

This is an amendment to 2.82.3 NMAC, Sections 8, 10 and 12, effective 11/12/2019.

**2.82.3.8 SALARY COVERED; SALARY EXCLUDED:**

**A.** Except as otherwise set forth herein and subject to the limitations set forth in Section 22-11-21.2 NMSA 1978, a member's annual salary for the purpose of contributions to the fund and computation of the member's benefit shall consist of total compensation or wages paid to the member for services rendered during each of the four calendar quarters of a fiscal year, beginning July 1 and ending June 30 [~~excluding any salary earned while employed under the return-to-work program of the Educational Retirement Act~~]. For purposes of determining contribution rates, a member's expected annual salary at the beginning of the fiscal year shall be considered. When relevant, a member's annual salary shall take into consideration the FTE of the position and the aggregation of salaries if the member will have multiple positions with the same or other local administrative units during the fiscal year. If a member's total annual salary is more than [~~\$20,000~~] \$24,000, the member shall be subject to the contribution rate set forth in Subsection A of Section 22-11-21 NMSA 1978. If a member's total annual salary is [~~\$20,000~~] \$24,000 or less the member shall be subject to the lower contribution rate set forth in Subsection B of Section 22-11-21 NMSA 1978. When a member whose salary is [~~\$20,000~~] \$24,000 or less earns in excess of the [~~\$20,000~~] \$24,000 limit during the fiscal year, the member shall be subject to the higher contribution rate in Subsection A of Section 22-11-21 NMSA 1978 effective the first day of the month in which the member earns in excess of the [~~\$20,000~~] \$24,000 limit. However, if a member whose salary is [~~\$20,000~~] \$24,000 or less changes positions with a local administrative unit during the fiscal year or engages in additional employment with the same or other local administrative unit during the fiscal year, and that change in employment creates the expectation that the member's total annual salary shall be more than [~~\$20,000~~] \$24,000, then the member's contribution rate shall be adjusted in accordance with the change in employment beginning the first day of the month of the change in employment.

(1) Salary includes payments made directly to the member or to a third party on behalf of or for the benefit of the member. Salary includes, without limitation:

- (a) base salary, compensation, or wages;
- (b) salary, compensation or wages for additional services rendered; examples include: teaching courses in addition to or above a full teaching load during the September to May academic year; teaching courses or performing research during summer (e.g., June through August) where such courses or research are not included in the duties on which the member's salary is based; and, performing work in addition to that specified in the employee's job description; performing administrative duties, such as serving as a department head, head of a faculty or staff group, or for providing other additional services;
- (c) salary, compensation or wages based on professional certifications or qualifications, or skills such as being bilingual or multilingual;
- (d) overtime, shift differential, and 'on-call' or call back pay.

(2) Retirement contributions shall be made by a local administrative unit and a member on base salary earnings before the salary is reduced due to the local administrative unit and member entering into a voluntary "cafeteria" plan.

(3) The salary or compensation paid to a member under a school bus owner-driver contract shall be covered for contributions and benefit calculation purposes. Contributions for compensation paid under a school bus owner-driver contract shall be based upon and limited to the compensation amount paid to a person who drives a single school bus owned by that person over a regularly established route under a regular contract in that person's name with a local administrative unit.

(4) Tips or other remuneration paid to a member by a third party are considered salary to the extent that a local administrative unit reports such amounts as the member's income for tax purposes.

**B.** The following items shall not be considered annual salary for the purposes of contributions to the fund and computation of the member's annual benefit:

(1) Bonuses, awards and prizes, pay supplements or salary supplements or other "one-time" payments which do not increase an employee's annual base pay or which are made in lieu of an increase in base pay, and similar additional payments, as well as allowances or reimbursements for travel, housing, food, equipment or similar items.

(2) Lump-sum payments to the member for accrued sick leave made at any time, and lump-sum payments of accrued annual leave (also referred to as "vacation leave") made after July 1, 2010. Lump-sum

payments for accrued annual leave made on or before July 1, 2010 shall be includable as annual salary only to the extent that it does not include payment for more than 30 days of such leave.

(3) Payments made by a local administrative unit to a member where services are not rendered. By way of example, and with limitation to such examples: (a) payments by an employer to “buy-out” the remaining term of a member’s employment contract or in connection with an early retirement program are not payments for services rendered, irrespective of whether payment is made in a lump-sum or distributed over a period of time, and (b) payments as a result of a legal settlement, whether related to the member’s employment or otherwise, are not payments for services rendered, unless such payments are specifically made for salary that was not previously paid.

(4) Stipends, salary, or other compensation paid to student teachers.

(5) Stipends or one-time payments for attending training sessions where such payments are not reimbursements for travel expenses.

(6) Allowances or reimbursements for, or expenses related to, travel, housing, food, equipment, cars, or similar items.

(7) After July 1, 2012, additional pay or a pay differential that is based solely on a member performing duties at (a) a location that is different than the location at which the member regularly performs his or her job duties or (b) that is based on the member performing duties outside of the United States and its insular areas, territories, and possessions (e.g., a location differential or hazard or hazardous duty pay).

[2.82.3.8 NMAC - Rp, 2.82.3.8 NMAC, 7/1/2012; A, 10/15/2012; A, 9/26/2017; A, 11/12/2019]

#### **2.82.3.10 REFUNDS OF CONTRIBUTIONS IN THE EVENT OF DEATH OF MEMBER OR BENEFICIARY:**

A. In the event of the death of an active member who is not vested, member contributions together with interest calculated at the refund rate shall be refunded to the member’s beneficiary or to the member’s estate upon completion of the proper refund forms as provided for herein.

B. In the event of the death of a vested member who did not select Option B benefits prior to the effective date of retirement, the deceased member’s beneficiary shall have the option of electing to receive a refund of the member’s contributions or receiving benefits in the form of Option B as provided in Section 22-11-29 NMSA 1978. Refunds, together with interest calculated at the refund rate and reduced by the sum of any disability benefits which that member ~~might have~~ previously received, shall be paid to the member’s surviving beneficiary, ~~or~~ surviving spouse or domestic partner if no beneficiary had been named, or if there is no named surviving beneficiary, surviving spouse or domestic partner, to the member’s estate. If a beneficiary defers payment after the member dies as described in Section 22-11-29 NMSA 1978 and requests a lump sum payment in lieu of benefit under Option B, interest shall be calculated at the refund rate through the end of the calendar quarter prior to the date on which the complete refund request is received by the ERB. Under the provisions of Options B and C, if both the member and the designated beneficiary die before the total of the retirement benefits received by the member and the beneficiary equal the total contributions made by the member, the difference, less any disability benefits previously paid to the member, shall be paid to the member’s or the beneficiary’s estate.

C. In order to obtain a refund of contributions after the death of a member, the member’s beneficiary must notify the director of the member’s death and furnish a copy of the death certificate or other proof of death acceptable to the director, whereupon the director shall furnish the beneficiary the proper forms to request a refund.

D. If the amount of a deceased member’s contribution does not exceed the sum of \$1,000.00 and no written claim is made to the board for it within one year from the date of the member’s death, by the member’s surviving beneficiary or estate, payment thereof may be made to the named beneficiary or, if none is named, to the person that the board determines to be entitled to the contribution under the laws of New Mexico.

E. A person will be considered a domestic partner if the person submits a completed ERB domestic partner affidavit form and two of the following documents: proof of shared residence via joint mortgage statement, joint rental agreement, or deed; automobile title or registration showing joint ownership of a vehicle; joint checking, bank, or investment account statement; joint credit account statement; a will or life insurance policy that designates the other person as primary beneficiary; or such other supporting document(s) approved by the director.

[2.82.3.10 NMAC - Rp, 2.82.3.10 NMAC, 7/1/2012; A, 10/15/2012; A, 11/12/2019]

#### **2.82.3.12 PURCHASE OF NON-REPORTED SERVICE; FAILURE TO DEDUCT MEMBER CONTRIBUTIONS:**

A. Non-reported service must be purchased at the time it is discovered. Payment for non-reported service shall be at the contribution rate in effect at the time the non-reported service is discovered. The full fiscal

year salary for the position for which the member was hired shall determine whether a member pays the contribution rate applicable to members who earn [~~\$20,000~~] \$24,000 or less per year in accordance with Section 22-11-21 NMSA 1978.

**B.** If the local administrative unit fails to deduct the applicable contribution from the salary paid to a member for each payroll period, the local administrative unit shall be responsible to remit to the fund the total amount due for both the member and the local administrative unit plus interest at a rate set by the board.  
[2.82.3.12 NMAC - N, 7/1/2012; A, 9/26/2017; A, 11/12/2019]