

# MEMBER HANDBOOK

New Mexico Educational Retirement Board



NEW MEXICO  
EDUCATIONAL  
RETIREMENT  
BOARD

*Last updated March 2008*

# NMERB Handbook

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The ERB is a defined benefit retirement plan. Under the internal Revenue Service code it is considered a 401(a) retirement plan. Defined benefit retirement plans are designed to give members who qualify for benefits a lifetime income source for the retiree and, if they choose such a benefit, for a beneficiary. Both the member and employer contribute a percentage of earnings towards retirement. The large pool of members and professional investing by the ERB provides for the stable and generous retirement benefit.

**WHAT KIND OF RETIREMENT PLAN IS THE ERB?**

**WHO IS THE EDUCATIONAL RETIREMENT BOARD?**

The Educational Retirement Board is the legal body responsible for administering the Educational Retirement Act. Its seven members include two state officials (the Cabinet Secretary of the Public Education Department and the State Treasurer), two members appointed by the Governor, one member elected by the members of the New Mexico National Education Association, one member elected by members of the New Mexico Association of University Professors, and one member elected by the New Mexico Association of Educational Retirees.

ERB is also the employees who serve ERB members. Staff members oversee investments, ensure that members are paid their benefits or receive refunds of their contributions, and help members to understand their benefits and make good decisions about their retirement benefit options. There are approximately 53 staff members serving 63,000 active, 30,000 retired, and 21,000 inactive members.

**MEMBERSHIP**

**Y**ou become an ERB member when you begin employment with an ERA covered employer. When you become a member of the ERB, an account is established in your name with your Social Security number as the account reference. Upon employment you are required to complete a Beneficiary Designation Form (ERB Form 42). The information requested on the form is required in setting up your retirement account. Contributions are deducted each pay period from your check and credited to your account quarterly.

Membership in the ERB is a condition of employment. Employees covered under the ERB are referred to as members. Employers are referred to as local administrative units or employers.

If you are a substitute teacher, an intern, or work .25 or less than a full time equivalent (FTE) employee you are NOT eligible to participate in the ERB.

Employees of the following local administrative units who are employed more than twenty-five percent of a Full Time Equivalent (.25 FTE) are required to be members of the ERA:

- » public schools (including charter schools)
- » universities
- » junior colleges
- » technical and vocational institutions
- » New Mexico Boys' and Girls' Schools New Mexico School for the Deaf
- » New Mexico School for the Visually Handicapped
- » Youth Diagnostic Center
- » Regional CoOperatives
- » New Mexico Activities Association

- » State agencies providing an educational program (i.e. Department of Health, Public Education Department, Division of Vocational Rehabilitation, Educational Retirement Board, Department of Corrections). If you are a certified educator (teacher, administrator) you will participate in the Educational Retirement Board pension plan. If you are not a certified educator you will participate in the Public Employees Retirement Association pension plan.

For a list of specific local administrative units see the ERB website and the Annual Financial report at [www.nmerb.org/pdfs/ERB\\_Annual\\_Report\\_FY05-1.pdf](http://www.nmerb.org/pdfs/ERB_Annual_Report_FY05-1.pdf).

**ALTERNATIVE RETIREMENT PLAN**

**A**n Alternative Retirement Plan (ARP) is available to faculty and professionals with one of the six four-year institutions of higher education who were initially employed after July 1, 1991 or eight community college and technical schools who were initially employed after July 1, 1999. The election must be made within ninety days of employment and is irrevocable. The ARP is a defined contribution plan in which the employee contributes 7.825% of their income to their ARP. This deduction amount will increase by .075% on July 1, 2008 when the employee contribution will be 7.9%. The employer matches with a contribution of 10.9%. The employer contribution will increase by .75% each year until 2011 when the employer contributes 13.9% of salary. Three percent of the employer match goes to the ERB to help pay for the unfunded liability incurred by the plan.

## CONTRIBUTIONS

Members of the system contribute 7.9% (effective 7-1-08) of their total earnings, deducted before taxes, from each payroll check. Earnings covered include all salary remuneration to the member for services rendered whether included under a contract or not. Not covered for contribution purposes are reimbursements, bonuses, lump-sum payments for unused, accrued sick leave and early retirement incentive payments.

The employer (school board, institution of higher learning, state agency, etc.) contributes an amount equal to 10.9% (effective 7-1-07) of a members' total salary. The employer contribution will increase by .75% each year until July 1, 2011 when the employer contribution will be 13.9%.

Contributions made by the member after July 1, 1983 are deferred from federal income tax based upon a ruling by the Internal Revenue Service. Member contributions are exempt from taxes by the State of New Mexico as well (Section 414 (h)(2) of the IRS Code). The contributions will be taxed when the member terminates employment and begins receiving a benefit as either a one-time refund or a lifetime retirement benefit.

## REFUND INFORMATION

Members may withdraw their contributions only when they terminate covered employment in a New Mexico ERA covered position and the former employer has provided certification of termination.

Forms (Request for Refund and/or Rollover) are available at each local administrative office or from ERB offices. After the employee and the former employer have completed the form, it must then be sent to the Educational Retirement Board for payment. If a member terminated employment more than 6 months before requesting the refund it is not necessary to have the former employer complete the form. Employer contributions are not placed in the member's account and are not refundable to a member upon termination.

The refund rate for active members who die prior to retirement and for members who terminate their employment with all ERB employers is set, effective to 12-1-08, at 4.92%. For retired members who chose the normal retirement option and who die prior to their contributions being paid out the interest rate is set at 5.03% effective through 12-1-08. The Board determines the interest rate each year. Interest is not earned on contributions credited to accounts prior to July 1, 1971 or on contributions on deposit for less than one year.

Upon a withdrawal of contributions, post-1983 contributions and interest are subject to federal income tax as ordinary income and are generally subject to an IRS 10% penalty tax, as well. The distribution may be rolled-over into an IRA or qualified employer plan under certain conditions, thereby avoiding the regular and penalty taxes. A refund may be in the form of a direct roll-over, direct refund, or a partial roll-

**REFUND INFORMATION**

CONTINUED

over/direct refund. The ERB is required by federal statute to withhold 20% of the taxable balance paid to the member on a partial roll-over or direct refund and forward it directly to the IRS as income withholding.

A member who dies prior to retirement and does not have Option B coverage will have the total contributions plus interest paid to a designated beneficiary or to his or her estate. The interest paid in this case is 4.92% (2008). The interest rate changes annually and is determined by the Board. Upon the death of a member who has designated a minor as beneficiary, payment will not be made until the minor reaches age 18, or until the court appoints a guardian of the minor's estate.

A member who has withdrawn contributions in the form of a refund may regain credit for those contributions by paying the Educational Retirement Board the sum withdrawn plus interest compounded monthly for the period during which the funds were withdrawn. That interest rate is currently 8%.

**SERVICE CREDIT**

Service credit under the Educational Retirement Act may be either "earned" or "allowed". Earned service credit is granted for the time when a member is contributing to ERA, or for employment prior to July 1, 1957. The member thus receives earned service credit for all the time he/she has been employed in New Mexico as a member of the educational retirement plan. In order to earn service credit a member must work more than .25 of the full time equivalent for the job. The member contributes 7.9% (after 7-1-08) of his/her pre-tax earnings through a payroll deduction.

**SABBATICAL LEAVE AND LEAVE OF ABSENCE**

Earned service credit is granted for paid sabbatical leave for which contributions have been made. Service time is not earned for unpaid sabbatical leave or leave of absence.

**RESTORATION OF EARNED SERVICE CREDIT**

A member may restore his/her contributions that were previously refunded and receive credit for the years involved by "buying back" as many years as desired up to the maximum withdrawn. Active or inactive members may buy back this service time. Withdrawn or refunded service time may not be purchased after the member has retired from ERB. Employees may buy back earned service in one of two ways:

(1) members may make a lump sum payment to buy back all or part of their withdrawn service; or

(2) members may “roll-over” retirement contributions from another plan to the ERB plan to the extent allowed by the IRS. This provision allows members to transfer funds from another retirement plan like ours, which is a 401(A) plan, a 403(b), or an IRA.

If the member subsequently withdraws contributions or the member dies prior to his or her retirement, the interest paid on restored contributions is not refundable.

**A**llowed service credit is included in the computation of the member’s retirement benefit and is also included in determining retirement eligibility in the “25 and Out” retirement provision. It is not included in determining eligibility for retirement under the “Rule of 75”.

**ALLOWED SERVICE**

Five years of allowed service credit may be purchased and credited to a member’s account under the Educational Retirement Act. The member and former employer are required to provide verification of the allowed service credit sought. The form to purchase out-of-state service and private school or BIA service are available on the ERB web site.

The cost to purchase allowed service is based on actuarial cost. This cost ranges from approximately 18% of current full time earnings to as much as 68% of current full time earnings for each year of service purchased. Contact your nearest ERB office for an estimate of your cost for allowed service time.

**T**he following options describe the allowed service that may be purchased into your ERA retirement:

**PURCHASABLE  
ALLOWED SERVICE**

- 1) Out-of-state Employment in a public or accredited private school or institution of higher learning in a state or territory of the United States.
- 2) US Military Dependents School
- 3) Federal Educational Service in New Mexico
- 4) New Mexico Private School Experience: The school must be accredited by the State Department of Education or an accreditation agency approved by the state.
- 5) Military Service: The cost to purchase each year of active military service is 10.5% of the member’s annual New Mexico salary for all years of covered employment.

Members engaged in the United States Military or the Commissioned Corps of the Public Health Service may purchase up to five years of allowed service credit for such service. The member must have received an honorable discharge in order to qualify for the purchase. This buy-in provision is available to members within three years following the initial date of employment. The member must provide a copy of their DD-214 or other type of military discharge notice.

Members who leave covered employment immediately prior to entering into active military service and reenter covered employment within 18 months of discharge may receive up

**PURCHASABLE  
ALLOWED SERVICE  
CONTINUED**

to five years of service credit for the time spent in active duty. There is no cost for this service.

Under the provisions of the Educational Retirement Act, a member may purchase a maximum of five years of allowed service credit in each category or in any combination thereof. When any single category or combination of categories is combined with military service, the maximum allowable is ten years.

Members may purchase allowed service in two ways:

- 1) Members may make a lump-sum payment to the ERB, or
- 2) Members may roll-over or transfer retirement contributions from one plan to another. The Educational Retirement Board may accept rollovers to the extent allowed by the IRS. This provision will let a member transfer their funds from another retirement plan like ours, which is a 401(a) plan, a tax sheltered annuity 403(b) plan, or an IRA.

Allowed service credit is included in the computation of the member's retirement benefit and is also included in determining retirement eligibility in the "25 and Out" retirement provision; but is not included in determining retirement eligibility under the "Rule of 75".

A member is eligible to retire when:

**RETIREMENT  
ELIGIBILITY**

- 1) The members' age and earned service credits add to the sum of 75 or more. This is referred to as the "Rule of 75". A benefit reduction will apply if the member is under 60 years of age. A reduction of a member's benefit is applicable only when the member is less than age 60 and has less than 25 years of earned service credit. The reduction is 2.4% for each of the first five years under age 60 plus 7.2% for each year under age 55. Age is considered in quarters; for example the reduction at age 59 ½ is 1.2%.
- 2) The member has earned and allowed service credit totaling 25 or more years. This is referred to as the "25 and Out" provision.
- 3) The member's age is 65 or more with at least five years of earned service credit. This is often referred to as the "65 plus 5" provision. The member is "vested" after 5 years of earned service.

**REMINDER:** Earned service is credit for employment with an administrative unit in New Mexico. Allowed service credit is included in the computation of the member's retirement benefit and is also included in determining retirement eligibility in the "25 and Out" retirement provision; but is not included in determining retirement eligibility under the "Rule of 75".

When members have accrued five or more years of "earned service credit", they may terminate employment, leave their

contributions in the retirement fund and retire: (1) when their age and years of “earned service credit” (see above paragraph) add to the sum of 75 or more, or (2) at age 65, whichever is sooner. To receive retirement benefits when the eligibility requirements are met, a member must make application directly to the Educational Retirement Board. This should be done sixty to ninety days before the desired effective date of retirement.

**DEFERRED RETIREMENT**

If the member is eligible to retire, there is no advantage in deferring retirement beyond age 60, as the benefit does not increase beyond that age when the member is on deferred status. The member

who is on deferred status, and becomes eligible for benefits, forfeits all benefits from the date of eligibility to the date application is made for retirement.

Here is an example of deferring a retirement benefit: Mary has 20 years of earned service and qualifies for retirement at age 55. She will be terminating her employment by age 55. Her monthly benefit of \$1,000 is decreased by the age penalty of 12% (2.4% per year for each year under 60 for the “Rule of 75” option). Her retirement benefit would be \$880 until cost of Living Allowances begin at age 65.

Deferring her benefit to age 60 would increase her benefit to \$1,000 (no age penalty) but cost her \$52,800 (\$880 x 12 months x 5 years) in lost pension income. Mary would begin her admittedly larger pension \$52,800 in the hole. She would break even on this option just before her 87th birthday.

Retirement benefits are determined by a formula. The formula includes three component parts: the member’s Final Average Salary (FAS), the number of years of service credit earned and allowed and the .0235 factor.

**RETIREMENT BENEFITS**

$$\text{FAS} \times \text{SERVICE CREDIT} \times .0235 = \text{ANNUAL BENEFIT}$$

The Final Average Salary is the greater of:

(1) The member’s \*average annual earnings in the last twenty calendar quarters (or 60 months) immediately preceding retirement; or

(2) The member’s average annual earnings in any twenty consecutive calendar quarters in which there are earnings.

\*average annual earnings means the annual earnings are annualized by fiscal year. For example, if the quarterly earnings from 6 years ago will be used to round out the 20 calendar quarters the quarterly earnings will be the average for the fiscal year of six years ago. If quarterly earnings are: \$10,000, \$15,000, \$15,000 and \$20,000 then the average quarterly earnings will be \$15,000.

Even more precisely, if a member retires at a time other than the end of a quarter (July 1, October 1, January 1, or April 1) income from months within a quarter will be borrowed to correctly reflect a quarters’ earnings. If a member retired on September, 2007 the FAS would be FY 2007, FY 2006, FY 2005,

FY 2004, the 2 months earnings in July and August 2007, and ten months of the average earnings in 2003.

A reduction of a member's benefit is applicable when, and only when, the member's age is under age 60 and has less than 25 years of service credit. The reduction is 2.4% for each of the first five years under age 60, plus 7.2% for each year under age 55. For example, a retiree with 17 years of earned service who retires at age 58 will have a 4.8% (2 yrs. x 2.4% = 4.8%) permanent reduction in benefits. A retiree with 22 years of earned service and age 53 would have a 26.4% reduction (5 yrs. x 2.4% = 12% + 2 yrs x 7.2% = 14.4% = 26.4%).

#### COST OF LIVING ADJUSTMENT

The first COLA to a retiree's benefit will be made on July 1 of the year in which the retired member reaches age 65, or on July 1 of the year following the members retirement date, whichever is later. Thereafter, each July 1, a retiree's annuity will be adjusted by either one-half the percent change in the Consumer Price Index of the preceding calendar year or four percent, whichever is less. The annual adjustment shall be no less than two percent unless the CPI is less than two percent. In this case, the COLA will be the same as the percent change in the CPI.

For those members who retired under a disability retirement or anyone who retired under a regular retirement who can provide evidence to the ERA medical review board that they were disabled at the time of retirement a cost-of-living adjustment is provided. The adjustment is calculated as described above and will occur on July 1 of the third full year following retirement.

The retired member's benefit is subject to state and federal income tax immediately upon retirement. Previously taxed contributions are not subject to further taxation. Therefore, a portion of your monthly benefit may not be subject to further federal tax. This includes pre-83 contributions, and purchases of service with after tax money. At your request, upon retirement the ERB will compute the amount of your taxable income and withhold both state and federal taxes. Further, insurance premiums made to the Retiree Health Care Authority can be deducted when ERB is requested to do so. The ERB has also agreed to withhold dues to the New Mexico Association of Educational Retirees when asked to do so by the member. No other deductions from benefits are allowed.

#### DEDUCTIONS FROM RETIREMENT BENEFITS

#### RETIREMENT BENEFIT OPTIONS

The member, upon retirement, has three options as to how to receive the benefit. These options must be chosen upon retirement and cannot be changed.

**NORMAL BENEFIT** – If the member elects the Normal Benefit there is no reduction to the monthly benefit other than any "Rule of 75" deductions or any community property or child support reductions. There will be no continuing benefit due a beneficiary or estate upon the retiree's death, except the balance, if any, of contributions. Those contributions are usually exhausted in 2 to 3 years.

**OPTION B** – If the member elects Option B, the monthly benefit is reduced to provide for a 100% survivor's benefit. The reduced benefit is payable during the life of the member with the provision that, upon the retiree's death, the same benefit is paid to the beneficiary for his or her lifetime. The named beneficiary may not be changed after the effective date of retirement since the amount of the option is calculated by using both the age of the member and the beneficiary. If the beneficiary predeceases the member, the member's benefit will be adjusted by returning it to the "Normal Benefit" amount. The IRS prohibits selection of Option B for a non-spouse beneficiary more than ten years younger than the member.

**OPTION C** – If the member elects Option C, the monthly benefit is reduced to provide for a 50% survivor's benefit. The benefit is payable during the life of the member with the provision that, upon the retiree's death, one half of the member's benefit is paid to the beneficiary for his or her lifetime. Here again, the named beneficiary may not be changed after the effective date of retirement. If the beneficiary predeceases the member, the member's benefit is adjusted by returning it to the "Normal Benefit" amount.

Under the provisions of Options B and C coverage, the beneficiary must be a person, and only one beneficiary may be named. In accordance with the ERB, the term beneficiary means a person having an insurable interest in the life of the member.

Additional information and the approximate benefits payable in individual cases may be obtained from the Educational Retirement Board office.

**A**ny member who has accrued at least five years of earned service credit is entitled to the coverage of Option B from that point to the point of actual retirement, provided that the member's contributions remain in the fund. This coverage provides protection of funds to the beneficiary in the event of the member's death prior to actual retirement. Under the Option B coverage provided, the member must name one beneficiary; however, that named beneficiary can be changed as often as needed prior to the member's actual retirement.

#### OPTIONS BEFORE RETIREMENT

If a member who has chosen the Option B coverage should die prior to actual retirement, the deceased member's retirement benefit would be computed as of the first of the month following the date of death, and the appropriate benefit due the beneficiary may be commenced as of that date. The beneficiary may choose to defer receipt of the deceased member's benefit to any future date up to the date on which the deceased member would have become age 60, had he or she lived.

If the deceased member was under age 60, and did not have 25 years of service, deferring the benefit to a future date will result in a higher benefit to a beneficiary since the annuity is reduced for the member's age at death. The surviving beneficiary, in any case, would have the right to withdraw the member's contributions plus interest in lieu of the monthly benefit. An example of a death benefit follows: A member dies at age 42 with 15 years of service. An initial benefit of 35% of FAS is calculated. The reduction on the amount is 2.4% for each year under 60 and 7.25% for each year under 55.  $2.4\% \times 5 = 12\%$  and  $7.2\% \times 13 = 93.6\% + 12\%$ . The reduction

leaves the beneficiary with no income if they want the benefit immediately. Waiting until the member would have been 50 yields a 48% penalty, age 55 a 12% penalty, and age 60 no penalty.

A member eligible for Option B coverage may reject such coverage by completing the appropriate form. In the event of the death of a member prior to retirement who does not have Option B coverage, the beneficiary or the member's estate would receive the member's contributions plus interest.

Most ERA retirees have a health, dental, vision, long term care, and life insurance coverage plan available through the New Mexico Retiree Health Care Authority. For more information about that plan please call NMRHCA at 1 (800) 233-2576, 222-6400 in Albuquerque or visit their website at [www.nmrhca.state.nm.us](http://www.nmrhca.state.nm.us). Their offices are located in Albuquerque at 4308 Carlisle Blvd NE Suite 104 or in Santa Fe at 810 West San Mateo Suite D.

**NEW MEXICO RETIREE  
HEALTH CARE AUTHORITY**

Retirees who last worked for New Mexico State University, San Juan College, Clovis Community College, or the University of New Mexico at the time of their retirement may qualify for continuing benefits through their employers. They do not qualify for NMRHCA benefits unless they worked for a participating NMRHCA employer for at least 5 years prior to their service with the above institutions.

The ERA / PERA Reciprocity Act allows service credit under PERA and ERA to be combined for retirement eligibility and benefits. The member should ask the PERA office to verify that service to ERB and vice versa. The retirement application must be filed with the system where the member is last employed. Educational employees having credit under PERA should contact the Educational Retirement Board office six months prior to retirement for an analysis of credit which may be due under this Act. Failure to notify the ERB of such service will result in a loss of benefits for that reciprocal service.

**RECIPROCITY ERA/  
PUBLIC EMPLOYEES  
RETIREMENT  
ASSOCIATION**

Service time earned under each system is calculated using the rules in effect at the time the service was earned. The earned time total combines for eligibility purposes for each system. An example is a member at age 60 with 15 years of combined service. That person qualifies for a pension from ERB based on the "Rule of 75" but will not qualify for a PERA benefit because PERA requires a person with 15 years to be 62 before a benefit can be granted.

**PREPARING FOR  
YOUR RETIREMENT**

Plan your retirement in a businesslike manner so that it can be handled efficiently and with the greatest advantage to you.

One or two years before your actual retirement, communicate in writing or in person with the Educational Retirement office nearest you to be sure you have received credit for all of your

PREPARING FOR YOUR RETIREMENT

CONTINUED

covered employment in New Mexico. You may also check on allowed credit for military, federal, out-of-state, or U.S. Military service that you may have purchased.

One year before retirement. As you approach retirement, you may want an estimate of your projected benefits. Please direct your inquiries to the Educational Retirement Board giving specific information about when you plan to retire, your current annual salary, and the birthday of your beneficiary (if you elect an option). You may be able to estimate the amount of your own benefit by applying the formula described in this handbook or with our online benefits calculator.

You should, at this time, obtain verification of your date of birth and verification of date of birth for the person whom you may name as your beneficiary in the event you elect Option B or C upon your retirement. Acceptable verifications include a birth certificate, baptismal certificate, or passport.

To ensure that your retirement process moves smoothly, you should complete the application 60-90 days before your retirement date. Retirement application forms are available from your employer and must be completed by you and your employer and mailed by your employer to the Educational Retirement Board. Applications received after the anticipated retirement date will be changed to the next month.

If you are not employed at the time you seek benefits, you may make application directly with the Educational Retirement Board. This should be done between 30-90 days before the desired effective retirement date.

Retirement dates are the first of the month following a month in which the member had earnings. The only exception is that the retirement date for a member on a 9 or 10 month contract completing the academic school year is set by state statute as July 1. Retirement applications must be received in the ERB office by the last day of the month prior to the retirement date. For example, a July 1 retirement application must be received by the last working day of June in order to be effective. Applications for July 1 retirement dates received in the month of retirement will be moved to the next month's retirement date.

EFFECTIVE RETIREMENT DATE

PENSION PAYMENTS

Pension checks are paid on the last working day the month. For example, a July 1 retiree will receive his or her first benefit payment on the last working day of July. The first 6 to 8 payments will be an estimated amount since the actual earnings from your employer have not been reported to the ERB for several months after your retirement date. After the actual earnings are reported, the benefit will be recalculated and adjusted when needed.

ERB only pays benefits through direct deposit of your benefit into your account at the bank or certain credit unions. The electronic deposit has proven to be a much safer and faster way of conducting these transactions. The first deposit will be mailed to your mailing address. Thereafter your benefit payment will be available on the last working day of each month in your account.

## DISABILITY BENEFITS

A member may be eligible for disability benefits:

(1) after he or she has completed ten years of earned service credit;

(2) is totally disabled and unable to continue employment; or

(3) is unable to gain or retain other employment commensurate with his or her education, background and experience.

In order to receive benefits, the disabled member must have terminated employment because of the disability and must file an application with the ERB. This application must include a full accounting of the disability by a personal physician or physicians including a diagnosis and prognosis. The member must also have an examination by physicians appointed by the ERB. The cost of this examination is borne by the Board, but transportation and other personal expenses incurred by the applicant in presenting himself for such an examination are paid by the applicant.

The disabled member may file an application for benefits prior to termination of employment. However, the effective date of the benefit will be the first day of the month following termination of employment, or the first day of the month following the filing of application with the Retirement Board, whichever is later.

The annual disability benefit is approximately one-third of the member's Final Average Salary.

## CONTINUATION OF DISABILITY BENEFITS

Prior to turning age 60, the disabled member's case is reviewed by the Retirement Board annually or more frequently if necessary. If the results of a review show that the disabled member is able to return to work, the benefits are stopped.

Subject to severe penalties, the disabled member is required to report any substantial improvement in his or her physical condition within 30 days after such improvement is known.

When a disabled member turns age 60, a member is deemed to have retired and, thereafter, the disability benefit becomes a retirement benefit, subject to a reduction if the member elects Options B or C. The member is no longer subject to removal from status due to an improvement of condition.

**NON ERA  
EMPLOYMENT**

There is no limit on a retired member's earnings if the employer is not covered by the provisions of the Educational Retirement Act. City, state or county, the federal government, private schools, public schools in another state, BIA schools, any private employers... are all non-ERA covered employers and have no effect on your pension.

A retired member may work with an ERB covered employer and earn up to \$15,000 or an amount calculated under the .25 or less FTE (full-time equivalency) provision, whichever is greater, without affecting retirement benefits. The salary is calculated on a fiscal year basis, (July 1 through June 30). The determination of whether a position equals .25 FTE is made by the employer. The FTE salary is based on what the employee would make if they were working full time and is not related to their salary before retirement.

**\$15,000 OR .25 FTE  
RULE**

If the member exceeds the established limits in a fiscal year, he or she shall be considered to be removed from retirement status and shall forfeit the retirement benefits starting on the first day of the month in which cumulative earnings exceed \$15,000 or the 25% FTE provision. It is the member's responsibility to monitor their earnings from an ERB sponsored employer so that they do not exceed the maximum earnings.

**CONTRACTORS**

ERA retirees may contract for services to ERB employers and continue to earn their pension. A retiree may earn an unlimited amount and have no effect on their ERB pension. The employer and employee must follow the IRS rules concerning who qualifies as a contractor vs. an employee. A retiree may not, according to IRS rules, return to the same job with the same employer as a contractor unless a layout period of at least 90 days has elapsed. If a retiree is returning to work with the same employer with which they were employed at retirement they must complete the Employee or Independent Contractor forms (available on the ERB website at [www.nmerb.org/pdfs/IC\\_Determination.pdf](http://www.nmerb.org/pdfs/IC_Determination.pdf)) and send them to ERB's attorney for review.

**RETURN TO WORK  
PROGRAM**

The Return to Work Program allows all educational retirees (not just teachers) to return to work after taking a 12 consecutive month layout from any kind of work for an ERB covered employer. That layout must have been in the 12 months immediately preceding the return to work date. This option is the ONLY option for those who retired after January 1, 2001. The re-hired RTW employee continues to receive ERB pension benefits but does not earn service credits toward future retirement benefit improvement. The employee does not make contributions to the retirement fund. A Return to Work application must be sent to ERB in Santa Fe and approved before moving to a different employment status.

**RETURN TO WORK PROGRAM**

CONTINUED

Employees who retired before January 1, 2001 and are current employees (substitutes, contractors, .25 FTE) may return without any layout period. A Return to Work application ([www.nmerb.org/pdfs/RTW\\_Form.pdf](http://www.nmerb.org/pdfs/RTW_Form.pdf)) must be sent to ERB in Santa Fe and approved before moving to a different employment status.

Another Return to Work option is for employees who retired before January 1, 2001 and suspended their retirement. This means you canceled your retirement and became an active, contributing, ERB member after retiring the first time. The employee must have had a 12 month layout at some time and must terminate current employment and complete a 90 calendar day layout period, which does not include scheduled breaks (summer, winter, or spring breaks), vacations, or sick leave. If you qualify and are interested in this option please call your nearest ERB office about specific layout dates. A Return to Work application must be sent to ERB in Santa Fe and approved before moving to a different employment status.

**R**etirees may return to full-time employment covered by the ERB at any time. When this occurs, the member must notify the ERB in writing. The retirement benefit is canceled and the member becomes an active contributing member again. Upon re-retirement the benefit is re-computed giving

**REEMPLOYMENT OF RETIREES**

consideration to the additional service credit and salary acquired during reemployment. In no case will the benefit be less than it was at the time of first retirement.

While a retired person's benefit is canceled if he returns to covered employment, the "Option" or type of benefit previously chosen remains in effect throughout periods of reemployment and subsequent retirements. For example, if a member chose Option C at the time of his or her first retirement, and dies during a period of reemployment while benefits were canceled, the member's surviving beneficiary would begin receiving monthly benefits under the terms of Option C. If the member re-retires, his or her benefits are recalculated at the Option C level.

**REEMPLOYMENT OF RETIREES**

CONTINUED

COMMUNITY  
PROPERTY  
RIGHTS

New Mexico is a community property state. As such, all property that is acquired during the marriage is divisible upon a divorce.

Contributions to ERB that have been received during the marriage are community property. The Educational Retirement Act protects our members' contributions from assignments or attachments in a legal process with the exception of community property settlements or child support obligations.

Community property and child support distributions will only occur upon an appropriate court order that is specific to the distribution of an ERB member's retirement. All court orders are subject to review by the ERB. An acceptable order will become part of the members' record and the ERB will comply with its direction.

A packet of information is available to those members who request information regarding their retirement account upon a divorce. That packet includes: a statement of the member's account, a history of the member's accumulated quarterly salary and contributions, and beneficiary information. Upon request, a model order with attorney instructions is available. The model order contains instructions for drafting an acceptable order for the convenience of our membership. The model order with attorney instructions is available on our website at

[www.nmerb.org/pdfs/modelorderwithattorneyinstructions.pdf](http://www.nmerb.org/pdfs/modelorderwithattorneyinstructions.pdf).



**TOLL FREE TO SANTA FE - 1 (866) 691-2345**

701 Camino de Los Marquez  
Santa Fe, NM 87502

Phone (505) 827-8030  
Fax (505) 827-1855

6201 Uptown Blvd. NE  
Suite 204  
Albuquerque, NM 87110

Phone (505) 888-1560  
Fax (505) 830-2976

410 W. Court  
Las Cruces, NM 88001

Phone (575) 647-3313  
Fax (575) 647-3315

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