

TITLE 2 PUBLIC FINANCE
CHAPTER 80 PUBLIC EMPLOYEES RETIREMENT
PART 600 SERVICE CREDIT AND PURCHASE OF SERVICE CREDIT

2.80.600.1 ISSUING AGENCY: Public Employees Retirement Association, P.O. Box 2123, Santa Fe, New Mexico 87504-2123
[10-15-97; 2.80.600.1 NMAC - Rn, 2 NMAC 80.600.1, 8-15-01]

2.80.600.2 SCOPE: This rule affects the members, former members, public employers, retirement board, and the association under the Public Employees Retirement Act.
[10-15-97; 2.80.600.2 NMAC - Rn, 2 NMAC 80.600.2, 8-15-01]

2.80.600.3 STATUTORY AUTHORITY: This rule is authorized by NMSA 1978, Sections 10-11-4, 10-11-6, 10-11-7, and 10-11-130, as amended.
[10-15-97; 2.80.600.3 NMAC - Rn, 2 NMAC 80.600.3, 8-15-01]

2.80.600.4 DURATION: Permanent.
[10-15-97; 2.80.600.4 NMAC - Rn, 2 NMAC 80.600.4, 8-15-01]

2.80.600.5 EFFECTIVE DATE: December 15, 1995 unless a different date is cited at the end of a section.
[10-15-97; 2.80.600.5 NMAC - Rn, 2 NMAC 80.600.5, 8-15-01]

2.80.600.6 OBJECTIVE: The objective of this rule is to establish standards and procedures for awarding and reinstating service credit.
[10-15-97; 2.80.600.6 NMAC - Rn, 2 NMAC 80.600.6, 8-15-01]

2.80.600.7 DEFINITIONS:

A. "Full-time employee" means an employee who normally works eighty (80) hours in an eighty (80) hour pay period or forty (40) hours in a week.

B. "Part-time employee" means an employee who works forty (40) or more hours but less than eighty (80) hours in an eighty (80) hour pay period or twenty (20) or more hours but less than forty (40) hours in a week.

[2.80.600.7 NMAC - Rn, 2 NMAC 80.600.7, 8-15-01; A, 12-30-13]

2.80.600.8-9 [Reserved]

2.80.600.10 GENERAL PROVISIONS

A. Service shall be credited to the nearest month.

(1) Members may receive one month of service credit for any calendar month in which the member becomes a member on or before the sixteenth day of that month, or for any calendar month in which the member leaves office or terminates employment on or after the fifteenth day of the month, provided that all other requirements for awarding service credit are met.

(2) A member who is a full-time employee of an affiliated public employer shall acquire one month of service credit for every calendar month in which the member is paid 50% or more of his or her monthly salary as reported by the member's affiliated public employer.

(3) If a member who is a full-time employee of an affiliated public employer is paid less than 50% of the member's monthly salary as reported by the member's affiliated public employer, employer and member contributions shall be paid on any salary paid during that month, and the member contributions shall be posted to the member's individual member contribution account, but no service credit shall be acquired for that month, even if unpaid leave was taken pursuant to the Family Medical Leave Act.

(4) A member who has the applicable minimum number of years of service credit required for normal retirement on June 30, 2014 and who is a part-time employee of an affiliated public employer shall acquire one month of service credit for every calendar month in which the member works twenty (20) or more hours per week, totaling forty (40) or more hours in an eighty (80) hour pay period as reported by the member's affiliated public employer. This amendment was adopted as an emergency rule to provide additional time for review and

consideration of the manner in which service credit is awarded to PERA members who are employed part-time. Immediate adoption of this amendment is necessary for the general welfare of the association.

(a) Notwithstanding any other provision of 2.80.600.10 NMAC, part-time employees who normally work at least twenty (20) hours in a week and who were furloughed pursuant to executive order issued between July 1, 2009 and June 30, 2010 shall acquire one month of service credit for each month affected by a furlough day. This amendment was adopted as an emergency rule to allow part-time employees to acquire service credit they would otherwise be eligible for absent the executive order. Immediate adoption of this amendment is necessary for the general welfare of the association.

(b) Notwithstanding any other provision of 2.80.600.10 NMAC, part-time employees who normally work at least twenty (20) hours in a week and who were furloughed in January and February, 2010 as a result of the second judicial district court's furlough plan shall acquire one month of service credit for each month affected by a furlough day.

(c) Notwithstanding any other provision of 2.80.600.10 NMAC, part-time employees who normally work at least twenty (20) hours in a week and who were furloughed in May and June, 2010 as a result of the city of Rio Rancho's resolution no. 43 furlough plan shall acquire one month of service credit for each month affected by a furlough day.

(5) A member who does not have the applicable minimum number of years of service credit required for normal retirement on June 30, 2014 and who is a part-time employee of an affiliated public employer shall acquire one (1) month of service credit for every calendar month in which the member works thirty (30) or more hours per week, totaling sixty (60) or more hours in an eighty (80) hour pay period as reported by the member's affiliated public employer. This amendment was adopted as an emergency rule to provide additional time for review and consideration of the manner in which service credit is awarded to PERA members who are employed part-time. Immediate adoption of this amendment is necessary for the general welfare of the association.

(6) A member who does not have the applicable minimum number of years of service credit required for normal retirement on June 30, 2014 and who is a part-time employee of an affiliated public employer shall acquire one (1) month of service credit for every two (2) consecutive calendar months in which the member works twenty (20) or more, but less than thirty (30) hours per week, totaling forty (40) or more hours, but less than sixty (60) hours, in an eighty (80) hour pay period as reported by the member's affiliated public employer.

(7) If a member who is a part-time employee does not qualify for service credit, employer and member contributions shall be paid on any salary paid during that month, and the member contributions shall be posted to the member's individual member contribution account, but no service credit shall be acquired.

(8) As used in Subsection A of 2.80.600.10 NMAC, "service credit" means only the service credit earned by the member during periods of employment with an affiliated public employer.

B. An employee who works fewer than forty (40) hours in an eighty (80) hour pay period or fewer than twenty (20) hours in a forty (40) hour week shall be exempt from membership by filing a PERA exclusion from membership form pursuant to 2.80.400.40 NMAC.

C. If a member has an incomplete contract to purchase service credit at the time of termination of employment, the contract must be paid in full within thirty (30) days of termination or the amount already paid under the contract will be refunded and no corresponding service credit will be granted.

D. Overlapping service credit.

(1) If a member has service credit for the same period of time for employment by public employers covered under different state systems, service credit may only be acquired under one state system for the period of overlapping service credit. In no case shall a member be credited with more than one month of service credit for all service in any calendar month.

(2) If a member accrues service credit under PERA and another state system for an overlapping period, the member shall be granted service credit for this overlapping period in accordance with all applicable statutes and rules that provide for the highest pension factor.

[10-15-97; 11-15-97; 12-15-99; 2.80.600.10 NMAC - Rn, 2 NMAC 80.600.10, 8-15-01; A, 9-30-03; A/E, 5-28-10; A, 9-30-10; A, 12-30-13; A/E, 6-9-14; A/E, 7-1-14]

2.80.600.11-19 [Reserved]

2.80.600.20 SERVICE CREDIT

A. In order to claim service credit for service rendered prior to August 1, 1947 or for a period prior to the employer becoming an affiliated public employer, a member shall:

- (1) file a claim for the period of employment showing specific beginning and ending dates of employment;
- (2) provide certification of employment to the association for the period or periods claimed as prior service;
- (3) file an affidavit, to be certified and signed by two other persons who know of the employment, together with any additional documentary evidence available which may be required by the board if no records are available for the period of prior service claimed;
- (4) provide payroll records, personnel action forms showing hire date(s), term of employment, full-time or part-time, job classification, salary amounts and dates of personnel actions, job description, if any;
- (5) contribution history from the federal social security administration for the claimed period of employment, if applicable.

B. Forfeited service credit may be reinstated by repayment of withdrawn member contributions, together with interest from the date of withdrawal to the date of repayment at the rate or rates set by the board, under the following conditions:

(1) Service credit may be reinstated in one-year increments, beginning with the most recently forfeited service credit. A one-year increment is 12 consecutive but not necessarily continuous months of service credit. For the purpose of eligibility to retire only, less than one year of service credit may be purchased. After reinstatement of all 12-month "years" as defined herein, any remaining service credit that totals less than 12 months may be reinstated by payment in one lump sum as provided herein.

(2) All forfeited service credit may also be reinstated by repayment of the total amount of all member contributions withdrawn from each period of service together with interest from the date of withdrawal to the date of repayment at the rate set by the board.

(3) A former member who is employed by an employer covered under the Educational Retirement Act must provide evidence of current contributing membership in the educational retirement association; such evidence shall be either certification by the employer, in the form prescribed by the association, or certification by the educational retirement association (ERA).

(4) Payment for reinstated service credit must be received by the association prior to the member's effective date of retirement.

(5) Interest received to reinstate forfeited service credit under this subsection shall not be refunded to the member. The purchase cost received to reinstate forfeited service credit which is determined to be unnecessary to provide the maximum pension applicable to the member and which is purchased in reliance on information provided by PERA shall be refunded to the member.

C. "Actual credited service" for purposes of NMSA 1978, Section 10-11-27 and Section 10-11-115.2 means only that service credit earned during periods of employment with the New Mexico state police in the positions of patrolman, sergeant, lieutenant, captain or aircraft division pilot, with the corrections department or its successor agency after July 1, 2004 in the positions of adult correctional officer or adult correctional officer specialist, or as a municipal detention officer member. No permissive service credit which is purchased by state police members, adult correctional officer members, or municipal detention officer members shall be increased by 20% as provided in NMSA 1978, Section 10-11-27 or Section 10-11-115.2. With respect to service credit acquired for periods of military service, only that service credit which is acquired for intervening military service during a period of employment as a state police member, an adult correctional officer member after July 1, 2004 or as a municipal detention officer member shall be increased by 20%, provided that the member was a retired member or a member on June 30, 2013.

D. Military service credit is free in some cases and may be purchased in other cases as provided by statute.

(1) Where a member wishes to claim service credit pursuant to NMSA 1978, Section 10-11-6 the association shall, upon the member's request, furnish that member a form of affidavit for completion and certification of such service. The affidavit shall be accompanied by documentary evidence of the member's entry and discharge from service in a uniformed service of the United States.

(2) The affiliated public employer by whom the member was employed immediately prior to entering a uniformed service of the United States shall certify in writing the date the member stopped rendering personal service to the employer. This requirement may be waived if PERA records contain sufficient documentation to support the date the member stopped rendering personal service.

(3) The affiliated public employer by whom the member was employed immediately after discharge from a uniformed service of the United States shall certify in writing to the association the date the member started rendering personal service to the employer. This requirement may be waived if PERA records contain sufficient documentation of the date of return to employment. Members who are not reemployed by an affiliated public employer within ninety days following termination of the period of intervening service but who nevertheless claim reemployment rights under federal law shall provide to the association written certification from the affiliated public employer that the member is entitled to reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

(4) The affidavit, employer certifications, and documentary evidence of uniformed service shall be presented to the association for approval.

(5) Service credit for periods of intervening service in the uniformed services following voluntary enlistment, reenlistment or appointment shall be awarded only upon compliance by the member and the affiliated public employer with the provisions of NMSA 1978, Section 10-11-6, as amended, and the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, including but not limited to the payment to the association of contributions required from the member and the employer.

(6) PERA members who are also members of the military service reserve components who are activated pursuant to a federal call to duty, deployment or peacekeeping mission or other declared national emergency may receive free service credit subject to the conditions of this section. The member must provide a form DD 214 or other documentation as required by PERA to support an award of free service credit.

(7) Payment for military service credit must be received by the association prior to the member's effective date of retirement.

E. A member who claims service credit for one or more periods of employment for which an employer failed to remit the required contributions to the association may receive service credit only after receipt by the association of payment by the employer of the delinquent contributions plus applicable interest and penalties, if any, along with the following documentation:

(1) payroll records for the claimed periods of employment, indicating the salary for the claimed employment dates;

(2) personnel action forms showing hire date(s), term of employment, job classification, salary amounts and dates of personnel actions;

(3) job description;

(4) contribution history from the federal social security administration for the claimed period of employment, if applicable;

(5) explanation from the employer as to why contributions were not withheld or paid to the association;

(6) any other information requested by the association; if original records have been lost or destroyed, affidavits in a form acceptable to the association may be submitted for the purpose of substantiating the employment; the association may accept such affidavits in lieu of original records if it deems them sufficient to establish the required employment information.

F. At any time prior to retirement, a member may purchase service credit at its full actuarial present value as determined by the association, under the following conditions:

(1) Service credit may be purchased in one-month increments.

(2) The amount of service credit purchased under this Subsection F shall not exceed one year.

(3) Service credit purchased cannot be used for the purpose of calculating final average salary or eligibility for pension factor of a coverage plan for pension calculation and retirement purposes.

(4) For purposes of calculating the full actuarial present value purchase cost of service credit under Subsection F of this section, the member's final average salary and coverage plan at the time of purchase shall be used.

(5) Payment for service credit under this subsection must be received within sixty (60) days of the date the member is informed in writing of the purchase price of the service credit.

(6) The purchase cost received to purchase service credit under this subsection shall not be refunded to the member.

[10-15-97; 11-15-97; 1-15-99; 12-15-99; 2.80.600.20 NMAC - Rn & A, 2 NMAC 80.600.20, 8-15-01; A, 12-28-01; A, 9-30-03; A, 8-31-04; A, 6-30-05; A, 12-15-09; A, 7-16-12; A, 12-30-13]

2.80.600.21-29 [Reserved]

2.80.600.30 PAYMENT FOR PURCHASE OF SERVICE CREDIT

- A.** No installment payment contracts may be used for the purchase of any service credit.
 - B.** The rate or rates of interest for the purchase or reinstatement of service credit shall be set annually by the board at a July meeting and shall be effective beginning the next succeeding January 1st.
 - C.** A vested member may purchase a total of five (5) years of permissive service credit as allowed under the Public Employees Retirement Act in one lump-sum or as provided by statute.
 - D.** A member may rollover funds from an Internal Revenue Code Section 457, 403(b), 401(k), IRA or another 401(a) qualified account to pay for forfeited or permissive service credit allowed by the Public Employees Retirement Act. The rollover of funds must be made by a trustee-to-trustee transfer and the account from which the funds come must be in the name of the member requesting the transfer.
- [10-15-97; 2.80.600.30 NMAC - Rn, 2 NMAC 80.600.30, 8-15-01; A, 12-28-01; A, 9-30-03; A, 12-15-09]

HISTORY of 2.80.600 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: PERA 76-1, (Rule No. 7) Service Credit, filed on 2-5-76; Rule 600.00, Service Credit and Purchase, filed on 10-4-79; PERA Rule 600.00, Service Credit and Purchase, filed on 11-19-81; PERA Rule 600.00, Service Credit and Purchase, filed on 11-23-82; PERA Rule 600.00, Credited Service and Purchase of Credited Service, filed on 7-1-87; PERA Rule 600, Credited Service and Purchase of Credited Service, filed on 7-10-90; PERA Rule 600, Credited Service and Purchase of Credited Service, filed on 7-1-91; PERA Rule 600, Service Credit and Purchase of Service Credit, filed on 7-1-92; PERA Rule 600, Service Credit and Purchase of Service Credit - Member Contributions, filed on 7-1-93; PERA Rule 600, Service Credit and Purchase of Service Credit, filed on 11-1-94; PERA Rule 600, Service Credit and Purchase of Service Credit, filed on 12-1-95.