

This is an amendment to 2.82.4 NMAC, Sections 8 and 10, effective 11/12/2019.

2.82.4.8 EARNED SERVICE CREDIT:

- A.** Earned service credit shall be granted on a quarterly basis.
- B.** A member shall receive one quarter of credit for each calendar quarter in which the member has earnings from regular employment and renders services for a minimum of 16 days. A member is considered to have rendered services for each day upon which the member is paid salary, regardless of whether the member is on annual, sick, administrative or other form of paid leave. Four calendar quarters of credit shall constitute one year. The calendar quarters of a year shall begin and end as follows: July 1 through September 30; October 1 through December 31; January 1 through March 31; and April 1 through June 30.
- C.** Members who are granted paid sabbatical leave shall receive one calendar quarter of earned service credit for each quarter in which they receive pay for such.
- D.** If a member is granted earned service credit while on paid sabbatical leave and that sabbatical leave is subsequently revoked, with salary payments returned to, or demanded by the administrative unit, under the terms of the leave agreement between the administrative unit and the member, the earned service credit granted during such sabbatical leave shall be revoked.
- E.** In the event of revocation of earned service credit as provided in Subsection D of 2.82.4.8 NMAC, disposition of contributions made by the member and local administrative unit relating to the revoked period of earned service credit shall be as follows:
 - (1)** Local administrative unit contributions shall be credited to the local administrative unit to be used against future contribution costs.
 - (2)** Before the member contribution shall be disbursed, or credited, the local administrative unit shall furnish the board with proof of the settlement which has been made with the member. Following the receipt of this proof, the member contributions shall be handled as follows:
 - (a)** If the local administrative unit has completed the financial settlement with the member without being reimbursed for member contributions relating to the leave and paid to the board, the administrative unit shall be granted credit for such member contributions to be used against the future administrative unit contribution costs.
 - (b)** If the local administrative unit has been reimbursed by the member for member contributions relating to the leave and paid to the board, such member contributions shall be paid to the member on a refund voucher separate from any other refund which might be requested by the member.
- F.** An exchange teacher who is working outside the New Mexico public schools, but who is being paid a regular salary by a local administrative unit, shall receive earned service credit for such service.
- G.** The board shall not allow contributory service credit when token salaries are paid or when gratuitous service is performed. The ERB shall rule on each case involving gratuitous service or token salaries when each case is presented.
- H.** The board may accept rollover and employer payroll deduction contributions for the restoration of withdrawn earned service credit if the following conditions are met:
 - (1)** The payments must be all or a portion of the member's interest qualified under Section 401(a) of the Internal Revenue Code.
 - (2)** The payments shall contain only tax-deferred contributions and earnings on the contributions. The member and employer must submit satisfactory documentation, releases or indemnification to the board against any and all liabilities that may be connected with the transfer, verifying that the proposed transfer is a qualifying contribution under the Internal Revenue Code.
 - (3)** Payroll deductions and employer pickups are authorized by the governing body of the ERA employer.
 - (4)** The board may not accept rollover or employer pickup payroll deduction contributions in excess of the amount required to restore the withdrawn earned service credit.
- I.** For payments to restore earned service credit which commence on and after January 1, 2002, the board may accept rollover and transfers if the following conditions are met:
 - (1)** Rollovers must be eligible rollover distributions that are not includible in the income of the member by reason of Sections 402(c), 403(b)(8), 408(d) or 457(e)(16) of the Internal Revenue Code.

(2) Transfers must be direct trustee-to-trustee transfers from a qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code, an annuity contract described in Section 403(b) of the Internal Revenue Code to the extent permitted by Section 403(b)(13) of the Internal Revenue Code, or an eligible plan under Section 457(b) of the Internal Revenue Code to the extent permitted by Section 457(e)(13) of the Internal Revenue Code.

(3) The rollovers and transfers shall contain only pre-tax deferred contributions and earnings on the contributions. The member and employer must submit satisfactory documentation, releases, or indemnification to the board against any and all liabilities that may be connected with the rollover or transfer verifying that the proposed rollover or transfer is permissible under the Internal Revenue Code.

(4) Payroll deduction contributions shall no longer be allowed for the purchase of earned service credit if the contributions would commence on or after July 1, 2002.

(5) The board may not accept rollovers or transfers in excess of the amount required to restore the withdrawn earned service credit.

J. A person who is employed by a local administrative unit and receives retirement benefits pursuant to the Public Employees Retirement Act shall not earn service credit unless the person has suspended their benefit.
[2.82.4.8 NMAC - Rp, 2.82.4.8 NMAC, 10/31/2017, A, 11/12/2019]

2.82.4.10 RETURN TO WORK: No service credit can be earned, purchased or otherwise credited for any of the time a retired member is employed by a local administrative unit [~~while the member is participating in the return to work program of the Act or the return to work exception~~] unless the retired member has suspended their retirement benefit. While a retired member is [~~participating in the return to work program or the return to work exception~~] employed by a local administrative unit, no service credit can be purchased for service previously earned or withdrawn unless the retired member has suspended their retirement benefit.
[2.82.4.10 NMAC - Rp, 2.82.4.10 NMAC, 10/31/2017; A, 11/12/2019]