

# **POLICE PENSION PLAN DESCRIPTION**

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### **Cautionary Note:**

This publication is presented with the understanding that the Author does not render any legal, accounting or other professional service. Due to the rapidly changing nature of the law, information contained in this publication may be outdated. Anyone using this publication must always update the information and seek legal counsel and not solely rely upon this publication.

This is a booklet intended to explain Downstate Police Pension benefits as contained in Article 3 of the Pension Code. This should not be confused with, nor is it endorsed by the Illinois Department of Insurance, but is solely the description of the author, and is only intended to provide a generic and cursory description of the plan.

This booklet is not a substitute for a reading of the Act itself, nor should it be dated as authoritative. Please keep in mind that the City of Chicago and some municipalities are not covered by the Downstate Police Pension Act.

The Law Offices of Collins & Radja acknowledges IPPAC (Illinois Public Pension Advisory Committee) for co-sponsoring this booklet.

Should you have a specific question concerning a particular issue, you should seek legal counsel and not rely solely on this booklet.

## **GUIDE TO THE POLICE PENSION FUND (DOWNSTATE)**

The Illinois Police Pension Plan, commonly known as Chapter 40 Act 5 Article 3 is a retirement plan qualified under Section 401A of the Internal Revenue Code.

The plan is not an ERISA plan as is sometimes erroneously thought. While geared to provide retirement benefits, the plan also provides disability benefits to its participants as well as survivor benefits to qualified dependants. The plan is governed solely by the applicable Illinois Statutes and is regulated by the Pension Division of the Illinois Department of Financial and Professional Regulation.

### **Application Eligibility**

Any full time police officer who has been sworn is eligible to participate in the plan upon written application. The written application must be made within ninety days of the officer joining the Police Department. There is no longer a restriction as to physical condition or age

in order to become a member of the Police Pension Fund.

### **Beneficiaries**

In the event of the death of a participant in the fund, survivor's benefits are paid pursuant to the statute. Eligible beneficiaries are defined by statute and not by the participant. There is no need for nor is it possible for a beneficiary to be named by a participant. As a general rule, eligible beneficiaries under the statute are spouses, dependent children to age 18 and dependent parents.

### **Benefits-General**

The Illinois Police Pension Code provides the following benefits as dictated by the statute.

1. Retirement Benefits for members who have at least eight years of creditable service at age 60.
2. Disability benefits both as a result of an act of duty in the police service or a non-duty injury or illness resulting from a non-duty related occurrence.

3. Survivor benefits for spouses, dependent children and parents.

### **Benefits-Retirement**

Retirement benefits are available to participants who have as few as eight years of creditable service. A participant having between eight (8) and twenty (20) years of creditable service is entitled to 2 1/2% of his/her last salary for each full year of creditable service. This is payable at age sixty.

### **Full Retirement**

The normal retirement age for police officers is age 50. Any police officer reaching age 50 with at least 20 full years of creditable service is entitled to 50% of his/her salary at his/her last day of service or for one year prior to the last day, whichever is greater. For each full year after 20 years the Pension increases by 2 1/2% until the 30th year. The maximum Pension is 75% of "salary" attained at 30 years of service.

### **Partial Retirement Benefits**

Any police officer who has at least eight (8) full years of service, but less than 20 years of full service, and

does not receive a refund of his contributions receives 2.5% of his last salary at age 60, for each full year of creditable service.

### **Refunds**

A participant in the plan with less than twenty years of service may, upon his/her separation from service request a refund of their contributions.

The contributions will be refunded without interest upon a written request from a participant who has been separated from service. There are no partial refunds; all refunds are in full. A refund cannot be made to a police officer either receiving benefits or who is still in service with the police department. A 20% tax withholding is figured unless the refund is placed in a Qualified Plan.

A police officer who receives a refund of his contributions is barred from further participation in the benefits of the police pension code.

## **Disability Benefits.**

The Plan provides disability benefits for participants who are found to be disabled. A disability is an accident, illness, injury or condition which renders necessary their suspension or retirement from the police service. The benefits are non-duty related injury benefits and duty-related benefits. A participant becomes eligible to apply for these benefits on the date he/she is accepted into the pension fund.

### **Non-Duty Related Disability** **(5/3-114.2)**

A non-duty disability is paid at 50% of the last salary of a participant who has been found eligible for such a benefit. This benefit is taxable. This disability can be of a nature totally unrelated to employment as a police officer. Such a disability can be from any cause other than as a result of the performance of an act of duty. This benefit is available from the first date of employment.



## **Duty-Related Disability**

### **5/3-114.1**

A duty-related disability is a disability arising from a specific event while on duty as a police officer. The Illinois Courts have found that in order to grant a duty related disability it must arise from (a causal connection) a duty unique to police service. This is frequently a disability, which occurs when a police officer is pursuing a perpetrator, but could be as a result of other types of activity unique to police service.

This disability pays 65% of the participant's salary at the time he/she left the police service. This benefit is tax exempt as it is compensatory in nature and the same type of benefit as Workers Compensation.

A Police Officer who has creditable service in excess of 65% when he/she receives the disability receives the amount of creditable service (i.e. 29 years-72.5%, 30 years-75%)

## **Continued Verification of Disability**

### **(5/3-115)**

In order to verify continuance of disability, a police officer retired for

disability is required to have a medical exam at least once a year prior to the age of 50. No exam shall be required after the age of 50.

### **Procedures**

The statutes require that to be eligible to receive either a duty or non-duty disability, an applicant shall be examined by at least three physicians selected by the Board who certify that the participant is disabled from further service as a police officer. After the physicians' examination, an Administrative Hearing is convened by the participant Police Pension Fund Board. The applicant has the burden of establishing that he/she is disabled. The applicant can be represented by legal counsel and present evidence and call witnesses to testify on his/her behalf at one of these administrative hearings. The Pension Board may also be represented by an attorney, introduce evidence and call witnesses to testify.

Hearings are fact finding and should not, however, become adversarial. In the event of a decision adverse to the participant, a participant

may appeal the decision under the Illinois Administrative Review Act. The rules for such appeals are highly technical and as such, the participant should be represented by legal counsel.

In some instances the municipality may file a Petition to Intervene in the hearing. It is at the discretion of the Police Pension Board to permit such an intervention.

**Transfer of Creditable Service**  
**(5/3-110)**

The Police Officer may transfer his/her creditable service between downstate or Article 3 Police Pension Funds. The participant must be on the transferring police department at least two years and must make application to both the police department from which he/she is transferring and to which he/she is transferring the creditable service. The procedures are set forth in the Statute and also by the administrative procedures of the Illinois Department of Financial and Professional Regulation, Pension Division. The transferring police officer may have to pay the police department to whom

he/she is transferring the "true cost" of the pension. The true cost is established by the Pension Board's actuary or the Illinois Department of Financial and Professional Regulation, Pension Division's Actuary. If a participant takes a new job with another municipality he or she may transfer his or her creditable service to the new municipality's Police Pension Fund.

**Conversion of Disability to Retirement**  
**(5/3-116.1)**

If an applicant or someone receiving disability is age fifty (50), and has twenty (20) years' service on the department including time on disability, he/she may convert a disability pension to a retirement pension. This may be advantageous or not and is an individual choice. These participants should seek professional assistance in determining whether or not it is beneficial.

**Pension Increases**  
**(5/3-111.1)**

**Retirement Pension:** At age fifty-five (55), a retiree receives a 3% increase for each full year of time broken into months

of time he/she is receiving a pension. The pension is increased each full year thereafter on a compound basis. These increases are credited to the benefit the participant will receive at age sixty (60).

**Disabled Beneficiaries:** The beneficiary receiving a disability pension also receives an increase in his/her pension. At age sixty (60), he/she receives 3% of the original grant of pension for each full year he/she received pension payments. These increases are not compounded. A 3% increase is then granted each year thereafter in January based upon the original granted pension.

Pension increases for those hired after 1/1/2011 shall be at age 60, and for those hired after 1/1/2011 3% of original granted pension or 1/2 the annual unadjusted percentage increase in the consumer price index-U for 12 months ending in September.

**Widows Increase:** Unfortunately widows and surviving dependents do not receive annual increases.

## **Pension to Survivors**

### **(5/3-112)**

Upon the death of a police officer entitled to a retirement pension, the surviving spouse receives the pension to which the participant was entitled.

If there is no spouse, the dependent children receive this benefit until they reach age 18 unless they are physically or mentally disabled, whereupon the pension continues after age 18.

If there is no spouse and no dependent children, a dependent parent may receive the benefit.

Remarriage of a surviving spouse no longer terminates her surviving spouse's benefit. A marriage after the retirement, however, does not qualify a spouse as a surviving spouse. The marriage of a police officer who has married after he/she has retired does not give the new the status of surviving spouse.

## **Death of an Active Police Officer**

If an active police officer dies with over 20 years of service, a surviving spouse or dependent is entitled to the

pension to which the officer was entitled at the date of his/her death.

If an active police officer dies with at least 10 years of service, but less than 20 years of service, the surviving spouse or dependents are entitled to one-half of his/her salary for the last year of service.

In the event an active police officer is killed as a result of the performance of duty, his/her eligible beneficiary will receive a pension. The pension is ordinarily regulated as a line of duty disability event and is the greater of 65% of the last salary of the police officer or the amount to which they would be entitled if they had retired. This should be treated as application for a disability pension request and considered a disability hearing.

If an active police officer dies with less than ten years of service due to something other than a performance of an act of duty, the officer's contributions are refunded without interest.

**Tier 2**--Survivors receive 66 2/3's of earned pension at the time of death (3-111.1(9))

## **Transfer**

Police officers leaving police service may roll over their contributions into an IRA.

The transfers may also be made to the General Assembly Retirement System, Municipal Retirement Fund, Article 8, 9 or 13 of Chapter 40 Act 5 of the Illinois Pension Code or to the State Employees' Retirement System. Creditable service may also be transferred to another of the several pension systems established by Statute. If the participant is eligible for membership in the new system, these additional pension systems include: SERS.

## **Spouses, Ex-Spouses and Dependent Children**

**Spouse** is defined as someone to whom the participant is legally married prior to retirement.

**Children** are natural born children and children adopted prior to age fifty and when judicial proceedings for adoption were commenced one year before age fifty and the date of retirement.

**Ex-Spouses** are treated as alternate payees. Article 1-119 governs payment



of retirement benefits to an alternate payee under a QILDRO (Qualified Illinois Domestic Relation Order).

**Alternate Payees:** receive a portion of a property right. That portion must be stated in a dollar amount. Anyone hired prior to July 1, 1999 may voluntarily submit to a QILDRO.

Disability benefits cannot be attached by a QILDRO only Retirement Benefits. There is no lump sum payment available from contributions.

The Alternate Payee is only entitled to a portion of the retirement benefit received by the participant while he/she is alive.

Alternate beneficiaries cannot assign benefits to others, nor name beneficiaries. A QILDRO is not a QDRO or other ERISA benefit. A QILDRO is purely statutory in nature and the statute must be strictly adhered to by the Alternate Payee.

### **Buying Back Former Service**

A police officer may buy back creditable service after leaving the department. In the event he/she leaves the active service he/she may re-

purchase their creditable service by repaying the refunded contributions plus 2% interest.

### **Participant Liabilities**

A police officer is required to pay a contribution equal to 9.91% of his/her salary.

Salary is the amount stated by contract or ordinance.

The following types of pay are considered salary:

- Base Pay,
- Holiday Pay-if paid to all officers,
- Education Pay,
- Longevity Pay,
- Specialty Rank Pay (i.e. detective),
- Temporary pay of over one year.

The municipality may elect to pick up contributions. If so, there is a reduction in salary, such a pickup program is uniform to all participants.

### **To Apply for Any of the Following Benefits:**

- Retirement
- Disability Pension
- Withdrawal of Contributions

- Spouse Benefits
- Conversion from Disability to Retirement
- Portability

an applicant must:

1. Contact the pension board;
2. Request and complete an application for benefits; and
3. Return application to member of the Pension Board.
4. Comply with any requests made by the Pension Board

### **Mistake in Benefits**

#### **(5/3-144.2)**

A mistake in benefit is any clerical or administrative error related to a benefit. It is not any reasonable calculation of a benefit based on salary, service credit, calculation or determination of a disability, or date of retirement.

If a benefit is set too low, a pension board is authorized by statute to pay the difference in one lump sum, with interest at the rate prescribed by the Department of Insurance.

If a benefit is mistakenly set too high, a pension board may recover the difference directly from the beneficiary, or by making deductions from monthly

benefits. The monthly deduction is not to exceed 10% of the corrected monthly benefit unless the beneficiary agrees to the higher deduction.

If a mistaken benefit that is too high is paid out for more than three years is not discovered by the pension board or the Department of Insurance, and the benefit was not paid out as the result of fraud by the beneficiary, then when the benefit is adjusted, the beneficiary is not required to repay any excess payments to the fund.

Further questions may be directed to the  
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