

THE INFORMATION CONTAINED IN THIS HANDBOOK IS INTENDED FOR EDUCATIONAL PURPOSES ONLY AND IS NOT INTENDED AS A SUBSTITUTE FOR LEGAL ADVICE. PENSION FUND TRUSTEES, PARTICIPANTS AND BENEFICIARIES SHOULD CONSULT WITH LEGAL COUNSEL BEFORE TAKING ANY ACTION. ADMINISTRATIVE RULES AND REGULATIONS AND POLICIES MAY DIFFER FROM PENSION BOARD TO PENSION BOARD. BE SURE TO CONSULT WITH YOUR PENSION BOARD BEFORE TAKING ACTION. THIS IS NOT LEGAL ADVICE.

**OVERVIEW OF BENEFITS AND PROVISIONS OF ARTICLE III
OF THE ILLINOIS PENSION CODE**

I. NATURE OF POLICE PENSION FUND

A. Defined benefit pension under the Internal Revenue Code

* Officer that first enters Article III Pension Fund after 12/31/10 have different level of benefits (Tier II)

B. Provisions set by Statute – Article III of Illinois Pension Code (40 ILCS §5/3-101 et seq.)¹

C. Provides the following benefits:

Retirement (§5/3-111)

Disability:

Duty (§5/3-114.1);

Non-Duty (§5/3-114.2);

Heart Attack or Stroke (§5/3-114.3);

and Occupational Disease (§5/3-114.6).

Survivor Benefits (§5/3-112)

¹References are to Article III of the Illinois Pension Code.

II. FUNDING OF POLICE PENSION FUND

A. Officer's Required Contributions (§5/3-125.1): 9.91% of salary

1) Included as Part of Salary For Pension Purposes (50 Ill. Adm. Code §4402.35)²:

Base Pay;

Education Pay;

Holiday Pay, if paid regardless of whether officer works and has no option to take time off

In lieu of pay;

Longevity Pay;

Specialty Pay; and

Temporary Pay, if assigned for over 1 year.

2) Excluded as salary for pension purposes:

(50 Ill. Adm. Code §4402.40)

Accumulated unused time;

Awards;

Automobile allowance;

Food allowance;

Housing allowance;

Merit pay, if not added to base salary for next increase;

Overtime pay;
Shift differential
Temporary pay; and
Uniform allowance;

- B. Municipal annual tax levy (§5/3-125) or other municipal contribution
- C. Interest income on pension fund investments

III. ADMISSION INTO PENSION FUND

- A. Police officer must be appointed, sworn, and commissioned to perform police duties; and:
 - 1) Within three (3) months of appointments, make written application for admission into pension fund; and
 - 2) If written application is submitted, admission is automatic – pension board has no discretion (§5/3-106).
- B. Persons Excluded (§5/3-109)
 - 1) Part-time, auxiliary police, temporary employees
 - 2) Officers who fail to make required contributions – (§5/3-125.1)

IV. CREDITABLE SERVICE (§5/3-110)

- A. Time spent by police officer as a member of police department
- B. Any periods of disability or leave of absence for which no disability pension payments received is included
- C. Furloughs without pay exceeding 30 days not counted (i.e., disciplinary suspension, leave of Absence, temporary lay-off)
- D. Service in military
 - 1) While officer employed as police officer if either:
 - a) Declaration of war by U.S., or
 - b) Draft
 - 2) Police Officer or municipality must pay 9.91% contributions before retirement
 - 3) Not to exceed 5 years total creditable service
- F. Up to three (3) years' time spent on disability pension if:
 - 1) Officer returns to active service for period at least equal to period for which creditable service is sought; and

- 2) Officer makes required contributions as per §5/3-125.1;
 - 3) Must be paid prior to retirement.
- G. Purchase of prior military service (§5/3-110(b-5))
Allows for purchase of up to two (2) years' service in military prior to appointment to police department (Effective 7/23/10) if:
- 1) Officer makes written application to Board before retirement/disability;
 - 2) Must be active military service;
 - 3) Officer must pay required contributions, including interest and amount representing municipal contribution;
 - 4) Check with individual Article III Police Pension Board for specific rules concerning prior military service purchase.

V. RETIREMENT BENEFITS (§5/3-111)
TWO TIERS OF BENEFITS

A. TIER I – ENTERED ARTICLE III FUND BEFORE 12/31/10

- 1) 0-7 years of creditable service = no pension
--refund of contributions only
- 2) 8-19 years of creditable service = pension base on 2.5% for each full year of creditable service, payable at age 60 (deferred pensioner)
- 3) 20 years of creditable service = 50% of salary at date of retirement at age 50 (must have 20 full years and attained age 50)
- 4) Over 20 years an additional 2.5% for each full year up to 30 years, to maximum of 75% of salary

B. TIER II – ENTERED ARTICLE III FUND AFTER 12/31/10 (5/3-111(D))

- 1) Minimum retirement age 55.
- 2) Required minimum of ten (10) years of creditable service.
- 3) Retirement pension based upon 2.5% for each full year of service, not to exceed 75% of "final average salary."
- 4) Final average salary defined as:

“The average monthly salary obtained by dividing the total salary of the police officer during the 96 consecutive months of service within the last 120 months of service in which the total salary was highest by the number of months of service in that period.”

(i.e., Pension will be based upon best eight (8) consecutive years out of last ten (10) years of service)

- 5) Salary Cap – Pension is capped at \$106,800, plus the lesser of one-half (1/2) of the annual CPI-U or three percent (3%) (compounded)
- 6) Officer can retire at age 50, with minimum of ten (10) years creditable service, but must pay penalty of one-half percent (1/2%) for each month police officer is under age fifty-five (55).

VI. DISABILITY BENEFITS

A. Non-duty disability benefits (§5/3-114.2)

- 1) Vested at time of entry into pension fund
- 2) 50% of salary attached to rank on date of suspension from duty (removed from payrolls)
- 3) Requirements for non-duty disability:³
 - a) Must be police officer at time of application
 - b) Suffer from an accident, illness or sickness as a result of any cause
 - c) Found to be physically or mentally disabled
 - d) Renders necessary suspension from police service

B. Line of duty disability benefits (§5/3-114.1)

- 1) Vested at time of entry into pension fund
- 2) 65% of salary attached to rank on date of suspension from duty (removed from payrolls) or amount officer would be eligible to receive if retired, whichever is greater.

³Batka v. Orland Park Pension Board, 186 Ill. App 3d 715, 542 N E 2d 839 (1st Dist. 1989)

3) Requirements for line of duty disability pension⁴

- a) Must be a police officer at time of application;
- b) Accident, injury or sickness was incurred in or resulted from the performance of “act of duty”;

- c) Found to be physically or mentally disabled;
 - d) Disability renders necessary officer's suspension from duty.
- 4) Robbin's test for what constitutes "act of duty"⁵

"Act of Duty" Any act of police duty inherently involving special risk, not ordinarily assumed by a citizen in the ordinary walks of life, imposed on a policeman by the statutes Of this State or by the ordinances or police regulations of the city in which this Article is in Effect or by a special assignment; or any act of heroism, performed in the city having for Its direct purpose the saving of the life or property of a person other than the policeman."

⁴Wall v Schaumburg Police Pension Board. 178 Ill. App. 3d 438, 533 N.E. 2d 458 (1st Dist. 1989)

⁵Robbins v Carbondale Police Pension Board. 117 Ill. 2d 533, 687 N.E. 2d 39 (Ill. Sup. Ct 1997)

- 5) Must be "causal connection" between "act of duty" and disability
 - 6) Possible aggravation of pre-existing non-duty condition
- C. Heart attacks or stroke (§5/3-114.3)
- 1) If suffered as a result of the performance of "act of duty" 65% of salary attached to rank
 - 2) Not presumed to be duty related.
- D. Occupational disease disability pension (§5/3-114.6)
- 1) Applies only if combined police/fire department with regular firefighting duties;
 - 2) 65% of salary attached to rank or amount eligible for regular retirement, whichever is greater
- E. Determine eligibility for disability benefits (§5/3-115)
- Requires that three physicians selected by the pension board examine the applicant to determine disability.
- F. Examination and emergency service (§5/3-116)
- 1) Disabled officer is examined at least once per year to verify disability until age 50.
 - 2) If recovered from disability, pension board certifies to chief that officer is no longer Disabled and can return to duty.
 - 3) Open question – does Department have to take you back?
- G. Non-resident pensioner (§5/3-123)

Pension Board can require affidavits as proof as determined by the Pension Board or require return to Illinois for annual exam.

H. Disability conversion option (§5/3-116.1)

- 1) If 50 years old and have total of 20 years service including active and disability time can convert to regular pension.
- 2) If hired prior to October 1, 1973 can convert to 50% of salary attached to rank on date of conversion.
- 3) If hired after October 1, 1973 can convert to 50% of salary attached to rank on date of disability.
- 4) Only time disability time counts as creditable service if officer does not return to active service.

I. Re-entry into active service after disability (§5/3-114.4)

Officer receives disability pension for more than two (2) years and returns to active service.

Must remain in service for at least five (5) years before becoming eligible for increased disability pension benefits.

VII. SURVIVOR BENEFITS (§5/3-112)

- A. Death of a police officer receiving pension benefits – surviving spouse is entitled to officer's pension, if no surviving spouse:
 1. Dependent children – under 18 or under legal guardianship with disability/guardianship.
 2. If no surviving spouse or children, to dependent parents.
- B. Death of a police officer either in or out of service with at least 20 years of creditable service, spouse or dependent receives whichever pension officer earned under §5/3-111.
- C. Tier 1 – Officer vested prior to 12/31/10
 - 1) Death of a police officer with at least 10 years of creditable service but less than 20, spouse or dependents eligible for 50% of officer's salary (note: 10 year vesting period)
- D. Tier II – Officer vested after 12/31/10
Surviving Spouse gets 66 2/3rd of earned pension on date of officer's death.
- E. Death of police officer incurred in, or resulting from performance of act of duty, regardless of creditable service, 100% of officer's salary. (Note: 10 year minimum doesn't apply)

- F. Death of police officer with less than 10 years creditable service, not on duty – no survivorship pension – estate entitled to refund of contributions only.
- G. Effective July 1, 2011, “domestic partners” are eligible for surviving spouse benefits (750 ILCS §75/01 et. seq.)

VIII. INCREASES IN RETIREMENT AND DISABILITY PENSION (§5/3-111.1)

A. TIER I – OFFICER ENTERED ARTICLE III FUND PRIOR TO 12/31/10

- 1) Retired Officer: Officers on retirement receive a cost of living (COLA) raise of 1/12 of 3% for each full month on retirement upon attainment of age 55 and an additional 3% each year, in January, compounded each year thereafter.
- 2) Disabled officer receive a COLA raise of 3% for each full year on disability at age 60, and an additional 3% each year, in January, compounded each year thereafter.
- 3) Survivors do not receive COLAs.

B. TIER II – OFFICERS ENTERED ARTICLE III FUND AFTER 12/31/10

- 1) Officers on retirement/disability receive a cost of living (COLA) raise at age 60;
- 2) On either January 1st after official retirement/disability or 1st anniversary of pension date, whichever is later;
- 3) COLA will equal lesser of 3% or ½ of CPI-U for proceeding calendar year (non-compounded). However, there will never be a reduction in COLAs.
- 4) Surviving spouse receives COLAs per Section VIII(B)(3) above.

IX. REFUND OF CONTRIBUTIONS (§5/3-124)

- A. Upon separation from service, officers with less than 20 years of creditable service may receive full refund of contributions.
- B. After attainment of 20 years – no refund.
- C. Acceptance of refund bars receipt of any further benefits under Article III.
- D. Death of officer with less than 10 years (not on duty) surviving spouse receives refund.
- E. Reentry to active service, must repay full amount of refund plus 2% per annum from date of refund until date of repayment.

X. TRANSFER OF CREDITABLE SERVICE BETWEEN OTHER ARTICLE III FUNDS “PENSION PORTABILITY” (§5/3-110.7)

- A. Allows for transfer of creditable service between Article III funds under the following criteria:
 - 1) The officer is an active member of an Article III pension fund;
 - 2) The officer actively served in the previous police department including IMRF for at least 2 years, unless;
 - 3) Involuntary separation from department through no fault of the officer, i.e.; layoff.
- B. Officer can repay amount of refund from previous pension fund to reinstate previous creditable service.
- C. Steps for transfer of creditable service.
 - 1) Officer makes application to current fund of intention to transfer from previous fund;
 - 2) Officer repays the amount of refund from previous fund, plus 6% per annum compounded annually, from the date of refund to date of repayment;
 - 3) Previous pension fund notifies current fund of total years of creditable service and transfers the amount of monies to the current pension fund consisting of the following:
 - a) The police officer's contributions
 - b) The municipalities' contributions
 - c) Interest on the above
 - d) Any contribution repayments
 - 4) The current pension fund determines any additional "true cost".
 - 5) The officer must pay the additional "true cost" either by lump sum or payment plan, if approved by the Pension Board, within five (5) years. Officer can elect to take a reduction in creditable service rather than to pay true cost.
 - 6) If officer dies before repayment is made surviving spouse can elect to pay remaining amount within six (6) months of death to receive credit.
 - 7) If officer does not pay within required time period, refund is received under formula set by §5/3-110.7.

XI. TRANSFER OF CREDITABLE SERVICE BETWEEN OTHER PUBLIC EMPLOYEE PENSION FUNDS IN ILLINOIS

Creditable service earned by a police officer under Article III of the Pension Code may be transferred to any of the following Illinois public employee pension funds, however the rules for transferring are not uniform.

- A. General Assembly Retirement System (§5/3-110.2)

- B. Illinois Municipal Retirement Fund (§5/3-110.3)
- C. State Employee's Retirement System (§5/3-110.5)
- D. County Employees Benefit Fund (§5/3-110.4)
- E. Sanitary District Employees' Benefit Fund (§5/3-110.4)
- F. Other Article III Police Pension Funds (§5/3-110.7)

XII. DIVESTITURE OF PENSION BENEFITS (§5/3-147)

Under §5/3-147 a police officer convicted of a felony:

- A. Related to;
- B. Arising out of, or
- C. In connection with his service as a police officer can receive no benefits under Article III and is only entitled to a refund of contributions.

XIII. DEDUCTION FOR GROUP HEALTH INSURANCE PLANS (§5/3-124.2)

If municipality provides group hospitalization and medical plans (including self-insured) that included retired police officers and spouses, officers can make written requests that monthly premium be deducted from monthly pension check, at expense of officer.

XIV. TAXATION OF PENSION BENEFITS

- A. Taxation of retirement benefits under §5/3-111, taxed as income under I.R.C. when received. However, retirement benefits are not taxed in Illinois (35 ILCS §5/203).
- B. Taxation of duty disability benefits under §5/3-114.1 – I.R.C. excluded from gross income, compensation for personal injuries or sickness under a workers' compensation act or a statute "in the nature of a workers' compensation act."⁶
- C. Taxation of non-duty disability benefits under §5/3-114.2 benefits received under §5/3-114.2 are taxable because not under a statute "in the nature of workers' compensation," and does not result from injury occurred in the line of duty.⁷
- D. Taxation of survivorship benefits under §5/3-112 – survivorship benefits for line of duty death of officer are not taxable as income. If a disabled police officer dies before converting a duty disability pension to a regular retirement pension, the benefits are still excludable when paid to surviving spouse.⁸

⁶28 U.S.C. 9104(a)(1); Reg. §1.104-1(b).

⁷Matter of Dwyer. 7 1 TC 560(A)(1979); Rev. Ruling BO-14(1980)

⁸Rev. Ruling 79-147(1979)

XV. NON-ALIENATION OF PENSION BENEFITS (§5/3-144.1)

Article III of the Pension Code provides that pension benefits are exempt from garnishment, attachment, assignment or levy on account of any debts, judgements, court orders or damage awards that may have been entered against the police officer. Thus, these benefits are for the exclusive payment to participants and beneficiaries and the pension board cannot be forced to pay these benefits to any creditors. Some other state and federal statutory provisions preempt this provision.

XVI. CONSEQUENCES OF DIVORCE ON PENSION BENEFITS

- A. A police officer's pension benefits are a form of deferred compensation and considered to be marital property.⁹
- B. A police officer's beneficial interest acquired during marriage are subject to distribution when marriage is dissolved.¹⁰
- C. Qualified Illinois Domestic Relations Order (QILDRO) (§5/1-119)

⁹In Re Marriage of Hackett. 113 Ill. 2d 286. 497 N.E. 2d 1152 (Ill. Sup. Ct. 1986).

¹⁰In Re Marriage of Papeck. 95 Ill. App. 3d 624 420 N.E. 2d 528 (1st Dist. 1981).

Effective July 1, 1999, all public pensions are subject to QILDRO, a court order requiring the Pension Board to pay portions of officer's pension benefit to third party i.e., ex-spouse.

- 1) If hired prior to 7/1/99 must sign "irrevocable consent" to issue QILDRO
- 2) Check with Article III Pension Fund for specific rules and regulations or forms.

XVII. MARRIAGE AFTER RETIREMENT (§5/3-120)

A police officer who marries subsequent to retirement or disability, the surviving spouse and children of such surviving spouse are not entitled to survivorship benefits.

XVIII. MARRIAGE AND REMARRIAGE OF SURVIVING SPOUSE (§5/3-121)

If the surviving spouse of a police officer remarries after November 15, 1995, the spouse continues to receive the survivorship benefits. If remarriage occurred prior to November 15, 1995, the marriage terminates the entitlement to surviving spouse benefits.