

TITLE 2 PUBLIC FINANCE
CHAPTER 80 PUBLIC EMPLOYEES RETIREMENT
PART 100 GENERAL PROVISIONS

2.80.100.1 ISSUING AGENCY: Public Employees Retirement Association, 33 Plaza La Prensa, Santa Fe, New Mexico 87507.
[10/15/1997; 2.80.100.1 NMAC - Rn, 2 NMAC 80.100.1, 12/28/2000; A, 12/28/2021]

2.80.100.2 SCOPE: This rule affects the members, former members, retirees, beneficiaries, public employers, retirement board, and the association under the Public Employees Retirement Act.
[10/15/1997; 2.80.100.2 NMAC - Rn, 2 NMAC 80.100.2, 12/28/2000]

2.80.100.3 STATUTORY AUTHORITY: This rule is authorized by Sections 10-11-2 and 10-11-130 NMSA 1978, as amended.
[10/15/1997; 2.80.100.3 NMAC - Rn, 2 NMAC 80.100.3, 12/28/2000]

2.80.100.4 DURATION: Permanent.
[10/15/1997; 2.80.100.4 NMAC - Rn, 2 NMAC 80.100.4, 12/28/2000]

2.80.100.5 EFFECTIVE DATE: December 15, 1995 unless a different date is cited at the end of a section.
[10/15/1997; 2.80.100.5 NMAC - Rn & A, 2 NMAC 80.100.5, 12/28/2000]

2.80.100.6 OBJECTIVE: The objective of Part 100 of Chapter 80 is to define terms used in the Public Employees Retirement Act and its rules and regulations.
[10/15/1997; 2.80.100.6 NMAC - Rn, 2 NMAC 80.100.6, 12/28/2000]

2.80.100.7 DEFINITIONS: As used in the Public Employees Retirement Act:

A. “Accumulated member contributions” means amounts deducted from the salary of a member and credited to the member’s individual account, together with interest if any, credited to that account; it also includes repaid withdrawn contributions not including interest paid thereon, or amounts paid to purchase service credit as allowed under the PERA Act.

B. “Active duty” for purposes of acquiring service credit under Section 10-11-7 NMSA 1978, as amended, for periods of active duty with uniformed service of the United States, means full-time duty in the active uniformed service of the United States, including full-time training duty, annual training duty, and attendance while in the active military service, at a school designated as a service school by law or by the secretary of the military department concerned. “Active duty” does not include full-time national guard duty, which is training or other duty performed by a member of the air or army national guard of a state or territory, for which the member is entitled to pay from the United States or for which the member has waived pay from the United States. “Active duty” includes duty in the full-time military service reserve components activated pursuant to a federal call to duty, deployment for a peacekeeping mission or other declared national emergency.

C. “Adult correctional officer member” means a person who is an adult correctional officer or an adult correctional officer specialist employed by the corrections department or its successor agency.

D. “Adult probation and parole officer member” means a person who is an adult probation and parole officer employed by the corrections department or its successor agency.

E. “Another retirement program” means retirement plans established by the Judicial Retirement Act, Magistrate Retirement Act, and the Educational Retirement Act.

F. “Elected official” means a person elected to a public office by registered voters, who is paid a salary; “elected official” includes a person who is appointed to fill an unexpired term of an elected public office, who is paid a salary.

G. “Filed” means that PERA has received the complete document as evidenced by a writing on the document indicating the date of receipt by PERA.

H. “Fire member” means any member who is employed as a firefighter by an affiliated public employer, is paid a salary and has taken the oath prescribed for firefighters. The term shall not include volunteer firefighters or any civilian employees of a fire department.

I. “Juvenile correctional officer member” means a member who is employed as a juvenile correctional officer by the children, youth and families department or its successor agency, but does not include any member who is a “police member” or a “fire member”.

J. “Juvenile probation and parole officer member” means a person who is a juvenile probation and parole officer employed by the children, youth and families department or its successor agency.

K. “Leave office” means an elected official’s successor has been duly elected or appointed and qualified for office, or upon the date of death of an elected official.

L. “Legal representative” means “personal representative” as defined in the Probate Code of New Mexico which includes executor, administrator, successor personal representative, special administrator and persons who perform substantially the same functions under the law governing their status, or an attorney or a person acting pursuant to a power of attorney for a member, retired member or beneficiary.

M. “Municipal detention officer” means a member who is employed by an affiliated public employer other than the state who has inmate custodial responsibilities at a facility used for the confinement of persons charged or convicted of a violation of a law or ordinance. “Municipal detention officer” includes both juvenile and adult municipal detention officers.

N. “Permissive service credit” means service credit recognized by the retirement system for purposes of calculating a member’s retirement benefit, which is available only by making a voluntary additional contribution which does not exceed the amount necessary to fund the benefit attributable to such service credit.

O. “Police member” means any member who is employed as a police officer by an affiliated public employer, who is paid a salary, and who has taken the oath prescribed for police officers. The term shall not include volunteers, juvenile correctional officer members, or employees who do not perform primarily police functions including, but not limited to jailers, cooks, matrons, radio operators, meter checkers, pound employees, crossing guards, police judges, park conservation officers, and game wardens. A member who is employed by an affiliated public employer as a police officer and as a non-police officer employee shall be regarded as a police member if more than fifty percent of the member’s total salary is paid as a police officer.

P. “Private retirement program” for the purpose of exclusion from membership under Paragraph (5) of Subsection B of Section 10-11-3 NMSA 1978, means a retirement program of the affiliated public employer which meets the internal revenue service minimum standards regarding benefits as outlined in 26 C.F.R. Section 31.3121(b) (7)F of the Employment Tax Regulations and IRS Rev. Proc. 91-40.

Q. “Reenlistment” as used in Paragraph (3) of Subsection A of Section 10-11-6 NMSA 1978, means enlistment or voluntary entry into one of the armed services as either enlisted personnel or as a commissioned officer.

R. “Retired member” means a person who is being paid a normal, deferred or disability pension on account of that person’s membership in the association. “Retired member” shall not include any persons receiving a pre-retirement survivor pension, post-retirement survivor pension, or reciprocity retirement pension where the payer system is not PERA, or any other person unless specifically included by definition as a “retired member”.

S. “Salary” means the base salary or wages paid a member, including longevity pay, for personal services rendered to an affiliated public employer. “Salary” includes a member’s fixed, periodical compensation from full or part time employment; shift differentials; and wages paid while absent from work on account of vacation, holiday, injury or illness, which means payment made by continuing the member on the regular payroll. “Salary” includes incentive pay that is not temporary and becomes part of member’s base salary. “Salary” also includes temporary promotions, temporary salary increases, but no other temporary differentials. “Salary” shall not include overtime pay, unless the overtime payment is required for a regular scheduled tour of duty as set forth in Section 207 (k) of Title 29 of the United States code and is made on the regular payroll for the period represented by the payment. “Salary” for overtime pay required for a regular tour of duty does not include on-call or special events duty, or other duty performed by a member on a voluntary or ad hoc basis, which is temporary and does not become part of the member’s base salary. “Salary” shall not include allowances for housing, clothing, equipment or travel, payments for unused sick leave, unless the unused sick leave payment is made through continuation of the member on the regular payroll for the period represented by that payment. “Salary” also shall not include lump sum payments which are not part of the member’s fixed periodical compensation, such as lump sum annual and sick leave or occasional payments to elected officials for attending meetings, allowances for any purpose, employer contributions to a private retirement program, or other fringe benefits, even if they are paid to or for a member on a regular basis, and any other form of remuneration not specifically designated by law as included in salary for Public Employees Retirement Act purposes.

T. “State legislator member” means a person who is currently serving or who has served as a state legislator or lieutenant governor and who has elected to participate in a state legislator member coverage plan. A

former legislator or former lieutenant governor may be a “state legislator member” whether or not currently receiving a pension under a state legislator member coverage plan.

U. “State system” means a retirement program provided for in the Public Employees Retirement Act, Magistrate Retirement Act, or Judicial Retirement Act.

V. “Terminate employment” means that a member has a complete break in service and an absolute cessation of employment with all affiliated public employers, including employment as an elected official, as evidenced by a personnel action form or other equivalent document, and the member is not reemployed by an affiliated public employer for 30 days; or upon the date of death of a member.

[10/15/1997; 11/15/1997; 1/15/1999; 12/15/1999; 2.80.100.7 NMAC - Rn & A, 2 NMAC 80.100.7, 12/28/2000; A, 12/28/2001; A, 9/30/2003; A, 6/30/2005; A, 12/15/2009; A, 12/30/2013; A, 12/28/2021]

HISTORY of 2.80.100 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: Rule 100.00, Definitions, filed 10-4-79; PERA Rule 100.00, Definitions, filed 11/19/1981; PERA Rule 100, Definitions and Preamble, filed 7/1/1987; PERA Rule 100, Definitions and Preamble, filed 7/1/1991; PERA Rule 100, Definitions and Preamble, filed 11/27/1991; PERA Rule 100, Definitions and Preamble, filed 7/1/1992; PERA Rule 100, Definitions, filed 7/1/1993; PERA Rule 100, Definitions, filed 12/1/1995.