

NOTICE OF PROPOSED RULEMAKING

Public Hearing: Notice is hereby given that the New Mexico Educational Retirement Board (hereafter, “Board”) will convene a Rule Hearing at 9:00 am (MT) on May 30, 2024, at the Albuquerque Public Schools Headquarters, located at 6400 Uptown Blvd. NE, Albuquerque, New Mexico 87110.

Purpose: The purpose of the Rule Hearing is to receive public comment and to consider adoption of the proposed repeal and replacement of 2.82.5 NMAC - Retirement Benefits and repeal and replacement of 2.82.9 NMAC – Administrative Unit Reports and Remittances.

Statutory Authority: Educational Retirement Act, Paragraph (5) of Subsection A of Section 22-11-6 NMSA 1978.

Summary of Proposed Amendments:

The replacement of 2.82.5 NMAC removes all references to the return to work program requiring a 12 month layout period authorized under Section 22-11-25.1 NMSA 1978 because the program is no longer available to new applicants pursuant to Subsection A of Section 22-11-25.1 NMSA 1978.

Proposed Section 15 of 2.82.5 NMAC would allow a retired member who is otherwise qualified for a return to work program, and who returned to employment with a local administrative unit (“LAU”) without prior Educational Retirement Board (“ERB”) approval, to terminate employment or file an appropriate return to work application within 30 days following the date of the letter from the ERB notifying the retiree of their failure to file an application. A retiree who complies with the requirements would not be suspended and would not repay to the retirement fund any of the benefits received while the retiree was ineligible for benefits.

A retiree who fails to file an application would have their benefit suspended immediately, and they must verify that they have terminated employment, and reapply for retirement.

A retiree who receives a letter from the ERB notifying the retiree of their failure to file an application who is not qualified to return to work under any program and who returns to work would have their benefit suspended immediately, must repay to the retirement fund any of the benefits received while the retiree was ineligible for benefits, must verify that they have terminated employment, and must reapply for retirement.

The Rule clarifies that a retiree who has satisfied the 90-day layout period required for certain return to work programs need not complete another layout period to qualify for those programs. Also, time of employment and income received while employed without ERB approval would count against the time and income caps contained in the return to work programs.

Proposed Section 15 of 2.82.5 would also allow all retirees employed under an approved return to work program to switch to another approved program once per fiscal year during the month of July. The Rule would also clarify that a retiree who wishes to provide independent contractor services to an LAU must submit and obtain approval of an independent contractor application from ERB. A retiree who fails to submit and obtain approval as an independent contractor prior to providing services to an LAU may be considered employed during the period of providing services to the LAU. Section 15 would also provide notice that penalties for violations may be appealed. Finally, the Rule would require each LAU to create, maintain and publicize to its employees an internal return to work policy consistent with the applicable statutes and rules.

A Subsection C is added to each of Sections 16, 17 & 18 of 2.82.5 NMAC to provide that, if a retiree’s benefits are suspended due to a violation, the retiree must certify to ERB and provide documentation from their employer(s) verifying that they have terminated all LAU employment and must reapply for retirement before their benefits can resume.

The replacement of 2.82.9 NMAC would assess a monetary penalty against an LAU for each failure to correctly include or identify an individual as employed or to miscategorize an employee when submitting a work report reflecting payment of wages as required pursuant to this rule. The penalty would be payable to ERB and shall be assessed as follows: 1st failure – five hundred dollars (\$500), 2nd failure – one thousand dollars (\$1,000), 3rd and each subsequent failure – one thousand five hundred dollars (\$1,500). The ERB Executive Director can waive the penalty for a first violation. The Board of Trustees can waive the penalty for second and subsequent violations.

The replacement of 2.82.9 NMAC would also remove the one percent interest rate contained in Paragraph (3) of Subsection C that is added to the state treasurer's overnight investment program interest rate that is assessed against an LAU for submitting late contributions.

Details for Obtaining a Copy of Proposed Rule Amendments and Submitting Oral or Written Comments:

A copy of the proposed rule amendments is available on the NMERB website at <https://www.erb.nm.gov>. Hard copies are available for pick up at the NMERB offices located at 701 Camino de los Marquez, Santa Fe, NM 87505 or 8500 Menaul Blvd. NE, Suite B-450, Albuquerque, NM 87112 during regular business hours. The proposed rule replacement amendments are also posted on the New Mexico Sunshine Portal at <https://ssp.nm.gov>. Interested individuals may provide oral comments at the public rule hearing or submit written comments by mail to Amanda Olsen, New Mexico Educational Retirement Board, P.O. Box 26129, Santa Fe, NM 87502 or by email to NMERB.RuleChange@erb.nm.gov or by fax to (505) 827-1855. Written comments must be received by 5:00 pm (MT) on May 24, 2024. All timely submitted written comments will be posted on the NMERB website at <https://www.erb.nm.gov>.

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact Amanda Olsen at (505) 476-6133 as soon as possible or at least ten business days before the public hearing.