; IC 33-39-7-11

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Sec. 3. (a) The purpose of this rule is to establish procedures to process petitioner appeals of PERF staff actions, determinations, or decisions referred to as "staff action" in accordance with and pursuant to the Indiana Administrative Orders and Procedures Act (Act), IC 4-21.5-3.

(b) Pursuant to IC 4-21.5-3-28, the executive director (ED) as the board's delegate is the ultimate authority and has set forth the following review process to be followed before a final order is issued:

- (1) PERF will issue an initial determination of its response to a questioned action.
- (2) The initial determination will be sent by certified mail to the stakeholder with a summary of the member's right to administrative review.
- (3) Pursuant to IC 4-21.5-3-5, the petitioner will have fifteen (15) days from receipt of PERF's initial determination to appeal in writing.
- (4) Upon receipt by PERF a copy of the appeal will be sent to the administrative law judge (ALJ) assigned to the matter.
- (5) The assigned ALJ may set a prehearing conference to discuss issues of discovery and motions for summary judgment and to determine a briefing schedule.
- (6) If an evidentiary hearing is required, PERF will provide space which is equipped with a recording device to conduct the hearing or engage a court reporter to make a record of the hearing if necessary.
- (7) Once the ALJ has entered a decision and recommended order, the petitioner will have fifteen (15) days to object to the ALJ's decision.
- (8) The ED will make a final determination to affirm, modify, or dissolve the ALJ's order. The executed final order will be mailed by certified mail to the ALJ and petitioner.
- (9) The petitioner has thirty (30) days from receipt of the final order to petition a court of jurisdiction for judicial review.
- (10) If no petition for judicial review is filed within the thirty (30) day time period, the file is closed.
- (11) This rule shall be interpreted to conform to the Act and shall be implemented pursuant to and in accordance with the Act.

(c) This rule will apply to appeals filed pursuant to IC 5-10.3-8-5, IC 33-39-7-11, IC 33-38-6-23, and IC 2-3.5-3-4. (*Board of Trustees of the Indiana Public Retirement System; 35 IAC 4-3-3; adopted Nov 19, 2010: 20101208-IR-035100722ONA*)

## **Rule 4. Vesting of Benefits**

### **35 IAC 4-4-1 Vesting of benefits (Repealed)**

Sec. 1. (*Repealed by Board of Trustees of the Indiana Public Retirement System; adopted Nov 9, 2007: 20071205-IR-035070818ONA*)

### **35 IAC 4-4-2 Vesting of benefits**

Authority: IC 5-10.5-4-2  
Affected: IC 5-10.5.5-22

Sec. 2. Vesting. A participant is vested under this fund upon:

- (1) accumulating fifteen (15) years of creditable service; or
- (2) for an officer who becomes a participant after becoming fifty (50) years of age, accumulating ten (10) years of creditable service. Pursuant to IC 5-10.5.5-22, officers who become participants after becoming fifty (50) years of age will not be eligible for the DROP until they have accumulated ten (10) years of service.

(*Board of Trustees of the Indiana Public Retirement System; 35 IAC 4-4-2; adopted Nov 21, 2008: 20090107-IR-035080955ONA*)

### **35 IAC 4-4-3 Actuarial assumptions**

Authority: IC 5-10.5-4-2  
Affected: IC 5-10.5.5-16

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Sec. 3. In the case of a surviving spouse who is more than five (5) years younger than the deceased participant at the time of the participant's death, the amount of the annual survivor allowance shall be reduced by a factor equal to 0.03% (0.0003), multiplied by the number of months in excess of sixty (60) months, that the surviving spouse is younger than the deceased participant at the time of the participant's death. (*Board of Trustees of the Indiana Public Retirement System; 35 IAC 4-4-3; adopted Apr 26, 2013: 20130508-IR-035130167ONA; adopted Dec 13, 2013: 20131225-IR-035130565ONA*)

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