

TITLE 2 PUBLIC FINANCE
CHAPTER 81 RETIREE HEALTH CARE FUNDS
PART 7 BENEFITS ELIGIBILITY OR NON ELIGIBILITY FOR RETIREES OF
INDEPENDENT PUBLIC EMPLOYERS

2.81.7.1 ISSUING AGENCY: NM Retiree Health Care Authority ("NMRHCA")
[6-15-98; 2.81.7.1 NMAC - Rn, 2 NMAC 81.7.1, 4/30/02]

2.81.7.2 SCOPE: This rule applies to independent public employers. It applies to their employees, retirees, spouses, domestic partners, and dependents.
[6-15-98; 2.81.7.2 NMAC - Rn, 2 NMAC 81.7.2, 4/30/02; A, 1-1-2010]

2.81.7.3 STATUTORY AUTHORITY: This rule is promulgated pursuant to the Retiree Health Care Act, ("Act"), Sections 10-7C-1 et seq. NMSA 1978.
[6-15-98; 2.81.7.3 NMAC - Rn, 2 NMAC 81.7.3, 4/30/02]

2.81.7.4 DURATION: Permanent.
[6-15-98; 2.81.7.4 NMAC - Rn, 2 NMAC 81.7.4, 4/30/02]

2.81.7.5 EFFECTIVE DATE: June 15, 1998, unless a later date is cited in the history note at the end of a section.
[6-15-98; 2.81.7.5 NMAC - Rn, 2 NMAC 81.7.5, 4/30/02; A, 1-1-2010]

2.81.7.6 OBJECTIVE: The objective of this rule is to describe the impact of inclusion in coverage and the impact of exclusion from or failure to act to become a participating employer on employees and retirees of independent public employers. The additional objective is to clarify the act with regard to eligibility of retirees to participate in coverages under the act if those retirees have a work history involving work for the state or public schools which is mandated into the act and also have worked for other governmental units which may be excluded from being a participating employer or may choose to be excluded from being a participating employer under the act or who may have been excluded as individuals from the public pension plan though having worked for an employer affiliated with a public pension plan.
[6-15-98; 2.81.7.6 NMAC - Rn, 2 NMAC 81.7.6, 4/30/02]

2.81.7.7 DEFINITIONS:

- A.** "Act" means the Retiree Health Care Act (Sections 10-7C-1 et seq. NMSA 1978)
 - B.** "Credited Service" means the same service as is included for purposes of determining "annual salary" or "salary" as defined in 2.81.5.7 NMAC.
 - C.** "Independent Public Employer" means a municipality, county or public entity which is not a retirement system employer (Section 10-7C-4(G)(2) NMSA 1978)
 - D.** "Public Entity" means a flood control authority, economic development district, council of governments, regional housing authority, conservancy district or other special district or special purpose government (Section 10-7C-4(N) NMSA 1978)
- [6-15-98; 2.81.7.7 NMAC - Rn, 2 NMAC 81.7.7, 4/30/02]

2.81.7.8 RETIREES/ELIGIBILITY FOR COVERAGE: To be eligible for coverage an eligible retiree must satisfy the service requirement pursuant to 2.81.7.10 NMAC in the employment of a participating employer which has timely petitioned to become and has been admitted as a participating employer under the act.
[6-15-98; 2.81.7.8 NMAC - Rn & A, 2 NMAC 81.7.8, 4/30/02]

2.81.7.9 APPLICANTS FOR COVERAGE/NOT ELIGIBLE: Acceptance of a contribution by an applicant for coverage shall not constitute a determination by the NMRHCA, any of its officers, agents or employees that the applicant, spouse or dependents are eligible for coverage. The third party administrator shall be responsible for making a determination with regard to eligibility of applicants for coverage. In the event the third party administrator determines the applicant to be ineligible, the contribution shall be returned without interest.

Such determination may be appealed to the NMRHCA board by the applicant and the board shall at its next regular meeting after notice of appeal hear and make a final decision on the issue, which decision is not appealable. [6-15-98; 2.81.7.9 NMAC - Rn, 2 NMAC 81.7.9, 4/30/02]

2.81.7.10 RETIREES/TIME IN SERVICE OF INDEPENDENT PUBLIC EMPLOYER AND RETIREMENT SYSTEM PUBLIC EMPLOYER:

A. Normal Retirement: The service requirement for coverage for those persons having served a participating employer affiliated with a public pension plan, but having been individually excluded from the public pension plan, or having served an independent public employer which has opted to become a participating employer is five or more years of creditable service. Periods of employment with, or retirement from, a non-participating employer shall not affect an employee's eligibility, so long as the employee has met the minimum requirement for years of creditable service with a participating employer and is eligible to receive a pension from the participating employer's pension system.

B. Duty Disability: Without regard to age or length of service, an applicant for coverage based on duty disability shall be granted coverage if the incident resulting in the disability arose from and in the course of performance of duties by the applicant for the participating employer and if the applicant is unable, after the incident, to perform the job which the applicant was performing prior to the time of the incident resulting in the disability. In the event there is a determination that the applicant is unable to perform the job being performed by the applicant at the time of the incident leading to the duty disability, the applicant will be granted temporary duty disability for a period up to one year. Prior to the end of the temporary period of duty disability, there shall be a second inquiry to determine whether or not the applicant can perform any gainful employment. In the event, on the initial inquiry it is determined that the applicant can perform the job that was being performed at the time of the incident resulting in the disability or in the second inquiry it is determined that the applicant is capable of performing any gainful employment, the applicant shall be denied coverages provided by the act.

C. Non-Duty Disability: A person shall be entitled to coverages under the act provided that person has five or more years of credited service with a participating employer. The applicant must show that the applicant is not capable of any gainful employment. In the event the applicant fails to show that the applicant has five or more years of credited service in employment with a participating employer or fails to show that he is incapable of holding any gainful employment, the applicant shall not be entitled to coverages under the act.

D. Survivor's benefit: survivor pension beneficiary means a person entitled to a survivor's benefit either pursuant to the retirement program of a participating Independent public employer or if the person meets the tests that would be applicable pursuant to 10-11-1 et seq. NMSA 1978.

E. Administrative Determination: The executive director of the retiree health care authority shall review and grant or deny the opportunity for coverage under the act on a form approved by the executive director. The executive director shall provide notice of the determination by regular mail and notify the applicant of the right of appeal.

F. Appeal: The applicant may appeal an adverse decision of the executive director. The appeal shall be filed with the office of executive director thirty days following the day on which the executive director's determination is deposited in the mail.

G. Board Determination Final: The board, at a time mutually convenient for the applicant, executive director and board shall review the appeal. A formal hearing shall not be held unless the board determines that substantial material factual issues are present that cannot be resolved satisfactorily through an examination of written documents in the record. The applicant may request a hearing, but such requests shall be deemed denied unless specifically granted. Hearings, when held, should be as informal as practicable under the circumstances, but the board has absolute discretion in establishing the degree of formality for any particular hearing. In no event is the executive director or board required to adhere to formal rules of evidence or procedure. The decision of the board shall be final and not subject to appeal.

H. Retirees Not Eligible For Coverage: Persons who retire from an employer which does not become or does not remain a participating employer shall not be eligible for retiree, spouse, domestic partner or dependent coverage unless they have been employed by a participating employer under the act and have satisfied prior to or after July 1, 1990, the age and service requirements of 2.81.7.10 NMAC while employed by a participating employer under the act. The time during which employees have exempted themselves from the employer-provided retirement system shall not be considered time in service.

[6-15-98; 2.81.7.10 NMAC - Rn & A, 2 NMAC 81.7.10, 4/30/02; A, 1-1-2010]

2.81.7.11 BENEFITS ELIGIBILITY/CERTIFYING OFFICIAL: Pursuant to Subsection M of 2.81.6.8 NMAC, the certifying official designated to certify permission to enroll in coverages by retirees, spouses, domestic partners, and dependents of persons having served an independent public employer or non-retirement system institution of higher education is the executive director of the NMRHCA. Certification shall be on a form approved by the executive director of the NMRHCA.
[6-15-98; 2.81.7.11 NMAC - Rn, 2 NMAC 81.7.11, 4/30/02; A, 1-1-2010]

HISTORY OF 2.81.7 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center & archives under

RHCA rule 90-14, Benefits Eligibility of Retirees, Spouses and Dependents of Institutions of Higher Education, Municipalities, Counties and Other Public Entities not Affiliated with a Public pension Plan but who have Timely Petitioned to Become a participating Employer and have been Accepted into Coverage of the Act; no Benefits Eligibility for Retirees, Spouses and Dependents of Any Employer not a participating Employer under the Act, Benefits Eligibility of Retirees, Spouses and Dependents Formerly Employed by Institutions of Higher Education, Municipalities, Counties and Other Public Entities Affiliated with a Public Pension Plan but who have been Individually Excluded from the Public Pension Plan, Eligibility for Coverage Based on Duty or Non-Duty Disability for Retirees of a participating Employer not Affiliated with a Public Pension Plan filed 12-21-90. Rule 90-14 superseded and replaced rule 90-7 of the same name filed 6-05-90

History of Repealed Material: [RESERVED]

Other History: 2 NMAC 81.7, Benefits Eligibility or Non Eligibility for Retirees of Independent Public Employers, filed 06-02-98 is renumbered, reformatted and amended to 2.81.7 NMAC, effective 4/30/02.