

Chapter 26. Pensions

[HISTORY: Adopted by the County Council of Sussex County 6-10-1975 by Ord. No. 19. Amendments noted where applicable.]

GENERAL REFERENCES

Post-Employment Benefit Plan — See Ch. **27**.

Personnel — See Ch. **29**.

Salaries and compensation — See Ch. **35**.

§ 26-1. Title.

This chapter shall be known as the "Sussex County Employee Pension Plan Act."

§ 26-2. Purpose.

The purpose of this chapter is to assist the County administration in attracting and retaining qualified employees and to reward employees for their extended service to the County.

§ 26-3. Allowable interruptions.

[Amended 12-16-1980 by Ord. No. 52; 9-22-1981 by Ord. No. 73; 3-25-1986 by Ord. No. 359; 9-1-1998 by Ord. No. 1257; 10-4-2011 by Ord. No. 2223^[1]]

The following are allowable interruptions:

- A. Time spent on short-term disability, under § **29-31A**, Subsection **B**. The time during which an employee receives long-term disability under § **29-31A**, Subsection **C**, or a disability pension under this chapter shall not be an allowable interruption and shall not count as service for a pension benefit under this chapter.
- B. Leaves of absence granted to employees.
- C. Leaves of absence for entering the armed services of the United States, as described in this chapter.
- D. Involuntary severance of employment not due to any fault or neglect on the part of such employee.
- E. Voluntary severance of employment for a period not to exceed one year; but the employee shall not be considered a covered employee during any period of such interruption. The usual vacation allowed any employee of any department or agency shall not be considered an interruption from continuous service.
- F. For a covered employee hired by Sussex County after December 31, 2013, covered employment for calculating benefits and vesting shall not include any period of uncompensated allowable interruption unless, within 12 months after returning from the uncompensated allowable interruption, such covered

employee contributes from his or her compensation the employee contributions that such covered employee would have contributed if he or she was not on an uncompensated allowable interruption at the rate of base compensation that such covered employee was earning at the commencement of the allowable interruption.

[Added 4-29-2014 by Ord. No. 2346]

[1] *Editor's Note: This ordinance also provided that it would become effective January 1, 2012.*

§ 26-4. Sussex County Pension Fund Committee.

[Amended 12-16-1980 by Ord. No. 52; 11-15-2011 by Ord. No. 2228]

- A. The good order of the Sussex County Council and the welfare of its personnel require safe and wise investment of the pension fund and Other Post-Employment Benefit Fund of the employees and former employees of Sussex County. Sussex County presently manages a substantial pension fund for the benefit of its employees.
- B. There is hereby established a Sussex County Pension Fund Committee, hereinafter referred to as the "committee." The responsibilities of the committee shall be to review and periodically advise the Sussex County Council on the prudent investment of the Sussex County Employees Pension Fund and Other Post-Employment Benefit Fund.
- C. The committee shall assume full responsibility to accomplish its mission and is hereby given the necessary powers as described below to do so:
 - (1) Adopt its own internal rules of procedure, subject to Sussex County Council's review and approval.
 - (2) Make such arrangements for meeting space and materials within the Sussex County Administration Building as are necessary for the carrying out of the committee's business.
 - (3) Obtain and keep such books and records as are needed to carry out the committee's business.
- D. Whoever is serving in the position of the County Finance Director, County Administrator, and County Human Resources Director shall always be members of the committee. The following members shall be appointed by the Sussex County Council for a term of four years: two Sussex County community members, a current Sussex County employee, and a retired Sussex County employee who currently receives a County pension.
- E. At its discretion, the Sussex County Council shall have the power to enter into contracts with qualified persons, agents, or entities to enable it to perform its investment duties or to enter into investment management agreements with qualified persons, agents, or entities, under which investment responsibilities of the Sussex County Council shall be delegated to such persons, agents, or entities, as so recommended by the committee. The Sussex County Council shall be allowed to buy investments based on recommendations of these qualified persons, agents or entities.

§ 26-5. Arbitration Commission.

[Added 12-16-1980 by Ord. No. 52]

- A. For the purpose of settling any controversy that may arise out of the administration of this chapter, the Arbitration Commission for Sussex County is created. It consists of three persons, two of whom shall be of the same political party, to be appointed by the government of Sussex County for a term of four years.

- B. The Commission shall adjudicate this controversy at a time and place to be fixed by the Commission after due notice, in writing, has been given to all interested parties at least 10 days prior to the day of hearing. The Commission may administer oaths and do such acts to make such rules in the premises as the Commission deems necessary and carry into effect with provisions. The written concurring decision of any two members of the Commission shall be final.
- C. The members of the Commission shall serve without compensation, but the government of Sussex County shall provide for the payment of the administrations of the Commission.

§ 26-6. Eligibility.

- A. A covered employee who shall have service with Sussex County in continuous employment for at least eight years shall be considered eligible for retirement benefits within the meaning of this chapter, except as otherwise provided. Elected County officials (including the Recorder of Deeds, Register of Wills, Sheriff, Clerk of Peace and members of County Council) would be eligible to retire and receive a pension with five years of elected official service at the age of 60 or with 10 years of elected official service at the age of 55. In no event shall a covered employee hired after December 31, 2013, receive credit for covered employment for benefit purposes for any period of employment during which the covered employee does not make the full 3% employee contribution, except for the period of the year during which the covered employee is working and earning the first \$6,000 of base compensation. [Amended 12-16-1980 by Ord. No. 52; 9-22-1981 by Ord. No. 73; 11-1-2005 by Ord. No. 1799; 4-29-2014 by Ord. No. 2346]
- B. Age of retirement.
[Amended 12-16-1980 by Ord. No. 52]
 - (1) Every covered employee who is eligible for retirement benefits under this chapter may retire after such employee attains the age of 62 years (or 60 years as hereinafter provided) and shall, after retirement and during the remainder of his life, receive the vested portion of the pension fixed by this chapter, subject to such qualification and reservations as are contained in this chapter.
[Amended 3-25-1986 by Ord. No. 359; 9-1-1998 by Ord. No. 1257]
 - (2) A covered employee who is eligible for retirement benefits under this chapter may select early retirement after serving in covered employment with Sussex County for at least 15 years and attaining the age of 60 years. He shall, after such early retirement and during the remainder of his life, receive the vested portion of the pension as provided by this chapter.
 - (3) A covered employee may retire after such employee has served in covered employment for 30 years, regardless of the age of the covered employee.
[Added 9-22-1981 by Ord. No. 73; amended 11-12-1985 by Ord. No. 318; 9-1-1998 by Ord. No. 1257]
 - (4) Notwithstanding the foregoing, a covered employee who is classified as a paramedic or emergency communications specialist and who works scheduled twelve-hour shifts, including management personnel who are required to maintain certifications necessary to relieve as a paramedic or emergency communications specialist, may be retired after such employee has served in such covered employment for a minimum of 25 years, with the last eight years being continuous in such job function.
[Added 6-6-2000 by Ord. No. 1375]
- C. Nothing in this chapter shall be construed to make mandatory the retirement of any employee.
[Amended 9-1-1998 by Ord. No. 1257]
- D. Time in the State of Delaware government service, prior to employment with Sussex County, for which a wage or salary is paid, shall be computed as time as a covered employee for those employees

employed with Sussex County prior to September 1, 1998. For those covered employees who were employed with Sussex County prior to September 1, 1998, any employee who is eligible for retirement benefits under the provisions of this chapter and who is covered by a State of Delaware pension plan or statute and who was credited with time as a covered employee for time in State of Delaware government service shall have retirement payments reduced by such amount as the employee receives from the State of Delaware pension plan or statute. For those covered employees who were employed with Sussex County prior to September 1, 1998, time credited under this section shall be considered as time in covered employment in calculating benefits; provided, however, that time credited under this subsection shall not be considered for the purpose of vesting.

[Amended 12-16-1980 by Ord. No. 52; 7-23-1985 by Ord. No. 281; 9-1-1998 by Ord. No. 1257]

- E. Time in federal military service or federally acceptable substitute service shall be computed as time as a covered employee, provided that the individual was an employee of the Sussex County Council prior to the entry into such service. This subsection shall apply to the entire period of service, not exceeding four years; except that no one receiving retirement compensation for such service shall be eligible for benefits under this chapter. For a covered employee hired after December 31, 2013, to receive such credit for covered employment for time in the federal military service or federally acceptable substitute service, a covered employee must, within the period starting with the date of reemployment and continuing a minimum period of at least 12 months but, if greater than 12 months, no longer than the lesser of i) three times the length of the covered employee's immediate past period of federal military service or federally acceptable substitute service and ii) five years, contribute from his or her compensation the employee contributions that such covered employee would have contributed if he or she had not spent time in the federal military service or federally acceptable substitute service at the rate of compensation that such covered employee was earning at the commencement of the allowable interruption federal military service or federally acceptable substitute service.

[Amended 12-16-1980 by Ord. No. 52; 4-29-2014 by Ord. No. 2346]

- F. Disability pension. Effective January 1, 2012 (the "effective date"), a disability pension shall no longer be available to covered employees who were not receiving a disability pension on the effective date. A covered employee who was receiving a disability pension on the effective date shall continue to receive such disability pension subject to this § 26-6F. A covered employee's status as disabled is reviewable by the Board every 12 months. The County may require, at its expense, that the covered employee undergo a physical examination by a physician of its choice to determine initial disability or continuing disability. Payments pursuant to the Delaware Workmen's Compensation Law shall not affect a covered employee's disability benefits under this § 26-6F. An employee shall be deemed disabled for the purposes of this section if such employee has a physical or mental disability which prevents the employee from performing the duties of such employee's position. Any covered employee who becomes disabled on or after the effective date shall receive disability benefits under the short- and long-term disability policies or plans, if any, that are maintained by the County.

[Amended 10-4-2011 by Ord. No. 2223^[1]]

[1] *Editor's Note: This ordinance also provided that it would become effective January 1, 2012.*

- G. Survivors' benefits.

[Amended 9-22-1981 by Ord. No. 73; 7-24-1984 by Ord. No. 190]

- (1) Upon the death of a present employee who has eight years of credited service, a monthly survivor's pension shall be payable to his or her eligible survivor or survivors, equal to 1/2 of the service pension for which the employee would have been eligible if he or she had been 65 years of age.
- (2) Upon the death of an individual who, at the time of his or her death, is either receiving a service or disability pension or is on an approved Sussex County long-term disability plan under § 29-31A, Subsection C, and who has eight years of credited service, a monthly survivor's pension shall be payable to his or her eligible survivor or survivors, equal to 1/2 of such service pension or disability pension.

[Amended 2-7-2012 by Ord. No. 2237^[2]]

[2] *Editor's Note: This ordinance also provided that it would become effective January 1, 2012.*

- (3) For the purpose of this subsection, the eligible survivors of any employee covered under this subsection shall be as follows, provided that an employee may change the priority of eligible survivors specified for herein by designating his or her priority of eligible survivors on a form to be maintained by the Sussex County Personnel Director as part of that employee's permanent record:
- (a) The widow or widower, provided that such person had been married to the deceased employee or former employee for at least one year before the date of death.
 - (b) If there is no eligible widow or widower, a child (or with the survivor's pension divided among them in equal shares, all such children, if there are more than one), provided that the child is unmarried and either:
 - [1] Has not attained age 18;
 - [2] Has attained age 18 but not age 22 and is attending school on a full-time basis; or
 - [3] Has attained age 18 and is permanently disabled as a result of a disability which began before he or she attained age 18.
 - (c) If there is no eligible widow, eligible widower or eligible child, a dependent parent (or, with the survivor's pension divided between them in equal shares, both such parents if there are two). A parent shall be deemed to have been dependent on the deceased employee or pensioner if such individual was receiving at least 1/2 of his or her support from such deceased person at the time of death.
- (4) A survivor's pension shall begin with the month following the month in which the employee or pensioner dies. If payable to a widow or widower, it shall cease with the month in which the survivor dies or marries. If payable to a child, it shall cease with the month in which the child dies or fails to meet the conditions of eligibility in Subsection **G(3)(b)** of this section. If payable to a parent, it shall cease with the month in which the parent dies.

§ 26-7. Computation of benefits.

[Amended 9-22-1981 by Ord. No. 73; 6-6-2000 by Ord. No. 1375; 8-21-2001 by Ord. No. 1485; 11-1-2005 by Ord. No. 1799]

- A. The benefits shall be computed as follows: The wages or salary of the highest paid three years of Sussex County service shall be averaged by dividing the total by 36 months. This product shall be divided by a constant of 60. The product of these functions shall be multiplied by the number of years' service and fractions of years' service. The result shall be the monthly pension payment. The number of years' service factored into the above calculations for those employees hired after July 1, 2000, will be a maximum of 25 or 30 years in determining benefits provided pursuant to § **26-6B(3)** and **(4)** above.
- B. Notwithstanding the foregoing, the benefits shall be computed as follows for a covered employee, hired after July 1, 2001, who is classified as a paramedic or emergency communications specialist and who works scheduled twelve-hour shifts, including management personnel who are required to maintain certifications necessary to relieve as a paramedic or emergency communications specialist: The wages or salary of the highest paid three years of Sussex County service shall be averaged by dividing the total by 36 months. This product shall be divided by a constant of 50. The product of these functions shall be multiplied by the number of years of service, which number shall not exceed 25. The

result shall be the monthly pension payment.

- C. In the event a covered employee who is classified as a paramedic or emergency communications specialist and who works scheduled twelve-hour shifts, including management personnel who are required to maintain certifications necessary to relieve as a paramedic or emergency communications specialist was hired prior to July 1, 2001, such covered employee may choose that his pension benefit be computed in accordance with § 26-7A or § 26-7B.
- D. For employees otherwise eligible for a County pension who have had United States military service and are honorably discharged from said service, the computation of years of service shall include one additional year of County service for two years or more of military service. As to those employees, the multiplier used in the calculation for the number of years of service and fractions of years of service shall be modified to provide that the product of these functions shall be multiplied by the number of years of service and fractions of years of service, plus one year. Otherwise, there will be no change in the maximum years of service used in determining the calculation of pension benefits. The one additional year granted herein for military service does not count toward vesting, pension eligibility or post-retirement benefit eligibility.
- E. Minimum death benefit. Upon the death of a covered employee hired after December 31, 2013, former employee hired after December 31, 2013, or pensioner hired after December 31, 2013, or if a survivor's pension is payable upon such death, when such pension ceases to be payable, there shall be paid to the designated beneficiary or, in the absence of a designated beneficiary, to the estate of such covered employee, such former employee or such pensioner a lump sum equal to the excess, if any, of the accumulated employee contributions with 2% interest per annum over the aggregate of all pension payments made.
[Added 4-29-2014 by Ord. No. 2346]
- F. Withdrawal benefit. Upon the withdrawal from service of a covered employee hired after December 31, 2013, and who is not eligible for a service pension under § 26-6A, the employee's total employee contributions paid while the employee was a covered employee, with simple interest at the rate of 2% per annum, shall be paid to the covered employee.
[Added 4-29-2014 by Ord. No. 2346]

§ 26-8. Employment restrictions for pensioners.

[Amended 12-16-1980 by Ord. No. 52; 6-1-1993 by Ord. No. 890; 6-6-2000 by Ord. No. 1375]

No person, while receiving a pension under this chapter, shall be employed by the government of Sussex County or any department or agency of said government in any capacity other than part-time for no more than 520 hours in any one calendar year unless elected by popular vote and elected; and during such elected term, he shall not be entitled to a pension unless he serves such term of office without pay. Persons eligible to receive survivor's benefits are excluded from this restriction.

§ 26-9. Funding.

- A. The Sussex County Council shall make an initial appropriation of \$75,000 to put this chapter into effect, and it shall be designated as the "Sussex County Pension Fund."
- B. The Sussex County Council shall review the status of the fund yearly.
[Amended 9-22-1981 by Ord. No. 73]
- C. The Sussex County Council shall annually reconsider the amount of pension payments to determine the necessity for a cost-of-living increase.

- D. This fund shall be used for pensions and no other purpose.
- E. Pension payments shall not be subject to attachment or execution.
- F. Employee contributions.
[Added 4-29-2014 by Ord. No. 2346]
- (1) Covered employees hired by Sussex County after December 31, 2013, shall make employee contributions to the fund equal to 3% of the covered employees' total annual base compensation in excess of \$6,000. In no event shall the total base compensation of a covered employee during any calendar year in excess of \$6,000 be exempt from employee contributions. A covered employee shall at all times be 100% vested in his or her employee contributions.
 - (2) Covered employees who were hired by Sussex County prior to January 1, 2014, and who terminate employment with Sussex County at any time and are subsequently reemployed by Sussex County after December 31, 2013, shall be required to make employee contributions to the plan upon their reemployment, except that no employee contributions shall be required from the following covered employees:
 - (a) A covered employee who, prior to such termination of employment, had service with Sussex County in continuous employment for at least eight years and who again becomes a covered employee within 60 months of such covered employee's termination of employment; and
 - (b) A covered employee who, prior to such termination of employment, did not have service with Sussex County in continuous employment for at least eight years and who again becomes a covered employee within 12 months of such covered employee's termination of employment.
- G. Employer pickup of employee contributions.
[Added 4-29-2014 by Ord. No. 2346]
- (1) The Sussex County Council, pursuant to the provisions of § 414(h)(2) of the United States Internal Revenue Code [26 U.S.C. § 414(h)(2)], shall pick up and pay the contributions which would otherwise be payable by the employees under § **26-9F** of this chapter. The contributions so picked up shall be treated as employer contributions for purposes of determining the amounts of federal income taxes to withhold from the employee's compensation.
 - (2) Employee contributions picked up by the Sussex County Council shall be paid from the same source of funds used for the payment of compensation to an employee. A deduction shall be made from each covered employee's compensation equal to the amount of the employee's contributions picked up by the employer. This deduction, however, shall not reduce the employee's compensation for purposes of computing benefits under the retirement system pursuant to this chapter.
 - (3) The contributions, although designated as employee contributions, are being paid by the employer in lieu of the contributions by the employee. The employee will not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system.

§ 26-10. Fraud.

Any person who knowingly makes any false statement or falsifies or permits falsification of any records of the Pension Fund in an attempt to defraud the fund shall be guilty of a misdemeanor and, upon conviction, shall be sentenced to pay a fine not exceeding \$1,000 or suffer imprisonment not exceeding one year, or both, in the discretion of the court.

§ 26-11. Records.

- A. The Personnel Director shall have the responsibility of keeping such records as are necessary to determine eligibility.
- B. The records of the fund concerning personnel shall not be deemed public records. However, a written request by a covered employee to the County Administrator shall entitle him to see his or her records or receive an extract signed by the Personnel Director. No more than two such requests in a twelve-month period need be honored.
- C. Those records concerning administration of the fund shall be kept by the Sussex County Finance Director.
- D. Only the County Administrator, County Finance Director and County Personnel Director or the Board in session or designated staff members shall have access to the records of the fund.