

TITLE 2 PUBLIC FINANCE
CHAPTER 80 PUBLIC EMPLOYEES RETIREMENT
PART 700 NORMAL RETIREMENT

2.80.700.1 ISSUING AGENCY: Public Employees Retirement Association, 33 Plaza La Prensa, Santa Fe, NM, 87507
[2.80.700.1 NMAC – Rp, 2.80.700.1, 10/10/2023]

2.80.700.2 SCOPE: This rule affects the members, retirees, beneficiaries, affiliated public employers, and the association under the Public Employees Retirement Act.
[2.80.700.2 NMAC – Rp, 2.80.700.2, 10/10/2023]

2.80.700.3 STATUTORY AUTHORITY: This rule is authorized by, Sections 10-11-8, 10-11-116, 10-11-130, 10-11-136 NMSA 1978, as amended.
[2.80.700.3 NMAC – Rp, 2.80.700.3, 10/10/2023]

2.80.700.4 DURATION: Permanent.
[2.80.700.4 NMAC – Rp, 2.80.700.4, 10/10/2023]

2.80.700.5 EFFECTIVE DATE: October 10, 2023, unless a different date is cited at the end of a section.
[2.80.700.5 NMAC – Rp, 2.80.700.5, 10/10/2023]

2.80.700.6 OBJECTIVE: The objective of this rule is to establish procedures for normal retirement.
[2.80.700.6 NMAC – Rp, 2.80.700.6, 10/10/2023]

2.80.700.7 DEFINITIONS: [RESERVED]
[2.80.700.7 NMAC – Rp, 2.80.700.7, 10/10/2023]

2.80.700.8-9 [RESERVED]

2.80.700.10 PROCEDURE FOR RETIREMENT:

A. The following procedure governs the process for retirement:

(1) The member shall request an application for retirement from PERA. To ensure that the member may retire on the date the member has chosen, the completed application should be returned to PERA, with the required documents described in Subsection B below, at least 60 days prior to the selected date of retirement. The completed application and all supporting documentation must be filed with PERA no later than the close of business on the last working day of the month prior to the selected date of retirement. Any changes to an application for retirement that has already been submitted to PERA, including, but not limited to, retirement date, designation of survivor beneficiary or form of payment option, must be in writing and filed with PERA no later than the close of business on the last working day of the month prior to the selected date of retirement.

(2) PERA shall furnish the member an estimate of retirement pension payable under form of payment A within a reasonable time of receipt of the properly completed application and required documents. If the member also desires an estimate of retirement pension payable under forms of payment B, C and D, the member shall request an estimate in writing.

(3) When the application is filed, PERA shall furnish the member's last affiliated public employer with an employer's certification of earnings form to be completed and returned to PERA. The final calculation of pension cannot be processed until PERA receives the properly completed employer's certification form.

(4) PERA will furnish the member a final calculation of retirement pension based on the information provided by the affiliated public employer.

(5) The completed application form must either include or be accompanied by a signed notarized statement of consent by the member's spouse to the form of payment and beneficiary elected by the member or an affidavit that the member is not married. An affidavit naming all former spouses must also accompany the final application form. If a married member does not provide spousal consent, the member shall execute an affidavit that:

(a) states why the member has been unable to obtain spousal consent;

(b) provides the most recent contact information for the member's spouse; and
(c) acknowledges that the member understands that because he or she is married and has not provided spousal consent, the PERA Act provides that the member will be retired under form of payment C with his or her spouse named as survivor beneficiary.

(6) The application shall be considered to be "filed" when PERA receives the completed application as evidenced by a writing on the application indicating the date of receipt by PERA.

(7) Retirement will be effective on the first day of the month following: a) the filing with PERA of the completed, signed application with all required documentation; b) the member's qualifying for retirement based on service and age; and c) the member's termination of covered employment with all employers covered by any state system or the educational retirement system.

(8) The retirement of the member shall be submitted to the board for ratification at the next regular meeting following the effective date of retirement.

B. The retiring member shall furnish the following documents to PERA:

(1) Proof of age of the member and any designated beneficiary or beneficiaries or the proof of age for a beneficiary to a supplemental needs trust. Acceptable documents are a birth certificate, a baptismal certificate, a religious record of birth established before age 5 years, a current passport, a current New Mexico driver's license or a current New Mexico motor vehicle division issued identification card, or any two of the following documents showing the date of birth of the member or designated beneficiary or beneficiaries:

- (a) copy of a life or automobile insurance policy;
- (b) current voter registration or voter identification record;
- (c) tribal census record;
- (d) childhood immunization record made prior to age 18 years;
- (e) military record, including a valid United States active-duty, retiree or reservist military identification card;
- (f) birth certificate of child showing age of parent;
- (g) physician's or midwife's record of birth;
- (h) immigration record;
- (i) naturalization record;
- (j) social security records.

(2) For any designated beneficiary to be identified as a spouse, a copy of a marriage certificate, other proof of marital status acceptable in a court of law or any two of the following documents showing marital status:

- (a) financial institution or bank records;
- (b) joint real estate deeds or mortgages;
- (c) insurance policies.

(3) For any designated beneficiary to be identified as a supplemental needs trust, a copy of the documents related to the formation of the trust and an affidavit from the trustee that the trust is formed as a supplemental needs trust as authorized by the Federal Social Security Act. Additional information may be required by the association to ascertain the purpose and function of the trust to ensure compliance with the PERA Act.

(4) Complete endorsed copies of all court documents necessary to ascertain the current marital status of the member and whether any ex-spouse of the member is entitled to any portion of the member's benefits. Such documents shall include the final decrees and marital property settlements for all marriages during the member's employment with an affiliated public employer. If the member's only divorce was prior to becoming a PERA member, then the final divorce decree is required, but no marital property settlement is required. If the member was divorced more than once before becoming a PERA member, then only the most recent final decree is required. The requirement for providing a copy of a final decree may be waived, in PERA's discretion, when PERA can establish through online court records that a divorce decree was entered on a specific date and no further documentation is deemed necessary to administer benefits.

(5) Any member with an effective retirement date on or after January 1, 2014 shall provide authorization to the association for the electronic transfer of pension payments to the retiree's banking institution. Such authorization shall be executed, in writing, in the form prescribed by the association.

C. No adjustments to the pension based on failure to claim free service credit may be made after the first pension payment.

D. The pension of a member who has earned service credit under more than one coverage plan with different pension factors shall be calculated pursuant to Subsection I of Section 10-11-8, NMSA 1978. If a member has earned service credit under one coverage plan on or before July 1, 2013 and under one or more coverage plans

after July 1, 2013 with different pension factors, each pension factor shall be used to calculate the member's pension. The coverage plan from which the member was last employed shall govern the age and service requirements for retirement. Permissive service credit purchased pursuant to Subsection H of Section 10-11-7, NMSA 1978 cannot be used to determine final average salary, pension factor or pension maximum for pension calculation purposes.

E. Upon meeting the membership requirements in 2.80.400 NMAC, a member shall combine concurrent salaries received from two affiliated public employers. In the case of concurrent full-time and part-time employment or full-time and elected official service, service credit shall be earned only for the full-time employment. In the case of two part-time employments, service credit shall be earned only for the employment which has the lowest pension factor and pension maximum. In the case of concurrent employment, termination from all affiliated public employers is required before retirement. No combining of concurrent salary may occur for employees who are on extended annual or sick leave until retirement.

F. In addition to any other vesting provided by state law, a member's normal retirement benefit is non-forfeitable when the member reaches normal retirement age, which is:

- (1) age 65, with five or more years of credited service, whichever is later, for individuals who were members on June 30, 2013;
- (2) age 65, with eight or more years of credited service, whichever is later, for individuals who became general plan members on or after July 1, 2013; and
- (3) age 60, with six or more years of credited service, whichever is later, for individuals who became public safety plan members on or after July 1, 2013.

G. In addition to any other vesting provided by state law, a member is also vested in his or her accrued benefits when the member reaches such lesser age and specified years of credited service as provided under the plan in which he or she is a member at the time of retirement or was last a member. If there is a termination of the PERA retirement system, or if employer contributions to the PERA fund are completely discontinued, the rights of each affected member to the benefits accrued at the date of termination or discontinuance, to the extent then funded, are non-forfeitable.

[2.80.700.10 NMAC – Rp, 2.80.700.10, 10/10/2023]

2.80.700.11-19 [RESERVED]

2.80.700.20 BENEFIT PAYMENT: The maximum annual benefit limits contained in Internal Revenue Code Section 415(b), as amended and adjusted, are incorporated herein by reference. Notwithstanding any other provision of the PERA Act and regulations, all benefits paid from the PERA trust fund shall be distributed in accordance with the requirements of Internal Revenue Code Section 401(a)(9) and the regulations under that section. In order to meet these requirements, the trust fund must be administered in accordance with the following provisions:

A. The entire interest of the member shall:
(1) be completely distributed to the member not later than the required beginning date; or
(2) shall be distributed, beginning not later than the required beginning date, in accordance with internal revenue service regulations, over a period not extending beyond the life expectancy of the member or the life expectancy of the member and a designated beneficiary.

B. For the purposes of this section, "required beginning date" shall be defined in the same manner as the term "required beginning date" is defined in the Internal Revenue Code Section 401 (a)(9) and the regulations under that section.

C. The life expectancy of the member or the member's beneficiary may not be recalculated after the benefits commence.

D. If a member dies before the distribution of the member's benefits has begun, distribution to beneficiaries must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died.

E. The amounts payable to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirements of the Internal Revenue Code Section 401(a)(9)(G) and regulations thereunder. PERA shall adjust the percentage of the member's pension payable to a non-spouse survivor beneficiary who is more than 10 years younger than the member at the time of the member's retirement as required by 26 C.F.R. Section 1.401(a)(9)-6.

[2.80.700.20 NMAC – Rp, 2.80.700.20, 10/10/2023]

2.80.700.21-29 [RESERVED]

2.80.700.30 ANNUAL COMPENSATION: Notwithstanding any provision of the PERA Act and regulations, the annual compensation of each member that is taken into account under the plan, including for benefit calculation purposes, for any year does not exceed the limit specified in Internal Revenue Code Section 401(a)(17).
[2.80.700.30 NMAC – Rp, 2.80.700.30, 10/10/2023]

HISTORY of 2.80.700 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: Rule 700.00, Retirement Benefits, filed on 10/4/1979; Rule 800.00, Deferred Retirement Benefits, filed on 10/4/1979; PERA Rule 700.00, Retirement Benefit Applications and Overpayments, filed on 11/19/1981; PERA Rule 800.00, Deferred Retirement Benefits, filed on 11/19/1981; PERA Rule 700, Retirement Benefit Applications, Retirement Dates and Overpayments, filed on 7/1/1987; PERA Rule 800.00, Deferred Retirement Benefits, filed on 7/1/1987; PERA Rule 700, Normal and Deferred Retirement, filed on 12/29/1989; PERA Rule 700, Normal and Deferred Retirement, filed on 7/1/1991; PERA Rule 700, Normal and Deferred Retirement, filed on 7/1/1992; PERA Rule 700, Normal and Deferred Retirement, filed on 7-1-93; PERA Rule 700, Normal and Deferred Retirement, filed 11/1/1994.

History of Repealed Material:

2 NMAC 80.700.30 - Repealed, 11/15/1997

Other History of 2.80.700 NMAC:

2.80.700 NMAC, Normal Retirement, filed 11/1/1994 and renumbered 12/28/2000.

2.80.700, Normal Retirement, filed 12/28/2000 was repealed, and replaced with 2.80.700 NMAC, Normal Retirement, effective 10/10/2023.