

Investments & Pensions Oversight Committee

Senator Roberto “Bobby” J. Gonzales, Chair
Representative Patricia Roybal Caballero, Vice Chair

Discussion on Return to Work
October 31, 2023



ERB

ERB

Return To Work Programs Available

12 consecutive month layout (Application Required)

While this program is a current option, it will sunset on **Jan 1st, 2024**. Members who are not already retired and will have completed a 12-month layout by December 2023, will not be eligible to participate.

36 months consecutive or non-consecutive (Application Required)

NMERB retirees may return to employment under this Return-to-Work Program without affecting their retirement benefit if they maintain compliance with Section 22-11-25.1 and Rule 2.82.5.18 NMAC.

Less than \$15,000 (Application Required)

NMERB retirees may return to employment earning less than \$15,000 per year without affecting their retirement benefit if they maintain compliance with Section 22-11-25.1 NMSA 1978 and Rule 2.82.5.17 NMAC.

.25 FTE or less (Application Required)

NMERB retirees may return to employment at a level of .25 FTE or less without affecting their retirement benefit if they maintain compliance with Section 22-11-25.1 NMSA 1978 and Rule 2.82.5.16 NMAC.



ERB Return To Work Comparison Table

| Question | RTW .25 FTE or less | RTW less than \$15,000 | RTW Program | RTW 36 Months |
|--|--|------------------------------|--|------------------------------|
| Must retirement benefit be suspended to participate? | No | No | No | No |
| Application required prior to beginning employment? | ✓ | ✓ | ✓ | ✓ |
| Employee Contribution Required | No | No | ✓ | ✓ |
| Employer Contribution Required | No | No | ✓ | ✓ |
| Are contributions made during time working in RTW program refundable? | N/A | N/A | No | No |
| Layout Period Required? | No | 90 days from Retirement Date | 12 consecutive months from Retirement Date | 90 days from Retirement Date |
| Can a retiree purchase service credit while working under a RTW provision or for time worked in the RTW program? | No | No | No | No |
| Must employer and employee make contributions to RHCA while working under a RTW provision? | ✓ | ✓ | ✓ | ✓ |
| What happens if a retiree violates the RTW program rules? | The retiree will be required to pay back all pension payments received during the period of ineligibility. | | | |
| Do RTW provisions apply to retirees who participated in the Alternative Retirement Plan (ARP)? | ✓ | ✓ | ✓ | ✓ |

Participation By Program

| | FY21 | FY22 | FY23 |
|------------------------------|-------|-------|-------|
| Return-to-Work 36 Months | NA | NA | 154 |
| Less than \$15K | 111 | 283 | 390 |
| .25 or Less | 877 | 862 | 686 |
| Return-to-Work 1-Year Layout | 1,482 | 1,622 | 1,716 |
| | 2,470 | 2,767 | 2,792 |

- In FY23 there have been a total of 56 return-to-work violations or less than 2 percent of return-to work population
 - 38 failed to file a return-to-work application
 - 18 exceeded the \$15K earnings limit
- In FY23 ERB approved 75 independent contractors
- Lastly, 925 PERA retirees rendered service to a Local Administrative Unit in FY23

Return To Work Administration

- All retirees must sign and submit a 2-page form acknowledging their understanding of RTW rules and procedures
- All retirees receiving an ERB pension are required to seek and obtain approval from ERB to return to work prior to services being rendered to an ERB employer
- ERB does not approve RTW arrangements prior to the first day of retirement
- ERB will not accept a RTW application prior to a members first day of retirement
 - Retirement must be “bona fide” – if there is an informal agreement between employee and employer that they are not separating from service with the employer, the employee is not legitimately retired
 - Such arrangements prior to retirement violates section 401(a) of the Internal Revenue Service Code
- Return to Work violations will result in the suspension of benefit payments and the recoupment of funds paid during period of ineligibility

Educational Retirement Act

22-11-25.1 Return to employment; benefits; contributions.

D. Retired member may return to employment with a local administrative unit only if the member submits an application to return to work, on a form prescribed by the board, the board approves the application and the applicant complies with other application rules promulgated by the board.

H. A retired member may return to employment with a local administrative unit without a suspension of the member's retirement benefits; provided that:

- (1) the retired member has not rendered service to a local administrative unit for at least ninety days after the date of retirement;
- (2) prior to the date of retirement, or within ninety days after the date of retirement, the retired member did not enter into any formal or informal agreement with a local administrative unit or with any contractor providing services to a local administrative unit to return to employment; and
- (3) the retired member earns a salary of less than fifteen thousand dollars (\$15,000) per year.

J. As used in this section:

- (1) "rendered service" includes employment, whether full or part time; substitute teaching; voluntarily performing duties that would otherwise be, or in the past have been performed by a paid employee or independent contractor; and performing duties as an independent contractor or an employee of an independent contractor; and
- (2) "local administrative unit" includes any entity incorporated, formed or otherwise organized by, or subject to the control of, a local administrative unit, regardless of whether the entity is created for profit or nonprofit purposes.

Chapter 82 – Educational Retirement

NMAC 2.82.5.10 COMPUTATION AND COMMENCEMENT OF RETIREMENT BENEFITS:

B. Whenever a retiring member completes the academic or fiscal year prior to July 1, the member shall not be entitled to retirement benefits for the months of July or August if the member returns to employment at the beginning of the next following academic or fiscal year. If a member shall have received benefits for such months, the member shall be required by the director to return the sums received, to the educational retirement fund, in accordance with Section 22-11-40 NMSA 1978.

NMAC 2.82.5.15 RETURN TO WORK PROGRAM:

F. Any retired member who is participating in the return to work program who has violated the provisions of the program, failed to submit the required return to work application, or is discovered to have been ineligible to participate in the program shall have their retirement immediately suspended and shall pay the educational retirement fund a sum equal to all retirement payments that they have received while ineligible under the provisions of the return to work program plus interest at a rate to be set by the board. Before his or her monthly retirement benefits can resume, the suspended retired member must certify to ERB that they have terminated any and all employment that would disqualify them from retirement under the Educational Retirement Act and must reapply for retirement. To re-qualify for the return to work program, the retired member must complete the minimum break in service as described in Subsection A of 2.82.5.15 NMAC, calculated from the date of reinstatement of retirement.

Challenges

- “Gaming the system” (Member)
 - Enrollment in less than \$15K program to avoid making non-refundable contributions and then toggling to the 36-month program as they approach the \$15K limit
 - Working for 3rd-party or temp services agency
- Common statements following a violation
 - No one ever told me I was required to fill out an application
 - I don’t read your newsletter and I don’t check your website
 - I don’t remember signing an acknowledgement form when I retired
 - They wouldn’t have hired me unless I’d been approved, but I don’t have a copy or record of the approval
 - The employer should have informed me about the requirements
- Reporting (Local Administrative Unit)
- Hiring prior to verifying RTW approval (Local Administrative Unit)
- Staffing (Local Administrative Unit/ERB)
- Training (ERB)
- Process for identifying violations (ERB)

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