

## CHAPTER 353

## PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

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## 353.01 DEFINITIONS.

*[For text of subd 1, see M.S.1992]*

Subd. 2. **Public employee.** "Public employee" means an employee performing personal services for a governmental subdivision under subdivision 6, whose salary is paid, in whole or in part, from revenue derived from taxation, fees, assessments, or from other sources. The term also includes special classes of persons listed in subdivision 2a, but excludes special classes of persons listed in subdivision 2b for purposes of membership in the association. Public employee does not include independent contractors and their employees.

Subd. 2a. **Included employees.** Public employees whose salary from one governmental subdivision exceeds \$425 in any month shall participate as members of the association. If the salary of an employee is less than \$425 in a subsequent month, the employee retains membership eligibility. The following persons are considered public employees:

(1) employees whose annual salary from one governmental subdivision exceeds a stipulation prepared in advance, in writing, to be not more than \$5,100 per calendar year or per school year for school employees for employment expected to be of a full year's duration or more than the prorated portion of \$5,100 per employment period expected to be of less than a full year's duration. If compensation from one governmental subdivision to an employee under this clause exceeds \$5,100 per calendar year or school year after being stipulated in advance not to exceed that amount, the stipulation is no longer valid and contributions must be made on behalf of the employee under section 353.27, subdivision 12, from the month in which the employee's salary first exceeded \$425;

(2) employees whose total salary from concurrent nontemporary positions in one governmental subdivision exceeds \$425 in any month;

(3) elected officers for service to which they were elected by the public-at-large, or persons appointed to fill a vacancy in an elective office, who elect to participate by filing an application for membership, but not for service on a joint or regional board that is a governmental subdivision under subdivision 6, paragraph (a), unless the salary earned for that service exceeds \$425 in any month. The option to become a member, once exercised, may not be withdrawn during the incumbency of the person in office;

(4) members who are appointed by the governor to be a state department head and elect not to be covered by the Minnesota state retirement system under section 352.021;

(5) employees of elected officers;

(6) persons who elect to remain members under section 480.181, subdivision 2;

(7) employees of a school district who receive separate salaries for driving their own buses;

(8) employees of the Minnesota association of townships when the board of the association, at its option, certifies to the executive director that its employees are to be

included for purposes of retirement coverage, in which case coverage of all employees of the association is permanent;

(9) employees of a county historical society who are county employees;

(10) employees of a county historical society located in the county whom the county, at its option, certifies to the executive director to be county employees for purposes of retirement coverage under this chapter, which status must be accorded to all similarly situated county historical society employees and, once established, must continue as long as a person is an employee of the county historical society and is not excluded under subdivision 2b; and

(11) employees who became members before July 1, 1988, based on the total salary of positions held in more than one governmental subdivision.

**Subd. 2b. Excluded employees.** The following public employees shall not participate as members of the association:

(1) elected public officers, or persons appointed to fill a vacancy in an elective office, who do not elect to participate in the association by filing an application for membership;

(2) election officers;

(3) patient and inmate personnel who perform services in charitable, penal, or correctional institutions of a governmental subdivision;

(4) employees who are hired for a temporary position under subdivision 12a, and employees who resign from a nontemporary position and accept a temporary position within 30 days in the same governmental subdivision, but not those employees who are hired for an unlimited period but are serving a probationary period. If the period of employment extends beyond six consecutive months and the employee earns more than \$425 from one governmental subdivision in any one calendar month, the department head shall report the employee for membership and require employee deductions be made on behalf of the employee under section 353.27, subdivision 4.

Membership eligibility of an employee who resigns or is dismissed from a temporary position and within 30 days accepts another temporary position in the same governmental subdivision is determined on the total length of employment rather than on each separate position. Membership eligibility of an employee who holds concurrent temporary and nontemporary positions in one governmental subdivision is determined by the length of employment and salary of each separate position;

(5) employees whose actual salary from one governmental subdivision does not exceed \$425 per month, or whose annual salary from one governmental subdivision does not exceed a stipulation prepared in advance, in writing, that the salary must not exceed \$5,100 per calendar year or per school year for school employees for employment expected to be of a full year's duration or more than the prorated portion of \$5,100 per employment period for employment expected to be of less than a full year's duration;

(6) employees who are employed by reason of work emergency caused by fire, flood, storm, or similar disaster;

(7) employees who by virtue of their employment in one governmental subdivision are required by law to be a member of and to contribute to any of the plans or funds administered by the Minnesota state retirement system, the teachers retirement association, the Duluth teachers retirement fund association, the Minneapolis teachers retirement association, the St. Paul teachers retirement fund association, the Minneapolis employees retirement fund, or any police or firefighters relief association governed by section 69.77 that has not consolidated with the public employees retirement association, or any police or firefighters relief association that has consolidated with the public employees retirement association but whose members have not elected the type of benefit coverage provided by the public employees police and fire fund under sections 353A.01 to 353A.10. This clause must not be construed to prevent a person from being a member of and contributing to the public employees retirement association and also belonging to and contributing to another public pension fund for other service occur-

ring during the same period of time. A person who meets the definition of "public employee" in subdivision 2 by virtue of other service occurring during the same period of time becomes a member of the association unless contributions are made to another public retirement fund on the salary based on the other service or to the teachers retirement association by a teacher as defined in section 354.05, subdivision 2;

(8) persons who are excluded from coverage under the federal Old Age, Survivors, Disability, and Health Insurance Program for the performance of service as specified in United States Code, title 42, section 410(a)(8)(A), as amended through January 1, 1987, if no irrevocable election of coverage has been made under section 3121(r) of the Internal Revenue Code of 1954, as amended;

(9) full-time students who are enrolled and are regularly attending classes at an accredited school, college, or university and who are part-time employees as defined by a governmental subdivision;

(10) resident physicians, medical interns, and pharmacist residents and pharmacist interns who are serving in a degree or residency program in public hospitals;

(11) students who are serving in an internship or residency program sponsored by an accredited educational institution;

(12) persons who hold a part-time adult supplementary technical college license who render part-time teaching service in a technical college;

(13) foreign citizens working for a governmental subdivision with a work permit of less than three years, or an H-1b visa valid for less than three years of employment. Upon notice to the association that the work permit or visa extends beyond the three-year period, the foreign citizens are eligible for membership from the date of the extension;

(14) public hospital employees who elected not to participate as members of the association before 1972 and who did not elect to participate from July 1, 1988 to October 1, 1988;

(15) except as provided in section 353.86, volunteer ambulance service personnel, as defined in subdivision 35, but persons who serve as volunteer ambulance service personnel may still qualify as public employees under subdivision 2 and may be members of the public employees retirement association and participants in the public employees retirement fund or the public employees police and fire fund on the basis of compensation received from public employment service other than service as volunteer ambulance service personnel; and

(16) except as provided in section 353.87, volunteer firefighters, as defined in subdivision 36, engaging in activities undertaken as part of volunteer firefighter duties; provided that a person who is a volunteer firefighter may still qualify as a public employee under subdivision 2 and may be a member of the public employees retirement association and a participant in the public employees retirement fund or the public employees police and fire fund on the basis of compensation received from public employment activities other than those as a volunteer firefighter.

*[For text of subs 3 and 4, see M.S.1992]*

**Subd. 6. Governmental subdivision.** (a) "Governmental subdivision" means a county, city, town, school district within this state, or a department or unit of state government, or any public body whose revenues are derived from taxation, fees, assessments or from other sources.

(b) Governmental subdivision also means the public employees retirement association, the league of Minnesota cities, the association of metropolitan municipalities, public hospitals owned or operated by, or an integral part of, a governmental subdivision or governmental subdivisions, the association of Minnesota counties, the metropolitan intercounty association, the Minnesota municipal utilities association, the metropolitan airports commission, and the Minneapolis employees retirement fund for employment initially commenced after June 30, 1979, the range association of municipalities and schools, soil and water conservation districts, and economic development authorities created or operating under sections 469.090 to 469.108.

(c) Governmental subdivision does not mean any municipal housing and redevelopment authority organized under the provisions of sections 469.001 to 469.047; or any port authority organized under sections 469.048 to 469.068; or any hospital district organized or reorganized prior to July 1, 1975, under sections 447.31 to 447.37 or the successor of the district, nor the Minneapolis community development agency.

Subd. 7. **Member.** "Member" means a person who accepts employment as a "public employee" under subdivision 2, is an employee under subdivision 2a, and is not covered by the plan established in chapter 353D. A person who is a member remains a member while performing services as a public employee and while on an authorized leave of absence or an authorized temporary layoff.

Subd. 7a. **Former member.** "Former member" means a member of the association who terminates public service under subdivision 11a or membership under subdivision 11b.

*[For text of subd 8, see M.S.1992]*

Subd. 10. **Salary.** (a) "Salary" means the periodical compensation of a public employee, before deductions for deferred compensation, supplemental retirement plans, or other voluntary salary reduction programs, and also means "wages" and includes net income from fees.

(b) Salary does not mean fees paid to district court reporters, unused annual or sick leave payments, in lump-sum or periodic payments, severance payments, reimbursement of expenses, lump-sum settlements not attached to a specific earnings period, or workers' compensation payments. Salary does not mean employer-paid flexible spending accounts, cafeteria plans, health care expense accounts, day care expenses, or any payments in lieu of any employer-paid group insurance coverage, including the difference between single and family rates that may be paid to a member with single coverage.

(c) Except as provided in sections 353.86 or 353.87, compensation of any kind paid to volunteer ambulance service personnel or volunteer firefighters, as defined in subdivisions 35 and 36, is not salary.

(d) For a public employee who has prior service covered by a local police or firefighters relief association that has consolidated with the public employees retirement association and who has elected coverage under the public employees police and fire fund benefit plan under section 353A.08 following the consolidation, "salary" means the rate of salary upon which member contributions to the special fund of the relief association were made prior to the effective date of the consolidation as specified by law and by bylaw provisions governing the relief association on the date of the initiation of the consolidation procedure and the actual periodical compensation of the public employee after the effective date of the consolidation.

*[For text of subd 11, see M.S.1992]*

Subd. 11a. **Termination of public service.** "Termination of public service" occurs when a member resigns or is dismissed from public service by the employing governmental subdivision, as evidenced by appropriate written record transmitted to the association, and does not within 30 days of resignation or dismissal return to a nontemporary employment position in the same governmental subdivision.

Subd. 11b. **Termination of membership.** "Termination of membership" occurs:

- (1) upon termination of public service under subdivision 11a;
- (2) when a member who is a part-time employee is excluded from membership as a full-time student under subdivision 2b, clause (9);
- (3) when a member does not return to work within 30 days of the expiration of an authorized temporary layoff under subdivision 12 or an authorized leave of absence under subdivision 31. If the employee subsequently returns to a position in the same governmental subdivision, the employee shall not again be required to earn a salary in excess of \$425 per month, unless the employee has taken a refund of accumulated employee deductions plus interest under section 353.34, subdivision 1; or

(4) when a person files a written election to discontinue employee deductions under section 353.27, subdivision 7, paragraph (a), clause (1).

**Subd. 12. Authorized temporary layoff.** "Authorized temporary layoff," including seasonal leave of absence, means a suspension of public service authorized by the employing governmental subdivision for a period not exceeding three months in any calendar year, as evidenced by appropriate record of the employer and promptly transmitted to the association.

**Subd. 12a. Temporary position.** "Temporary position" means an employment position of six months or less in which a person is a public employee under subdivision 2, but not an employment position for an unlimited period in which a person serves a probationary period.

*[For text of subd 14, see M.S.1992]*

**Subd. 15. Dependent child.** For the purpose of survivor benefit eligibility under sections 353.31, subdivision 1, and 353.657, subdivision 3, "dependent child" means a biological or adopted child of a deceased member who is unmarried, and under the age of 18, or age 18 to 23, so long as the child submits evidence of full-time enrollment in an accredited educational institution. "Dependent child" also includes a child of the member conceived during the member's lifetime and born after the member's death. It also means a dependent child who is the subject of adoption proceedings filed by a member, and who within two years after death of the member, by judgment and decree duly entered, is adjudged to be the adopted child of the deceased member; subject, however, to the qualifying conditions of age and dependency under this subdivision. The dependency of the child dates from the decree of adoption. "Dependent child" also includes a child age 18 to 23 who had submitted evidence of full-time enrollment in an accredited educational institution but was determined to be medically unable to continue school on a full-time basis. The board of trustees shall adopt written procedures to make determinations regarding eligibility based on a student being medically unable to continue school, and may not continue a benefit for medical reasons for a period greater than one year.

**Subd. 15a. Dependent child.** For the purpose of survivor benefit eligibility under section 353.32, subdivision 1c, "dependent child" means any biological or adopted child of a deceased member who has not reached the age of 20 and is dependent for more than one-half of support upon the member. It also includes any child of the member conceived during the member's lifetime and born after the member's death.

**Subd. 16. Allowable service.** (a) "Allowable service" means service during years of actual membership in the course of which employee contributions were made, periods covered by payments in lieu of salary deductions under section 353.35, and service in years during which the public employee was not a member but for which the member later elected, while a member, to obtain credit by making payments to the fund as permitted by any law then in effect.

(b) "Allowable service" also means a period of authorized leave of absence with pay from which deductions for employee contributions are made, deposited, and credited to the fund.

(c) "Allowable service" also means a period of authorized leave of absence without pay that does not exceed one year, and during or for which a member obtained credit by payments to the fund made in place of salary deductions, provided that the payments are made in an amount or amounts based on the member's average salary on which deductions were paid for the last six months of public service, or for that portion of the last six months while the member was in public service, to apply to the period in either case immediately preceding commencement of the leave of absence. If the employee elects to pay employee contributions for the period of any leave of absence without pay, or for any portion of the leave, the employee shall also, as a condition to the exercise of the election, pay to the fund an amount equivalent to both the required employer and additional employer contributions for the employee. The payment must be made within one year from the expiration of the leave of absence or within 20 days

after termination of public service under subdivision 11a. The employer by appropriate action of its governing body, made a part of its official records, before the date of the first payment of the employee contribution, may certify to the association in writing its commitment to pay the employer and additional employer contributions from the proceeds of a tax levy made under section 353.28. Payments under this paragraph must include interest at an annual rate of 8.5 percent compounded annually from the date of the termination of the leave of absence to the date payment is made. An employee shall return to public service for a minimum of 90 calendar days to be eligible to pay employee and employer contributions for a subsequent authorized leave of absence without pay.

(d) "Allowable service" also means a periodic, repetitive leave that is offered to all employees of a governmental subdivision. The leave program may not exceed 208 hours per annual normal work cycle as certified to the association by the employer. A participating member obtains service credit by making employee contributions in an amount or amounts based on the member's average salary that would have been paid if the leave had not been taken. The employer shall pay the employer and additional employer contributions on behalf of the participating member. The employee and the employer are responsible to pay interest on their respective shares at the rate of six percent a year, compounded annually, from the end of the normal cycle until full payment is made. An employer shall also make the employer and additional employer contributions, plus six percent interest, compounded annually, on behalf of an employee who makes employee contributions but terminates public service. The employee contributions must be made within one year after the end of the annual normal working cycle or within 20 days after termination of public service, whichever is sooner. The association shall prescribe the manner and forms to be used by a governmental subdivision in administering a periodic, repetitive leave.

(e) "Allowable service" also means a period during which a member is on an authorized sick leave of absence, without pay, limited to one year. An employee who has received one year of allowable service shall return to public service for a minimum of 90 calendar days to receive allowable service for a subsequent authorized sick leave of absence.

(f) "Allowable service" also means an authorized temporary layoff under subdivision 12. The association shall grant a maximum of three months allowable service per authorized temporary layoff in one calendar year. An employee shall return to public service for a minimum of 90 calendar days to receive allowable service for a subsequent authorized temporary layoff.

(g) "Allowable service" also means a parental leave. The association shall grant a maximum of two months service credit for a parental leave, within six months after the birth or adoption, upon documentation from the member's governmental subdivision or presentation of a birth certificate or other evidence of birth or adoption to the association.

(h) "Allowable service" also means a period during which a member is on an authorized leave of absence to enter military service, provided that the member returns to public service upon discharge from military service under section 192.262 and pays into the fund employee contributions based upon the employee's salary at the date of return from military service. Payment must be made within five years of the date of discharge from the military service. The amount of these contributions must be in accord with the contribution rates and salary limitations, if any, in effect during the leave, plus interest at an annual rate of 8.5 percent compounded annually from the date of return to public service to the date payment is made. The matching employer contribution and additional employer contribution under section 353.27, subdivisions 3 and 3a, must be paid by the governmental subdivision employing the member upon return to public service if the member makes the employee contributions. The governmental subdivision involved may appropriate money for those payments. A member may not receive credit for a voluntary extension of military service at the instance of the member beyond the initial period of enlistment, induction, or call to active duty.

(i) For calculating benefits under sections 353.30, 353.31, 353.32, and 353.33 for state officers and employees displaced by the community corrections act, chapter 401, and transferred into county service under section 401.04, "allowable service" means combined years of allowable service as defined in paragraphs (a) to (h) and section 352.01, subdivision 11.

(j) For a public employee who has prior service covered by a local police or fire-fighters relief association that has consolidated with the public employees retirement association, and who has elected the type of benefit coverage provided by the public employees police and fire fund under section 353A.08 following the consolidation, "applicable service" is a period of service credited by the local police or firefighters relief association as of the effective date of the consolidation based on law and on bylaw provisions governing the relief association on the date of the initiation of the consolidation procedure.

*[For text of subds 17 to 27, see M.S.1992]*

**Subd. 28. Retirement.** (a) "Retirement" means the commencement of payment of an annuity based on a date designated by the board of trustees. This date determines the rights under this chapter which occur either before or after retirement. A right to retirement is subject to termination of public service under subdivision 11a and termination of membership under subdivision 11b.

(b) Notwithstanding the 30-day separation requirement, a member of the defined benefit plan under this chapter, who also participates in the public employees defined contribution plan under chapter 353D for other public service, may be paid, if eligible, a retirement annuity from the defined benefit plan while participating in the defined contribution plan.

*[For text of subds 29 and 30, see M.S.1992]*

**Subd. 31. Authorized leave of absence.** "Authorized leave of absence" means any period during which a member is authorized by an employer to refrain from active employment, with or without pay, evidenced by appropriate record of the employer and promptly transmitted to the association.

**Subd. 32. Coordinated member.** "Coordinated member" means any public employee, including any public hospital employee, covered by any agreement or modification made between the state and the Secretary of Health, Education and Welfare, making the provisions of the federal Old Age, Survivors and Disability Insurance Act applicable to the member if membership eligibility criteria are met under this chapter. Coordinated member also means a basic member who terminates public service under subdivision 11a, reenters public service in a nontemporary position, and meets the membership eligibility criteria under this chapter.

*[For text of subds 33 to 37, see M.S.1992]*

**History:** 1993 c 307 art 4 s 1-15; 1993 c 336 art 6 s 5,6

### **353.017 EMPLOYEES OF LABOR ORGANIZATIONS.**

**Subdivision 1. Qualifications.** A former member of the association, or a current coordinated member on an authorized leave of absence, who is an employee of a labor organization that represents public employees who are association members may elect, under subdivision 2, to be a coordinated member with respect to service with the labor organization unless specifically exempt under section 353.01, subdivision 2b.

**Subd. 2. Election.** A person described in subdivision 1 is covered by the association if written election to be covered is delivered to the association within six months of employment by the labor organization or within six months after July 1, 1993, whichever is applicable.

**Subd. 3. Contributions.** The employee, employer and additional employer contributions shall be the obligation of the employee who elects coverage herein in accord

with this chapter; provided, however, the employer, labor organization, may pay the employer and additional employer contributions. The employer shall, in any event, deduct the necessary contributions from the employee's salary and remit all contributions to the public employees retirement association pursuant to section 353.27, subdivisions 4, 7, 10, 11, and 12.

**Subd. 5. Board membership excluded.** Persons who become association members pursuant to this section shall not be eligible for election to the board of trustees.

**History:** 1993 c 307 art 4 s 16

### 353.27 PUBLIC EMPLOYEES RETIREMENT FUND.

*[For text of subds 1 to 4, see M.S.1992]*

**Subd. 7. Adjustment for erroneous receipts or disbursements. (a) Deductions taken in error.** Erroneous employee deductions and erroneous employer contributions and additional employer contributions for a person, who otherwise does not qualify for membership under this chapter, are considered:

(1) valid if the initial erroneous deduction began before January 1, 1990. Upon determination of the error by the association, the person may:

(i) continue membership in the association while employed in the same position for which erroneous deductions were taken; or

(ii) file a written election to terminate membership and apply for a refund or defer an annuity under section 353.34;

(2) invalid, if the initial erroneous employee deduction began on or after January 1, 1990. Upon determination of the error, the association shall require the employer to discontinue erroneous employee deductions and erroneous employer contributions and additional employer contributions. Upon discontinuance, the association shall refund all erroneous employee deductions to the person, with interest, under section 353.34, subdivision 2, and all erroneous employer contributions and additional employer contributions to the employer. No person may claim a right to continued or past membership in the association based on erroneous deductions which began on or after January 1, 1990;

(3) a refund of deductions taken in error from sick leave, vacation, workers' compensation, and severance pay may be made at any time.

**(b) Erroneous disbursement.** In the event a salary warrant or check from which a deduction for the retirement fund was taken has been canceled or the amount of the warrant or check returned to the funds of the department making the payment, a refund of the sum deducted, or a portion of it that is required to adjust the deductions, must be made to the department or institution.

*[For text of subds 7a to 13, see M.S.1992]*

**History:** 1993 c 307 art 4 s 17

### 353.29 RETIREMENT ANNUITY UPON TERMINATION OF MEMBERSHIP.

**Subdivision 1. Age and allowable service requirements.** Upon termination of membership, a person who has attained normal retirement age and who received credit for not less than three years of allowable service is entitled upon application to a retirement annuity. The retirement annuity is known as the "normal" retirement annuity.

*[For text of subds 2 to 8, see M.S.1992]*

**History:** 1993 c 307 art 4 s 18

### 353.32 REFUNDS AFTER DEATH OF MEMBER OR FORMER MEMBER.

*[For text of subd 1, see M.S.1992]*



**Subd. 1a. Surviving spouse optional annuity.** (a) If a member or former member who has credit for not less than three years of allowable service and dies before the annuity or disability benefit begins to accrue under section 353.29, subdivision 7, or 353.33, subdivision 2, notwithstanding any designation of beneficiary to the contrary, the surviving spouse may elect to receive, instead of a refund with interest under subdivision 1, or surviving spouse benefits otherwise payable under section 353.31, an annuity equal to the 100 percent joint and survivor annuity that the member could have qualified for had the member terminated service on the date of death.

(b) If the member was under age 55 and has credit for at least 30 years of allowable service on the date of death, the surviving spouse may elect to receive a 100 percent joint and survivor annuity based on the age of the member and surviving spouse on the date of death. The annuity is payable using the full early retirement reduction under section 353.30, subdivisions 1b and 1c, to age 55 and one-half of the early retirement reduction from age 55 to the age payment begins.

(c) If the member was under age 55 and has credit for at least three years of allowable service on the date of death but did not qualify for retirement, the surviving spouse may elect to receive the 100 percent joint and survivor annuity based on the age of the member and surviving spouse at the time of death. The annuity is payable using the full early retirement reduction under section 353.30, subdivision 1, 1b, 1c, or 5, to age 55 and one-half of the early retirement reduction from age 55 to the age payment begins.

Notwithstanding the definition of surviving spouse in section 353.01, subdivision 20, a former spouse of the member, if any, is entitled to a portion of the monthly surviving spouse optional annuity if stipulated under the terms of a marriage dissolution decree filed with the association. If there is no surviving spouse or child or children, a former spouse may be entitled to a lump-sum refund payment under subdivision 1, if provided for in a marriage dissolution decree but not a monthly surviving spouse optional annuity despite the terms of a marriage dissolution decree filed with the association.

The surviving spouse eligible for surviving spouse benefits under paragraph (a) may apply for the annuity at any time after the date on which the deceased employee would have attained the required age for retirement based on the employee's allowable service. The surviving spouse eligible for surviving spouse benefits under paragraph (b) or (c) may apply for an annuity any time after the member's death. The annuity must be computed under sections 353.29, subdivisions 2 and 3; 353.30, subdivisions 1, 1a, 1b, 1c, and 5; and 353.31, subdivision 3.

Sections 353.34, subdivision 3, and 353.71, subdivision 2, apply to a deferred annuity or surviving spouse benefit payable under this subdivision. No payment may accrue beyond the end of the month in which entitlement to the annuity has terminated or upon expiration of the term certain benefit payment under subdivision 1b. An amount equal to any excess of the accumulated contributions that were credited to the account of the deceased employee over and above the total of the annuities paid and payable to the surviving spouse must be paid to the deceased member's last designated beneficiary or, if none, as specified under subdivision 1.

A member may specify in writing that this subdivision does not apply and that payment may be made only to the designated beneficiary as otherwise provided by this chapter.

**Subd. 1b. Survivor coverage term certain.** In lieu of the 100 percent optional annuity under subdivision 1a, or a refund under subdivision 1, the surviving spouse of a deceased member may elect to receive survivor coverage for a term certain of five, ten, 15, or 20 years, but monthly payments must not exceed 75 percent of the average high-five monthly salary of the deceased member. The monthly term certain annuity must be actuarially equivalent to the 100 percent optional annuity under subdivision 1a.

If a surviving spouse elects a term certain annuity and dies before the expiration of the specified term certain period, the commuted value of the remaining annuity payments must be paid in a lump sum to the survivor's estate.

Subd. 1c. **Dependent child survivor coverage.** If there is no surviving spouse eligible for benefits under subdivision 1a, a dependent child or children as defined in section 353.01, subdivision 15a, is eligible for monthly payments. Payments to a dependent child must be paid from the date of the member's death to the date the dependent child attains age 20 if the child is under age 15. If the child is 15 years or older on the date of death, payment must be made for five years. The payment to a dependent child is an amount actuarially equivalent to the value of a 100 percent optional annuity under subdivision 1a using the age of the member and age of the dependent child at the date of death in lieu of the age of the surviving spouse. If there is more than one dependent child, each dependent child shall receive a proportionate share of the actuarial value of the employee's account.

*[For text of subds 2 to 9, see M.S.1992]*

**History:** 1993 c 307 art 6 s 2; 1993 c 336 art 6 s 7-9

### 353.33 TOTAL AND PERMANENT DISABILITY BENEFITS.

Subdivision 1. **Age, service, and salary requirements.** A coordinated member who has at least three years of allowable service and becomes totally and permanently disabled before normal retirement age, and a basic member who has at least three years of allowable service and who becomes totally and permanently disabled is entitled to a disability benefit in an amount under subdivision 3. If the disabled person's public service has terminated at any time, at least two of the required three years of allowable service must have been rendered after last becoming a member. A repayment of a refund must be made within six months after the effective date of disability benefits under subdivision 2 or within six months after the date of the filing of the disability application, whichever is later. No purchase of prior service or payment made in lieu of salary deductions otherwise authorized under section 353.01, subdivision 16, 353.017, subdivision 4, or 353.36, subdivision 2, may be made after the occurrence of the disability for which an application under this section is filed.

Subd. 2. **Applications; accrual of benefits.** Every claim or demand for a total and permanent disability benefit must be initiated by written application in the manner and form prescribed by the executive director showing compliance with the statutory conditions qualifying the applicant for a total and permanent disability benefit and filed with the executive director. A member or former member who became totally and permanently disabled during a period of membership shall file application for total and permanent disability benefits within three years next following termination of public service. This benefit begins to accrue the day following the commencement of disability, 90 days preceding the filing of the application, or, if annual or sick leave is paid for more than the 90-day period, from the date salary ceased, whichever is later. Payment must not accrue beyond the end of the month in which entitlement has terminated. If the disabled person dies prior to negotiating the check for the month in which death occurs, payment is made to the surviving spouse, or if none, to the designated beneficiary, or if none, to the estate. An applicant for total and permanent disability benefits may file a retirement annuity application under section 353.29, subdivision 4, simultaneously with an application for total and permanent disability benefits. The retirement annuity application is void upon the determination of the entitlement for disability benefits by the executive director. If disability benefits are denied, the retirement annuity application must be initiated and processed.

Subd. 3. **Computation of benefits.** This disability benefit is an amount equal to the normal annuity payable to a member who has reached normal retirement age with the same number of years of allowable service and the same average salary, as provided in section 353.29, subdivisions 2 and 3.

A basic member shall receive a supplementary monthly benefit of \$25 to age 65 or the five-year anniversary of the effective date of the disability benefit, whichever is later.

If the disability benefits under this subdivision exceed the average salary as defined

in section 353.29, subdivision 2, the disability benefits must be reduced to an amount equal to said average salary.

*[For text of subd 3a, see M.S.1992]*

**Subd. 4. Procedure to determine eligibility.** The applicant shall provide and authorize release of medical evidence, including all medical records and relevant information from any source, to support the application for total and permanent disability benefits. The medical adviser shall verify the medical evidence and, if necessary for disability determination, suggest referral of applicant to specialized medical consultants. The association shall also obtain from the employer, certification of the member's past public service, dates of paid sick leave and vacation beyond the last working day and whether or not sick leave or annual leave has been allowed. If upon consideration of the medical evidence received and the recommendations of the medical adviser, it is determined that the applicant is totally and permanently disabled within the meaning of the law, the association shall grant the person a disability benefit. The fact that an employee is placed on leave of absence without compensation because of disability does not bar the person from receiving a disability benefit.

*[For text of subds 5 and 5b, see M.S.1992]*

**Subd. 6. Continuing eligibility for benefits.** The association shall determine eligibility for continuation of disability benefits and require periodic examinations and evaluations of disabled members as frequently as deemed necessary. The association shall require the disabled member to provide and authorize release of medical evidence, including all medical records and information from any source, relating to an application for continuation of disability benefits. Disability benefits are contingent upon a disabled person's participation in a vocational rehabilitation program if the executive director determines that the disabled person may be able to return to a gainful occupation. If a member is found to be no longer totally and permanently disabled and is reinstated to the payroll, payments must cease the first of the month following the reinstatement to the payroll.

*[For text of subds 6a to 7, see M.S.1992]*

**Subd. 8. Refusal of examination or medical evidence.** If a person applying for or receiving a disability benefit refuses to submit to a medical examination under subdivision 6, or fails to provide or authorize the release of medical evidence under subdivisions 4 and 6, the association shall cease the application process or discontinue the payment of a disability benefit, whichever is applicable. Upon receipt of the requested medical evidence, the association shall resume the application process or the payment of a disability benefit upon approval for the continuation, whichever is applicable.

*[For text of subd 9, see M.S.1992]*

**Subd. 11. Coordinated member retirement status.** No person is entitled to receive disability benefits and a retirement annuity at the same time. The disability benefits paid to a coordinated member must terminate when the person reaches normal retirement age. If the coordinated member is still totally and permanently disabled upon attaining normal retirement age, the coordinated member is deemed to be on retirement status. If an optional annuity is elected under subdivision 3a, the coordinated member shall receive an annuity under the terms of the optional annuity previously elected, or, if an optional annuity is not elected under subdivision 3a, the coordinated member may elect to receive a normal retirement annuity under section 353.29 or an annuity equal to the disability benefit paid before the coordinated member reaches normal retirement age, whichever amount is greater, or elect to receive an optional annuity under section 353.30, subdivision 3. The annuity of a disabled coordinated member who attains normal retirement age must be computed under the law in effect upon attainment of normal retirement age. Election of an optional annuity must be made before the coordinated member attains normal retirement age. If an optional annuity

is elected, the election is effective on the date on which the person attains normal retirement age and the optional annuity begins to accrue on the first day of the month next following the month in which the person attains that age.

**Subd. 12. Basic disability survivor benefits.** If a basic member who is receiving a disability benefit under subdivision 3:

(a) dies before attaining age 65 or within five years of the effective date of the disability, whichever is later, the surviving spouse shall receive a survivor benefit under section 353.31, unless the surviving spouse elected to receive a refund under section 353.32, subdivision 1.

(b) is living at age 65 or five years after the effective date of the disability, whichever is later, the basic member may continue to receive a normal disability benefit, or elect a joint and survivor optional annuity under section 353.31, subdivision 1b. The election of the joint and survivor optional annuity must occur within 90 days of age 65 or the five-year anniversary of the effective date of the disability benefit, whichever is later. The optional annuity takes effect on the first of the month following the month in which the person attains age 65 or reaches the five-year anniversary of the effective date of the disability benefit, whichever is later.

(c) if there is a dependent child or children under paragraph (a) or (b), the association shall grant a dependent child benefit under section 353.31, subdivision 1b, paragraph (b).

**History:** 1993 c 307 art 4 s 19-26

### 353.34 RIGHTS UPON TERMINATION OF MEMBERSHIP.

**Subdivision 1. Refund or deferred annuity.** A former member is entitled to a refund of accumulated employee deductions under subdivision 2, or to a deferred annuity under subdivision 3. An active member of a fund enumerated in section 356.30, subdivision 3, clause (7), (8), or (14), who terminates public service in any of those funds and becomes a member of another fund enumerated in those clauses may receive a refund of employee contributions plus six percent interest compounded annually from the fund in which the member terminated service. Application for a refund may not be made prior to the date of termination of public service or the termination of membership, whichever is sooner. A refund must be paid within 120 days following receipt of the application unless the applicant has again become a public employee required to be covered by the association.

*[For text of subd 2, see M.S.1992]*

**Subd. 3. Deferred annuity; eligibility; computation.** A member with at least three years of allowable service when termination of public service or termination of membership occurs has the option of leaving the accumulated deductions in the fund and being entitled to a deferred retirement annuity commencing at normal retirement age or to a deferred early retirement annuity under section 353.30, subdivision 1, 1a, 1b, 1c, or 5. The deferred annuity must be computed under section 353.29, subdivisions 2 and 3, on the basis of the law in effect on the date of termination of public service or termination of membership and must be augmented as provided in section 353.71, subdivision 2. A former member qualified to apply for a deferred retirement annuity may revoke this option at any time before the commencement of deferred annuity payments by making application for a refund. The person is entitled to a refund of accumulated member contributions within 30 days following date of receipt of the application by the executive director.

*[For text of subds 3a to 7, see M.S.1992]*

**History:** 1993 c 307 art 4 s 27,28

### 353.35 CONSEQUENCES OF REFUND; REPAYMENT, RIGHTS RESTORED.

**Subdivision 1. Refund rights.** When any former member accepts a refund, all exist-

ing service credits and all rights and benefits to which the person was entitled prior to the acceptance of the refund must terminate. The rights and benefits of a former member must not be restored until the person returns to active service and acquires at least six months of allowable service credit after taking the last refund and repays the refund or refunds taken and interest received under section 353.34, subdivisions 1 and 2, plus interest at an annual rate of 8.5 percent compounded annually. If the person elects to restore service credit in a particular fund from which the person has taken more than one refund, the person must repay all refunds to that fund. All refunds must be repaid within six months of the last date of termination of public service.

**Subd. 2. Refund repayment.** A person who receives a refund of accumulated employee deductions, plus interest, may repay the total amount of the refund including the interest, within 30 days of the date the refund was issued, to retain allowable service.

**History:** 1993 c 307 art 4 s 29

### 353.37 PUBLIC REEMPLOYMENT OF ANNUITANT.

**Subdivision 1. Salary maximums.** The annuity of a person otherwise eligible for an annuity under this chapter must be suspended under subdivision 2 or reduced under subdivision 3, whichever results in the higher annual annuity amount, if the person reenters public service as a nonelective employee of a governmental subdivision in a position covered by this chapter and salary for the reemployment service exceeds the annual maximum earnings allowable for that age for the continued receipt of full benefit amounts monthly under the federal Old Age, Survivors and Disability Insurance Program as set by the secretary of health and human services under United States Code, title 42, section 403, in any calendar year. If the person has not yet reached the minimum age for the receipt of social security benefits, the maximum salary for the person is equal to the annual maximum earnings allowable for the minimum age for the receipt of social security benefits.

**Subd. 2. Suspension of annuity.** The association shall suspend the annuity on the first of the month after the month in which the salary of the reemployed annuitant exceeds the maximums set in subdivision 1, based only on those months in which the annuitant is actually employed in nonelective service in a position covered under this chapter. An annuitant who is elected to public office after retirement may hold office and receive an annuity otherwise payable from the association.

**Subd. 3. Reduction of annuity.** The association shall reduce the amount of the annuity as follows:

(a) for a person who has not reached normal retirement age, one-half of the amount in excess of the applicable reemployment income maximum under subdivision 1;

(b) for a person who has reached normal retirement age, but has not reached age 70, one-third of the amount in excess of the applicable reemployment income maximum under subdivision 1;

(c) for a person who has reached age 70, or for salary earned through service in an elected office, there is no reduction upon reemployment, regardless of income.

**Subd. 4. Resumption of annuity.** The association shall resume paying a full annuity to the reemployed annuitant at the start of each calendar year until the salary exceeds the maximums under subdivision 1, or on the first of the month following termination of public service or termination of membership, whichever is sooner. The executive director may adopt policies regarding the suspension and reduction of annuities under this section.

**Subd. 5. Effect on annuity.** Except as provided under this section, public service performed by an annuitant subsequent to retirement under this chapter does not increase or decrease the amount of an annuity. The annuitant shall not make any further contributions to the association's defined benefit plan by reason of this subsequent public service.

**History:** 1993 c 307 art 4 s 30

**353.64 MEMBERSHIP; QUALIFICATIONS; POLICE OFFICER, FIREFIGHTER.**

Subdivision 1. **Police and fire fund membership.** (a) A person who prior to July 1, 1961, was a member of the police and fire fund, by virtue of being a police officer or firefighter, shall, as long as the person remains in either position, continue membership in the fund.

(b) A person who was employed by a governmental subdivision as a police officer and was a member of the police and fire fund on July 1, 1978, by virtue of being a police officer as defined by this section on that date, and if employed by the same governmental subdivision in a position in the same department in which the person was employed on that date, shall continue membership in the fund whether or not that person has the power of arrest by warrant after that date.

(c) A person who was employed by a governmental subdivision as a police officer or a firefighter, whichever applies, was an active member of the local police or salaried firefighters relief association located in that governmental subdivision by virtue of that employment as of the effective date of the consolidation as authorized by sections 353A.01 to 353A.10, and has elected coverage by the public employees police and fire fund benefit plan, shall become a member of the police and fire fund after that date if employed by the same governmental subdivision in a position in the same department in which the person was employed on that date.

(d) Any other employee serving on a full-time basis as a police officer or firefighter on or after July 1, 1961, shall become a member of the public employees police and fire fund.

(e) An employee serving on less than a full-time basis as a police officer shall become a member of the public employees police and fire fund only after a resolution stating that the employee should be covered by the police and fire fund is adopted by the governing body of the governmental subdivision employing the person declaring that the position which the person holds is that of a police officer.

(f) An employee serving on less than a full-time basis as a firefighter shall become a member of the public employees police and fire fund only after a resolution stating that the employee should be covered by the police and fire fund is adopted by the governing body of the governmental subdivision employing the person declaring that the position which the person holds is that of a firefighter.

(g) A police officer or firefighter employed by a governmental subdivision who by virtue of that employment is required by law to be a member of and to contribute to any police or firefighter relief association governed by section 69.77 which has not consolidated with the public employees police and fire fund and any police officer or firefighter of a relief association that has consolidated with the association for which the employee has not elected coverage by the public employees police and fire fund benefit plan as provided in sections 353A.01 to 353A.10 shall not become a member of the public employees police and fire fund.

*[For text of subds 2 to 4, see M.S.1992]*

Subd. 5a. A member of the police and fire fund continues to be a member of that fund if transferred to a different position with associated police or fire department functions in the same department or a related department in the same governmental subdivision provided the governing body sends a copy of a resolution to that effect to the association. A police and fire fund member who is elected or assumes an appointive position, including but not limited to, the positions of city council member, city manager, and finance director is not eligible to retain membership in the public employees police and fire fund.

*[For text of subd 7, see M.S.1992]*

Subd. 7a. **Pension coverage for certain metropolitan transit commission police officers.** A person who is employed as a full-time police officer on or after the first day of the first payroll period after July 1, 1993, by the metropolitan transit commission and

who is not eligible for coverage under the agreement with the Secretary of the federal Department of Health and Human Services making the provisions of the federal Old Age, Survivors, and Disability Insurance Act because the person's position is excluded from application under United States Code, sections 418(d)(5)(A) and 418(d)(8)(D), and under section 355.07, is a member of the public employees police and fire fund and is considered to be a police officer within the meaning of this section. The metropolitan transit commission shall deduct the employee contribution from the salary of each full-time police officer as required by section 353.65, subdivision 2, shall make the employer contribution for each full-time police officer as required by section 353.65, subdivision 3, and shall meet the employer recording and reporting requirements in section 353.65, subdivision 4.

*[For text of subds 8 and 9, see M.S.1992]*

**History:** 1993 c 307 art 4 s 31-33

### **353.65 CONTRIBUTIONS.**

*[For text of subd 1, see M.S.1992]*

Subd. 2. The employee contribution is an amount equal to 7.6 percent of the total salary of the member. This contribution must be made by deduction from salary in the manner provided in subdivision 4. Where any portion of a member's salary is paid from other than public funds, the member's employee contribution is based on the total salary received from all sources.

Subd. 3. The employer contribution shall be an amount equal to 11.4 percent of the total salary of every member. This contribution shall be made from funds available to the employing subdivision by the means and in the manner provided in section 353.28.

Subd. 3a. **Change in employee and employer contributions in certain instances.** (a) If, for three consecutive years, the regular actuarial valuation of the public employees police and fire fund under section 356.215 indicates that the fund has no unfunded actuarial accrued liability and that there is a sufficiency in excess of 0.5 percent of covered payroll when the total actuarial funding requirements of the fund are compared to the total support, the employee and employer contribution rates must be decreased as determined under paragraph (c) to a level such that the sufficiency equals 0.5 percent of covered payroll based on the most recent actuarial valuation.

(b) If, for three consecutive years, the regular actuarial valuation of the public employees police and fire fund under section 356.215 indicates that the fund has an unfunded actuarial accrued liability and that there is a deficiency in excess of 0.5 percent of covered payroll when the total actuarial funding requirements of the fund are compared to the total support, the employee and employer contribution rates must be increased as determined under paragraph (c) so that no deficiency exists based on the most recent actuarial valuation.

(c) The increase or decrease in employee and employer contribution rates required under paragraphs (a) and (b) must maintain the current ratio in employer and employee contribution rates of 40 percent employee contribution and 60 percent employer contribution.

(d) The contribution rate increase or decrease must be determined by the executive director of the public employees retirement association.

(e) The contribution rate increase or decrease is effective on the first full payroll period beginning after June 30 next following the third consecutive annual actuarial valuation disclosing the deficiency or sufficiency specified in paragraph (a) or (b).

*[For text of subds 4 to 7, see M.S.1992]*

**History:** 1993 c 352 s 1-3

**353.651 RETIREMENT ANNUITY UPON SEPARATION FROM PUBLIC SERVICE.**

*[For text of subds 1 and 2, see M.S.1992]*

Subd. 3. **Retirement annuity formula.** The average salary as defined in subdivision 2, multiplied by 2.65 percent per year of allowable service determines the amount of the normal retirement annuity. If the member has earned allowable service for performing services other than those of a police officer or firefighter, the annuity representing such service is computed under sections 353.29 and 353.30.

*[For text of subd 4, see M.S.1992]*

**History:** 1993 c 352 s 4

**353.656 DISABILITY BENEFITS.**

Subdivision 1. **In line of duty; computation of benefits.** A member of the police and fire fund who becomes disabled and physically unfit to perform duties as a police officer or firefighter subsequent to June 30, 1973, as a direct result of an injury, sickness, or other disability incurred in or arising out of any act of duty, which has or is expected to render the member physically or mentally unable to perform duties as a police officer or firefighter for a period of at least one year, shall receive disability benefits during the period of such disability. The benefits must be in an amount equal to 53 percent of the "average salary" under subdivision 3, plus an additional 2.65 percent of said average salary for each year of service in excess of 20 years. Should disability under this subdivision occur before the member has at least five years of allowable service credit in the police and fire fund, the disability benefit must be computed on the "average salary" from which deductions were made for contribution to the police and fire fund.

Subd. 1a. **Optional annuity election.** A disabled member of the police and fire fund may elect to receive the normal disability benefit or an optional annuity as provided in section 353.30, subdivision 3. The election of an optional annuity may be made prior to commencement of payment of the disability benefit or as specified under subdivision 6a. The optional annuity shall begin to accrue on the same date as provided for the disability benefit.

(1) If the person who is not the spouse of the member is named as beneficiary of the joint and survivor optional annuity, the person is eligible to receive the annuity only if the spouse, on the disability application form prescribed by the executive director, permanently waives the surviving spouse benefits under section 353.657, subdivisions 2 and 2a. If the spouse of the member refuses to permanently waive the surviving spouse coverage, the selection of a person other than the spouse of the member as a joint annuitant is invalid.

(2) If the spouse of the member permanently waives survivor coverage, the dependent child or children, if any, continue to be eligible for survivor benefits, including the minimum benefit under section 353.657, subdivision 3. The designated optional annuity beneficiary may draw the monthly benefit; however, the amount payable to the dependent child or children and joint annuitant must not exceed the 70 percent maximum family benefit under section 353.657, subdivision 3. If the maximum is exceeded, the benefit of the joint annuitant must be reduced to the amount necessary so that the total family benefit does not exceed the 70 percent maximum family benefit amount.

(3) If the spouse is named as the beneficiary of the joint and survivor optional annuity, the spouse may draw the monthly benefit; however, the amount payable to the dependent child or children and the joint annuitant must not exceed the 70 percent maximum family benefit under section 353.657, subdivision 3. If the maximum is exceeded, each dependent child will receive ten percent of the member's specified average monthly salary, and the benefit to the joint annuitant must be reduced to the amount necessary so that the total family benefit does not exceed the 70 percent maximum family benefit amount. The joint and survivor optional annuity must be restored to the surviving spouse, plus applicable postretirement adjustments under section



356.41, as the dependent child or children become no longer dependent under section 353.01, subdivision 15.

*[For text of subds 2 and 2a, see M.S.1992]*

**Subd. 3. Nonduty disability benefit.** Any member who becomes disabled after not less than one year of allowable service because of sickness or injury occurring while not on duty as a police officer or firefighter, and by reason of that sickness or injury the member has been or is expected to be unable to perform duties as a police officer or firefighter for a period of at least one year, is entitled to receive a disability benefit. The benefit must be paid in the same manner as if the benefit were paid under section 353.651. If a disability under this subdivision occurs after one but in less than 15 years of allowable service, the disability benefit must be the same as though the member had at least 15 years service. For a member who is employed as a full-time firefighter by the department of military affairs of the state of Minnesota, allowable service as a full-time state military affairs department firefighter credited by the Minnesota state retirement system may be used in meeting the minimum allowable service requirement of this subdivision.

*[For text of subd 4, see M.S.1992]*

**Subd. 5. Proof of disability.** A disability benefit payment must not be made except upon adequate proof furnished to the association of the existence of such disability, and during the time when disability benefits are being paid, the association has the right, at reasonable times, to require the disabled member to submit proof of the continuance of the disability claimed. A person applying for or receiving a disability benefit shall provide or authorize release of medical evidence, including all medical records and information from any source, relating to an application for disability benefits.

**Subd. 5a. Cessation of disability benefit.** The association shall cease the payment of an in-line-of-duty or nonduty disability benefit the first of the month following the reinstatement of a member to full time or less than full-time service in a position covered by the police and fire fund.

**Subd. 6.** [Repealed, 1993 c 307 art 4 s 54]

**Subd. 6a. Disability survivor benefits.** If a member who is receiving a disability benefit under subdivision 1 or 3:

(a) dies before attaining age 65 or within five years of the effective date of the disability, whichever is later, the surviving spouse shall receive a survivor benefit under section 353.657, subdivision 2 or 2a, unless the surviving spouse elected to receive a refund under section 353.32, subdivision 1. The joint and survivor optional annuity under subdivision 2a is based on the minimum disability benefit under subdivision 1 or 3, or the deceased member's allowable service, whichever is greater.

(b) is living at age 65 or five years after the effective date of the disability, whichever is later, the member may continue to receive a normal disability benefit, or the member may elect a joint and survivor optional annuity under section 353.30. The optional annuity is based on the minimum disability benefit under subdivision 1 or 3, or the member's allowable service, whichever is greater. The election of this joint and survivor annuity must occur within 90 days of age 65 or the five-year anniversary of the effective date of the disability benefit, whichever is later. The optional annuity takes effect the first of the month following the month in which the person attains age 65 or reaches the five-year anniversary of the effective date of the disability benefit, whichever is later.

(c) if there is a dependent child or children under paragraph (a) or (b), the association shall grant a dependent child benefit under section 353.657, subdivision 3.

**History:** 1993 c 307 art 4 s 34-39; 1993 c 352 s 5