

This is an amendment to 2.82.4 NMAC, Section 11, effective 7/14/2020.

2.82.4.11 SICK LEAVE SERVICE CREDIT:

A. Beginning July 1, 2020, a member may pay to convert unused sick leave to earned service credit in accordance with Section 22-11-34.1 NMSA 1978. Earned service credit that is purchased in accordance with Section 22-11-34.1 NMSA 1978 shall be known as "sick leave service credit." To purchase sick leave service credit a member shall:

- (1) submit an application on a form provided by the director specifying the number of days of unused sick leave the member desires to use to purchase earned service credit;
- (2) be currently employed by a local administrative unit (LAU) as a regular member as defined under the Educational Retirement Act;
- (3) pay to the fund the actuarial present value, as determined by the board, of the benefit attributable to the conversion; and
- (4) have acquired at least five years of contributory employment to be eligible for retirement.

B. The member shall make full payment in a single lump sum within 90 calendar days of the date that the member is informed of the amount of the payment.

C. The board may accept rollovers or transfers for the purchase of sick leave 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 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) The board may not accept rollovers or transfers in excess of the amount required to purchase sick leave service credit.
- (4) 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.
- (5) 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.
- (6) The rollovers and transfers shall contain only pre-tax deferred contributions and earnings on the contributions. The member 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.

D. Any sick leave for which the member has been paid or which the member has otherwise used shall not be eligible for conversion to sick leave service credit.

E. The member shall only be eligible to convert his or her own earned sick leave to earned service credit. Donated sick leave or sick leave available to the member from a sick leave bank or similar repository shall not be eligible for conversion to sick leave service credit.

F. The LAU employing the member shall certify to ERB:

- (1) the number of days of unused sick leave the member has available for conversion, and
- (2) the number of days of unused sick leave the member wishes to convert to sick leave service credit.

G. The director shall review the member's application for sick leave service credit and the information certified by the LAU. The director may request additional documentation or information from the LAU or the member that may be relevant to the processing of the application.

H. Unused sick leave that is converted to earned service credit shall be cancelled by the LAU and shall no longer be available to the member for use as sick leave or as a basis for monetary payment.

I. If a member receives a refund of the member's contributions, all sick leave service credit shall be cancelled from the member's account and shall not be available for purchase or be reinstated.

J. Conversion of unused sick leave to earned service credit is irrevocable. Sick leave service credit shall not convert back into or become unused sick leave.

K. Payments received by ERB for the purchase of sick leave service credit are nonrefundable.

L. A retired member who has not suspended their benefit and who has returned to employment with an LAU is not eligible to purchase sick leave service credit. Sick leave earned by a retired member who has not suspended their benefit and who has returned to employment with an LAU shall not be eligible for conversion to sick leave service credit.

[2.82.4.11 NMAC - N, 7/14/2020]