

Questions and Answers About the Updated Return to Work Rules January 6, 2009

Return to Work (“RTW”) was created pursuant to a statute that the New Mexico Legislature adopted in 2001 and amended in 2003. The RTW program allows retired members of the Educational Retirement Fund to resume working for an ERB employer after completing a layout of 12 consecutive months. Members who apply for the RTW program can choose to work full time or part-time, with no restrictions on the income they can earn. The RTW program is separate from the rule that allows retirees to work .25 FTE or less, but limits the income they can earn to the greater of .25 FTE or \$15,000 per year. The RTW program allows educators who have chosen to retire the option of continuing to offer their skills and experience to New Mexico’s schools, colleges and universities without having to suspend their retirement. Some 1220 ERB retirees have opted to participate in the RTW program and another 800 are working under the part-time .25 FTE program.

Pursuant to the statute adopted by the Legislature, the ERB’s Board of Trustees adopted a rule to implement the RTW program. On December 5, 2008 the ERB Board of Trustees approved an update to that rule. The updated rule contains two important changes. First, the work that can and cannot be performed during the 12 month layout is more completely described. Second, the 12 month layout can be any consecutive 12 month period, not just the 12 months immediately preceding the application for Return to Work.

The Q&A below addresses some of the questions the ERB has been asked about the RTW program. If you have any questions about Return to Work, the part-time .25 FTE program, or other work after retiring, you should contact the ERB. Having your question answered generally only takes a short time and is an important step in protecting your ERB retirement benefits.

Q & A

Q: Do I still have to apply to participate in the Return to Work program?

A: Yes. Retired ERB members who want to participate in the ERB program must submit an application, which can be found on ERB’s website. Retirees who only want to work in the part-time .25 FTE program do not need to submit an application, but are limited in the income they can earn.

Q: Do I still have to lay out the 12 months after retirement in order to qualify for Return to Work?

A: Yes. The 12 consecutive month layout period has not changed for everyone who retired after January 1, 2001. If you retired before January 1, 2001 and have not since suspended your retirement or been required to suspend your benefits, you still do NOT need the 12 month layout. Of course, everyone who wants to participate in the Return to Work program must apply to ERB.

Q: What do you mean by “layout”?

A: In the 12 consecutive month layout period you cannot have done any work for an ERB employer or contractor. You also cannot have served as a volunteer in a position that would otherwise be, or in the past has been, performed by a paid employee or an independent contractor. You CAN work for any non-ERB employer as long as the non-ERB employer was not working under a contract for an ERB employer. In the attached Rule 2.85.5.15 (Return to Work), under sections A (1) and A (2), the definition of the “break in service” is described.

Q: Can I go work for a PERA employer as part of my 12 consecutive month layout?

A: Yes, most ERB retirees can work for a New Mexico Public Employees Retirement Association employer during their layout period. The only exception would be if the ERB retiree is a licensed educator working for a state agency in an education-related program. If this would be the case for you, you could not work for that employer unless you had already completed your 12 month layout. You should check with ERB to determine whether a 12 month layout would be required before accepting a position in such a program. But remember - if you are an ERB retiree and you work for a PERA employer, you cannot contribute to PERA and you cannot earn time toward a PERA pension.

Q: I have gone back to work under the .25 FTE/\$15,000 rule and now want to apply for the Return to Work program. Can I do this?

A: If you have completed the 12 consecutive month layout at some time and are now working as a contractor or under the part-time .25 FTE option, you may apply for the RTW program. When your application is approved, you may then move to Return to Work status which would allow you to work more than .25 FTE and not have any restrictions on the income you can earn before affecting your ERB retirement benefits.

Q: I retired *before* January 1, 2001. After I retired, I decided to suspend my retirement, take my old job back and earn more service credit to increase my retirement. Now I've retired again. Is there is a special provision in the Return to Work program that applies to retirees in my position?

A: Yes. The statute adopted by the Legislature states that members who retired on or before January 1, 2001, who subsequently removed themselves from retirement so that they could work and earn more service credit (a/k/a "suspended retirement"), and then "re-retired," must complete an additional 90 day layout after the re-retirement to qualify for the RTW program. The language *only* applies to members who first retired before January 1, 2001. As is discussed below, the requirements for a member who retired after January 1, 2001 are different.

Q: I retired *after* January 1, 2001, did not work for 18 months, and then suspended my retirement to earn more service credit and increase my retirement. I'm thinking about retiring again – or "re-retiring." What will I have to do to qualify for the RTW program after I re-retire?

A: The RTW requirements are different for members who retired after January 1, 2001, then suspended retirement to earn more service credit. Members who first retired after January 1, 2001 must complete a 12 month layout each time they retire – or re-retire – to be eligible for the RTW program. Even if you laid out 12 months or longer after retiring the first time, if you suspend retirement to earn more service credit, you must complete a new 12 month layout after re-retiring to be eligible for the RTW program. For example, if you retired June 30, 2002, laid out until January 1, 2004 (18 months), then suspended retirement and worked until December 31, 2008 to earn more service credit, and re-retired, you must lay out for 12 months or until January 1, 2010 to be eligible for the RTW program.

Q: I have heard that the Return to Work program will end in 2011. Is that accurate?

A: When the Legislature created the Return to Work program, it included a "sunset" date of January 1, 2012. If the statute is not changed, the Return to Work program will end on that date. The part-time .25 FTE program would continue. The ERB will ask the Legislature in the 2009 session to extend the sunset date to 2022 so that the RTW program can continue.



REMEMBER – Contact the ERB with any questions you have about the RTW program, the part-time .25 FTE program, or other work after retiring.