

## ARTICLE 20. 401(H) MEDICAL BENEFITS ACCOUNTS

### Rule 1. Plan Rules

#### 35 IAC 20-1-1 Plan coverage

Authority: IC 5-10.5-4-2

Affected: IC 5-10.3-8-14

Sec. 1. These rules shall cover all state employees who are members of the Public Employees' Retirement Fund (PERF). *(Board of Trustees of the Indiana Public Retirement System; 35 IAC 20-1-1; adopted Sep 14, 2012: 20120926-IR-035120542ONA)*

#### 35 IAC 20-1-2 Definitions

Authority: IC 5-10.5-4-2

Affected: IC 5-10.2-4-1; IC 5-10.3-8-14

Sec. 2. As used in this rule:

(1) "Medical expenses" means expenses incurred by a retired employee, the retired employee's spouse, or the retired employee's dependent for medical care as defined in the Internal Revenue Code, Section 213(d), and which are not compensated for by insurance or otherwise.

(2) "PERF 401(h) Account" means an individual account established for each retired employee for whom leave is required to be converted under section 3 of this rule, which account is administered by the PERF 401(h) Accounts Team of the Indiana Public Retirement System and the balances of which may be used solely for the payment or reimbursement of medical expenses of retired employees, their spouses, and their dependents. The PERF 401(h) Account shall consist of the contributions to the account and all earnings on the deposits under section 6 of this rule, reduced by medical expenses paid or reimbursed from the PERF 401(h) Account and administrative costs allocable to the account.

(3) "Retired employee" means a former state employee who is eligible for and has applied to receive a normal, unreduced retirement benefit from the Public Employees' Retirement Fund as described in Indiana Code 5-10.2-4-1 contemporaneously with the former state employee's last day of service.

(4) "Dependent" means a dependent of the retired employee as defined in Internal Revenue Code (IRC), Section 152 without regard to subsections (b)(1), (b)(2), and (d)(1)(B). The term dependent also includes a retired employee's child (as defined in IRC Section 152(f)(1) who as of the end of a calendar year has not attained age twenty-seven (27). In the case of the retired employee's death, an individual shall remain a dependent under these rules until the individual reaches the age limitation (and does not fulfill the disability exception) set forth in IRC Section 152.

*(Board of Trustees of the Indiana Public Retirement System; 35 IAC 20-1-2; adopted Sep 14, 2012: 20120926-IR-035120542ONA)*

#### 35 IAC 20-1-3 Conversion

Authority: IC 5-10.5-4-2

Affected: IC 5-10.3-8-14

Sec. 3. Upon termination of employment, the unused vacation leave of a retired employee, if any, but in any case not more than thirty (30) days (two hundred twenty-five (225) hours), may be converted to a credit to the retired employee's PERF 401(h) Account pursuant to section 4 of this rule. Sick leave, special sick leave, personal leave, and compensatory time off are not eligible for conversion. *(Board of Trustees of the Indiana Public Retirement System; 35 IAC 20-1-3; adopted Sep 14, 2012: 20120926-IR-035120542ONA; adopted Jun 20, 2014: 20140820-IR-035140335ONA)*

#### 35 IAC 20-1-4 Vacation leave valuation

Authority: IC 5-10.5-4-2

Affected: IC 5-10.3-8-14

Sec. 4. For purposes of conversion, the value of vacation leave is determined as follows:

STEP ONE: Divide the employee's regular biweekly salary, as of the conversion date, by seventy-five (75).

STEP TWO: Multiply the quotient determined in STEP ONE by the number of hours to be converted.

*(Board of Trustees of the Indiana Public Retirement System; 35 IAC 20-1-4; adopted Sep 14, 2012: 20120926-IR-035120542ONA)*

**35 IAC 20-1-5 Vesting**

Authority: IC 5-10.5-4-2

Affected: IC 5-10.3-8-14

Sec. 5. All deposits into the employee's PERF 401(h) Account shall vest upon retirement under the Public Employees' Retirement Fund, subject to forfeiture under section 10 of this rule. *(Board of Trustees of the Indiana Public Retirement System; 35 IAC 20-1-5; adopted Sep 14, 2012: 20120926-IR-035120542ONA)*

**35 IAC 20-1-6 Investment**

Authority: IC 5-10.5-4-2

Affected: IC 5-10.3-8-14

Sec. 6. All amounts converted as provided in section 3 of this rule with respect to a retired employee will be credited to a PERF 401(h) Account, which shall earn interest at a short-term money market fund rate. *(Board of Trustees of the Indiana Public Retirement System; 35 IAC 20-1-6; adopted Sep 14, 2012: 20120926-IR-035120542ONA)*

**35 IAC 20-1-7 Benefits**

Authority: IC 5-10.5-4-2

Affected: IC 5-10.3-8-14

Sec. 7. The balance in a retired employee's PERF 401(h) Account may be used to pay or reimburse the retired employee or the spouse or dependent of the retired employee for medical expenses. Such payment or reimbursement will be made as soon as administratively feasible following a claim therefore *[sic, therefor]*. No benefits will be paid from a PERF 401(h) Account on or after the date the balance in the account has been reduced to zero (0). *(Board of Trustees of the Indiana Public Retirement System; 35 IAC 20-1-7; adopted Sep 14, 2012: 20120926-IR-035120542ONA)*

**35 IAC 20-1-8 Death of retired employee or eligible employee**

Authority: IC 5-10.5-4-2

Affected: IC 5-10.3-8-14

Sec. 8. In the event of the death of a retired employee, such employee's PERF 401(h) Account may be used to pay or reimburse the retired employee's spouse or dependents for the medical expenses of the retired employee's spouse or dependents. In the event of the death of a state employee who is eligible for a normal, unreduced retirement benefit from the Public Employees' Retirement Fund, but had not yet applied for retirement, such employee's PERF 401(h) Account may be used to pay or reimburse the retired employee's spouse or dependents for the medical expenses of the retired employee's spouse or dependents. *(Board of Trustees of the Indiana Public Retirement System; 35 IAC 20-1-8; adopted Sep 14, 2012: 20120926-IR-035120542ONA)*

**35 IAC 20-1-9 Limitations**

Authority: IC 5-10.5-4-2

Affected: IC 5-10-1.1-7.5; IC 5-10.3-8-14

Sec. 9. This rule does not create any additional rights to compensation for accrued but unused leave or to any additional benefits under the Public Employees' Retirement Fund beyond those rights expressly granted herein. If a terminating state employee does not retire with normal, unreduced retirement benefits from PERF contemporaneously with employment termination, the employee does not receive the benefit of these rules and instead is limited to the conversion rules under IC 5-10-1.1-7.5, 31 IAC

1-9-3, 31 IAC 2-11-3, and 31 IAC 4-4-1. If a retired employee returns to service as a state employee (as defined in IC 5-10.3-7-1(d)) the individual will no longer be considered retired and will only have access to their PERF 401(h) account upon retirement from reemployment. Such individual will not receive additional leave conversion under these rules at the time of such subsequent retirement(s). (*Board of Trustees of the Indiana Public Retirement System; 35 IAC 20-1-9; adopted Sep 14, 2012: 20120926-IR-035120542ONA*)

### **35 IAC 20-1-10 Forfeitures**

Authority: IC 5-10.5-4-2

Affected: IC 5-10.3-8-14

Sec. 10. Any amount remaining in a retired employee's PERF 401(h) Account will be forfeited upon the death of the last to die of the retired employee or the retired employee's spouse or when the retired employee's dependents are no longer dependents under section 2(d) of this rule. Any forfeiture of a PERF 401(h) Account will be used to reduce state contributions and cannot be used to fund retirement benefits. If the Public Employees' Retirement Fund is terminated, any amounts remaining in PERF 401(h) Accounts shall revert back to the state. (*Board of Trustees of the Indiana Public Retirement System; 35 IAC 20-1-10; adopted Sep 14, 2012: 20120926-IR-035120542ONA*)

### **35 IAC 20-1-11 Restrictions**

Authority: IC 5-10.5-4-2

Affected: IC 5-10.3-8-14

Sec. 11. The provisions of this rule are subject to any restrictions imposed by the Internal Revenue Service on the Public Employees' Retirement Fund. The provisions of Indiana Code 5-10.3-8-14 and these rules will be implemented one hundred eighty (180) days following receipt of such letter or as soon thereafter as is administratively feasible but not later than one (1) year after the date of such letter and will apply to retired employees who terminate employment with the state on or after the implementation date. (*Board of Trustees of the Indiana Public Retirement System; 35 IAC 20-1-11; adopted Sep 14, 2012: 20120926-IR-035120542ONA*)

### **35 IAC 20-1-12 HIPAA**

Authority: IC 5-10.5-4-2

Affected: IC 5-10.3-8-14

Sec. 12. The PERF 401(h) Accounts administered by the PERF 401(h) accounts team will be designated as a "health care component" of PERF pursuant to 45 CFR 164.105 and 164.504(b) and will comply with the "privacy regulations" and the "security regulations" found at 45 CFR Parts 160 and 164, as they may be amended from time to time, issued under the Health Insurance Portability and Accountability Act of 1996, governing the use and disclosure of protected health information and electronic protected health information. (*Board of Trustees of the Indiana Public Retirement System; 35 IAC 20-1-12; adopted Sep 14, 2012: 20120926-IR-035120542ONA*)

### **35 IAC 20-1-13 Purpose**

Authority: IC 5-10.5-4-2

Affected: IC 5-10.3-8-14

Sec. 13. It will be impossible, at any time prior to the satisfaction of all liabilities under the PERF 401(h) Accounts, for any part of the PERF 401(h) Accounts to be used for or diverted to any purposes other than providing the benefits specified in IC 5-10.3-8-14. (*Board of Trustees of the Indiana Public Retirement System; 35 IAC 20-1-13; adopted Sep 14, 2012: 20120926-IR-035120542ONA*)

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