

TITLE 2 PUBLIC FINANCE
CHAPTER 80 PUBLIC EMPLOYEES RETIREMENT
PART 400 EMPLOYEE MEMBERSHIP

2.80.400.1 ISSUING AGENCY: Public Employees Retirement Association, P. O. Box 2123, Santa Fe, New Mexico 87504-2123
[10-15-97; 2.80.400.1 NMAC - Rn, 2 NMAC 80.400.1, 12-28-00]

2.80.400.2 SCOPE: This rule affects the members, former members, retirees, beneficiaries, affiliated public employers, retirement board, and the association under the Public Employees Retirement Act.
[10-15-97; 2.80.400.2 NMAC - Rn, 2 NMAC 80.400.2, 12-28-00]

2.80.400.3 STATUTORY AUTHORITY: This rule is authorized by NMSA 1978, Sections 10-11-3, 10-11-4, 10-11-124, 10-11-130, as amended.
[10-15-97; 2.80.400.3 NMAC - Rn, 2 NMAC 80.400.3, 12-28-00]

2.80.400.4 DURATION: Permanent.
[10-15-97; 2.80.400.4 NMAC - Rn, 2 NMAC 80.400.4, 12-28-00]

2.80.400.5 EFFECTIVE DATE: July 1, 1993 unless a different date is cited at the end of a section.
[10-15-97; 2.80.400.5 NMAC - Rn & A, 2 NMAC 80.400.5, 12-28-00]

2.80.400.6 OBJECTIVE: The objective of this rule is to clarify issues related to membership in the public employees retirement association.
[10-15-97; 2.80.400.6 NMAC - Rn, 2 NMAC 80.400.6, 12-28-00]

2.80.400.7 DEFINITIONS: [Reserved]
[2.80.400.7 NMAC - Rn, 2 NMAC 80.400.7, 12-28-00]

2.80.400.8-9 [Reserved]

2.80.400.10 MEMBER COVERAGE UNDER PERA

A. Full-time employees who work 40 or more hours in a week and part-time employees who work 20 or more hours but fewer than 40 hours in a week shall be members.

B. The following employees are excluded from coverage:

(1) Retired members of PERA or retired members from any other state system as defined in subsection D of 2.80.100.7 NMAC who subsequently become employees of affiliated public employers. This exclusion does not apply to a previously retired member whose pension has been suspended.

(2) Independent contractors. Persons who render services to an affiliated public employer as independent contractors are not employees who are entitled to PERA membership unless the employment contract provides that they are “employees” for federal and state taxation purposes, or the IRS had determined that they are “employees” under the contract.

(3) Seasonal or student employees.

(a) “Seasonal employee” or “temporary employee” means an employee who works in a position designated by the affiliated public employer as seasonal or temporary and created to last no more than 9 consecutive months. Retired members returning to work with an affiliated public employer shall not be re-employed under this subsection 3(a).

(b) “Student employee” means an employee who during at least 8 months in any calendar year, or during the period of employment, is enrolled at an educational institution whose academic credits would be accepted by a state educational institution or a public school district and carrying at least 12 credit hours or is enrolled in an educational institution’s graduate studies program and carrying at least 9 credit hours. Any person who is a regular full-time employee is not a “student” for purposes of exclusion from PERA membership.

(4) Elected officials who file with the association a written application for exemption from membership using the form prescribed by the association within twenty-four (24) months of taking office. Prior to

filing the application for exemption, the elected official shall be a member. An application for exemption may be subsequently withdrawn by filing with PERA an executed PERA membership application form.
[10-15-97; 12-15-99; 2.80.400.10 NMAC - Rn & A, 2 NMAC 80.400.10, 12-28-00; A, 8-15-01; A, 9-30-03; A, 8-31-04; A, 9-30-10]

2.80.400.11-19 [Reserved]

2.80.400.20 REINSTATEMENT OF PERA BACK BENEFITS AND BACK-PAY

A. Members or former members whose employment has been terminated and who are reinstated PERA back benefits and the associated back-pay from an affiliated public employer pursuant to a settlement agreement, court order, or administrative decision may acquire service credit and remit employee and employer contributions to PERA for the period reinstated under the following conditions:

(1) the settlement agreement, court order, or administrative decision provides that the member or former member was reinstated PERA back benefits and the associated back-pay;

(2) the service credit reinstated shall not exceed the period of unemployment from affiliated public employment between termination and the date designated in the settlement agreement, court order or administrative decision. No service credit shall be allowed for future service or future employment;

(3) the employee received back-pay in the same amount as salary that would have been paid during the period of unemployment or an amount that is 50% or more of the employee's regular monthly salary; the back-pay may be offset by amounts of salary earned by the employee in other employment; contributions shall be remitted on the full amount of back-pay without any offset, unless contributions have previously been remitted on the offset; salary shall not be posted for the member from more than one affiliated public employer, except when the back-pay brings the employee's salary to the level it would have been absent the termination;

(4) all employee and employer contributions due, plus interest at the rate set by the board pursuant to subsection C of 2.80.500.8 NMAC, from the date the contributions should have been paid until the date of payment, shall be paid before service credit and salary will be posted for the member;

(5) service credit shall be calculated in accordance with NMSA 1978, Section 10-11-4 and 2.80.600 NMAC; and

(6) this subsection does not apply to retired members; no adjustment in pension shall be made after the first pension payment.

B. Members or former members who are demoted or fail to receive a promotion and who are reinstated PERA back benefits and the associated back-pay from an affiliated public employer pursuant to a settlement agreement, court order, or administrative decision may remit employee and employer contributions to PERA for the period reinstated under the following conditions:

(1) the settlement agreement, court order, or administrative decision provides that the member or former member was reinstated PERA back benefits and the associated back-pay;

(2) the employee received back-pay in the same amount as salary that would have been paid had the employee not received the adverse employment decision;

(3) salary shall not be posted for the member from more than one affiliated public employer, except when the back-pay brings the employee's salary to the level it would have been absent the adverse employment decision;

(4) all employee and employer contributions due, plus interest at the rate set by the board pursuant to subsection C of 2.80.500.8 NMAC, from the date the contributions should have been paid until the date of payment, shall be paid before salary will be posted for the member; and

(5) this subsection does not apply to retired members; no adjustment in pension shall be made after the first pension payment.

[10-15-97; 12-15-99; 2.80.400.20 NMAC - Rn & A, 2 NMAC 80.400.20, 12-28-00]

2.80.400.21-29 [Reserved]

2.80.400.30 ADDRESS UPDATE: The member is responsible for providing in writing to the association any change of the member's address.

[1-15-99; 2.80.400.30 NMAC - Rn, 2 NMAC 80.400.30, 12-28-00; A, 8-31-04]

2.80.400.31-39 [Reserved]

2.80.400.40 MEMBERSHIP REQUIRED: All employees of an affiliated public employer are required to be members of PERA, except for those employees excluded by statute. Except in the case of elected officials who file with the association a written application for exemption from membership using the form prescribed by the association within twenty-four (24) months of taking office as provided in paragraph 4 of subsection B of 2.80.400.10 NMAC, within thirty (30) days of hire, job change, or change to a part-time, seasonal or student employee, employers shall file with PERA an executed PERA membership application form or PERA exclusion from membership form on all employees.
[12-15-99; 2.80.400.40 NMAC - Rn, 2 NMAC 80.400.40, 12-28-00; A, 12-28-01; A, 8-31-04]

HISTORY of 2.80.400 NMAC:

Pre-NMAC History: The material in this part was derived from the previously filed with the State Records Center and Archives under: PERA 69-2, (Rule No. 6) Membership in Association, filed on 6-17-69; Rule 400.00, Membership, filed on 10-4-79; PERA Rule 400.00, Membership, filed on 11-19-81; PERA Rule 400.00, Membership, filed on 7-1-87; PERA Rule 400, Employee Membership, filed on 10-21-88; PERA Rule 400, Employee Membership, filed on 7-1-91; PERA Rule 400, Employee Membership, filed on 7-1-92; PERA Rule 400, Employee Membership, filed on 7-1-93.