

**CHAPTER 71-05-05
NORMAL AND EARLY RETIREMENT BENEFITS**

Section	
71-05-05-01	Normal and Early Retirement Benefits - Application
71-05-05-02	Special Retirement Options - Application
71-05-05-03	Payment Date - Regular Early and Normal Retirement Benefits
71-05-05-03.1	Payment Date - Retirement Benefits for Late Retirees
71-05-05-04	Optional Benefits
71-05-05-04.1	Benefit Modifications
71-05-05-05	Designation of Beneficiary
71-05-05-06	Lack of a Designated Beneficiary
71-05-05-07	Amount of Early Retirement Benefit
71-05-05-08	Retirement - Dual Membership
71-05-05-09	Assignment or Alienation of Plan Benefits
71-05-05-10	Erroneous Payment of Benefits - Overpayments
71-05-05-11	Erroneous Payment of Benefits - Underpayments
71-05-05-12	Erroneous Payment of Benefits - Appeals

71-05-05-01. Normal and early retirement benefits - Application. Except as provided in section 71-05-05-02 for retirement options, applications for retirement, surviving spouse, and disability benefits must be filed at the public employees retirement system at least thirty days before normal or early retirement date or before the commencement of benefits. A member shall file a photocopy of the member's birth certificate and, if the member is married, a photocopy of the member's spouse's birth certificate and marriage certificate. A surviving spouse shall file a photocopy of the surviving spouse's birth certificate, deceased member's birth certificate, and marriage certificate for a benefit election under subsection 6 of North Dakota Century Code section 39-03.1-11.

History: Effective October 1, 1991; amended effective May 1, 2004.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-11

71-05-05-02. 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 prior to the beginning date of benefit payments if approved by the plan administrator 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 retirement office.

History: Effective October 1, 1991; amended effective May 1, 2004; July 1, 2010.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-11

71-05-05-03. Payment date - Regular early and normal retirement benefits. Except for the retirement options provided in section 71-05-05-02, a member's normal or early retirement benefit must 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.

History: Effective October 1, 1991.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-11

71-05-05-03.1. Payment date - Retirement benefits for late retirees. Except for retirement options provided in sections 71-05-05-02 and 71-05-05-03, 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, 2008.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-11

71-05-05-04. Optional benefits. A member may elect, as provided in section 71-05-05-02, to receive one of the following optional benefits in lieu of the regular early or normal retirement benefit.

1. **One hundred percent joint and survivor benefit.** A member may 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. In the event the member's spouse predeceases the member or, in the event of divorce, the option shall be canceled and the member's benefit shall be returned to the normal retirement amount. Payment of the normal retirement amount shall commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree. Should the member remarry and wish to change such designation, a new actuarial retirement benefit will be calculated.

Payments of benefits to a member's surviving spouse must 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, death certificate, birth certificate verifying age, and is still living. Benefits must terminate in the month in which the death of the beneficiary occurs.

2. **Twenty-year or ten-year term certain.** 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: Effective October 1, 1991; amended effective July 1, 2006; April 1, 2008; July 1, 2010.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-11

71-05-05-04.1. Benefit modifications. A member may elect as provided in section 71-05-05-02 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 their normal retirement date. This option is an irrevocable election and made at initial application for retirement. The payment is equal to twelve monthly payments determined under the normal annuity option. The member is permitted to choose one of the optional forms of payment 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 their normal retirement date. This option is an irrevocable election and made at initial application for 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 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 and made at initial application for retirement. The member is permitted to choose one of the optional forms of payment for ongoing benefits excluding the deferred normal retirement option or partial lump sum option. The ongoing benefits will be actuarially reduced to reflect the election of the graduated benefit.

History: Effective July 1, 2010.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-11

71-05-05-05. Designation of beneficiary. A member may designate a beneficiary or beneficiaries by filing such designation with the office. A member shall have the right to change the member's designation of beneficiary without the consent of the beneficiary, but no such change is 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 consent of the member's spouse is required before benefits can be paid other than to the member's spouse.

History: Effective October 1, 1991; amended effective April 1, 2002.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-11(6)(7)(8)

71-05-05-06. Lack of a designated beneficiary. If no beneficiary is designated by a member, any benefits due and payable must be paid to the estate. If the member has elected the one hundred percent joint and survivor option, and the designated beneficiary predeceases the member, the option must be canceled and the member's benefits must be returned to its unreduced amount.

History: Effective October 1, 1991.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-11

71-05-05-07. Amount of early retirement benefit. The early retirement benefit must be an amount actuarially reduced from the normal retirement benefit by one-half of one percent for each month (six percent per year), that the member

is younger than age fifty-five on the date of the member's early retirement benefit effective date.

History: Effective October 1, 1991; amended effective July 1, 2010.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-11

71-05-05-08. Retirement - Dual membership. If a member elects to begin drawing monthly benefits while continuing to participate in the public employees retirement system, teachers' fund for retirement, or the teachers' insurance and annuity association college retirement equities fund, the provisions of section 71-02-04-09 must apply.

History: Effective October 1, 1991; amended effective June 1, 1996; May 1, 2004.

General Authority: NDCC 39-03.1-14.1(1)(c)

Law Implemented: NDCC 39-03.1-14.1

71-05-05-09. Assignment or alienation of plan benefits. Benefits provided under the plan may not be assigned or alienated except as provided in North Dakota Century Code section 54-52-17.6.

History: Effective April 1, 2002.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-14.2

71-05-05-10. 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 an explanation and a written request for the amount to be refunded from the executive director. 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 an 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 individual's benefit payment period.

4. If the overpayment was the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the recipient, the recipient is liable to pay 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 April 1, 2002; amended effective July 1, 2006; July 1, 2010.

General Authority: NDCC 32-03-04, 39-03.1-06, 54-52-04(12), 54-52-14.2

Law Implemented: NDCC 39-03.1-25

71-05-05-11. 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 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 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 April 1, 2002; amended effective May 1, 2004; April 1, 2008.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-25

71-05-05-12. 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 April 1, 2002.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-25