

IRS Proposes New Regulation Mandating Minimum Retirement Age of 50

President Lavin reported at the October meeting that he had learned a day earlier that the IRS Commission was proposing a new regulation that would require public safety employees to attain the age of 50 before becoming eligible for retirement. This regulation obviously flies in the face of the NJ pension system regulations. Lavin reported that he along with the PBA and State Troopers Association met with Congressman Pascrell regarding this issue.

Lavin provided as much information as was available to the membership at the meeting and will keep the membership updated via the njfmba.org website and the FMBA BULLETIN.

PLEASE SEE THE LETTER BELOW THAT PRESIDENT LAVIN HAS SENT TO THE IRS COMMISSION

Breaking News

The NJ FMBA has learned that, through our advocacy with Congressman Bill Pascrell along with the NJSPBA and NJ STFA, the IRS Commission will be delaying the implementation of the proposed Regulation until July 2009. That will allow us to determine how the regulations will impact our membership.

We also learned the Director of Pension and Benefits Fred Beaver, has indicated that the division does not believe the proposed regulations will impact or effective our membership. The division is seeking an opinion from outside legal counsel.

The NJ FMBA will continue to provide the best possible advice and information to our membership as it becomes available.



New Jersey Firefighters' Mutual Benevolent Association

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William J. Lavin
President

The Honorable Douglas Shulman
Commissioner
Internal Revenue Service
U.S. Department of Treasury
1111 Constitution Avenue NW
Washington, DC 20224

October 8, 2008

Dear Commissioner Shulman:

On behalf of the 5,500 members of the New Jersey State Firefighters' Mutual Benevolent Association (NJ FMBA), I would like to express our serious concerns with the implementation of Treasury Regulations Section 1.401 (a)-1 (b) and the burden that it will place on both firefighters and the taxpayers of New Jersey.

As you are aware, the regulations adopted by the Internal Revenue Service (IRS) mandate that State pension plans no longer permit public employees to retire on a formula based on "years of service." Rather, the regulations require that such retirements be based on a "normal retirement age" for different classes of employees, in the case of "public safety employees" setting that age at no less than 50 years of age. These Regulations are expected to be implemented on January 1, 2009 and unless otherwise delayed will adversely impact individuals, employers and the pension system itself.

These regulations overturn decades of precedent setting rulings relating to Government Pension Plans. It mandates that States revise their pension laws regardless of the financial or practical impact and it practically eliminates the ability of the elected representatives at the State level to develop laws that meet their individual employee needs. Of especially serious concern is that these regulations threaten the non-forfeitable rights of pensions and benefits for public employees that are guaranteed in the constitution of the State of New Jersey.

We are concerned that the regulations establish a "one size fits all" solution that fails to comprehend the special needs of firefighters in New Jersey. The regulations create a mandate that solves no problem, fails to meet an objective standard of reality and is not in the best interests of public safety or the general needs of the taxpayer.

For your information, the New Jersey Police and Firemen's Retirement System (PFRS) permits a firefighter to retire based on years of service with no age restriction. All of these levels were established by the Legislature with different but important goals in mind. For example, a firefighter may retire with 20 years of service at 50% pension, with no health benefits, this was done in recognition of the fact that burnout and stress may

require a firefighter to leave their job. This is done with no age limit because of the high levels of stress that accompany public safety workers and the Legislature in their wisdom believed that it was better for the firefighter's health, the safety of the public that the firefighter be given this opportunity to retire.

In addition, PFRS members can take advantage of Special Retirement; which allows for 65% of final compensation after 25 years of service, rising 1% per year to a maximum of 70% for 30 years of service, these special retirements come with no age restriction. Firefighters often begin their careers at young ages and in many respects it is a younger person's job. The physical requirements of firefighting and the burdens of the job require that retirement options exist to allow a firefighter to retire after a long career that sometimes comes in their late 40's. This is a standard that is well established in the State and has been working for decades. This is generally the standard in most other states for public safety employees and therefore age requirements are not functionally appropriate in this case.

Firefighters perform a public service that is both dangerous and stressful. The impact of stress can't be understated as the number of suicides and cases of substance abuse for firefighters has reached very high levels. Firefighters work on holidays, overnights, on mandatory overtime and in all conditions and in every kind of jurisdiction. They are forced to witness the horrors of fire and see death and serious injury far too often. This places significant pressures on them and "burnout" is not uncommon. Retirement based on years of service therefore gives the firefighter options to consider leaving the fire service when it is in the best interest of their personal health as well as the community they serve.

In addition, the regulations mandate that our Legislature rewrite its entire pension laws for every employee and there is no way it can be practically accomplished before the IRS regulation goes into effect. This leaves significant practical and legal questions. For example, if New Jersey is mandated to establish a retirement age of 50, then on what formula will firefighter pensions be based? This also raises concerns that the regulations violate our contractual rights as State and local employees. A firefighter who took the job based on the understanding of certain retirement benefits will now have the terms and conditions of their employment changed dramatically.

Both the New Jersey State Attorney General and bi-partisan Office of Legislative Services have ruled in the past that pensions provided to current state and local employees are "non-forfeitable rights" under the State and federal constitutions.

In light of these serious concerns, we respectfully request that the implementation date of the regulations be delayed so that you may consider the concerns of the public safety community, to allow for a revision of the definition and to permit States to address the needs of their employees. I thank you for your attention to these comments.

Sincerely,

William J. Lavin
State President

Cc: Congressman Bill Pascrell, Jr.
David I Fox, Esq.