

**TITLE 2 PUBLIC FINANCE**  
**CHAPTER 84 MAGISTRATE RETIREMENT**  
**PART 1100 RETIRED MEMBERS**

**2.84.1100.1 ISSUING AGENCY:** Public Employees Retirement Association (PERA), P. O. Box 2123, Santa Fe, New Mexico 87504-2123.

[2.84.1100.1 NMAC - Rp, 2.84.1100.1 NMAC, 7/1/15]

**2.84.1100.2 SCOPE:** This rule affects the members, retirees, beneficiaries, public employers, retirement board and the association under the Magistrate Retirement Act (MRA).

[2.84.1100.2 NMAC - Rp, 2.84.1100.2 NMAC, 7/1/15]

**2.84.1100.3 STATUTORY AUTHORITY:** This rule is authorized by Sections 10-12C-3 and 10-12C-17 NMSA 1978, as amended.

[2.84.1100.3 NMAC - Rp, 2.84.1100.3 NMAC, 7/1/15]

**2.84.1100.4 DURATION:** Permanent.

[2.84.1100.4 NMAC - Rp, 2.84.1100.4 NMAC, 7/1/15]

**2.84.1100.5 EFFECTIVE DATE:** July 1, 2015, unless a later date is cited at the end of a section.

[2.84.1100.5 NMAC - Rp, 2.84.1100.5 NMAC, 7/1/15]

**2.84.1100.6 OBJECTIVE:** The objective of this rule is to establish standards and procedures for the payment, suspension, and reinstatement of pensions of retired members; to establish notification and reporting requirements for post-retirement employment; and to establish conditions for retired members who work for affiliated public employers as independent contractors.

[2.84.1100.6 NMAC - Rp, 2.84.1100.6 NMAC, 7/1/15]

**2.84.1100.7 DEFINITIONS:** [Reserved]

[2.84.1100.7 NMAC - Rp, 2.84.1100.7 NMAC, 7/1/15]

**2.84.1100.8 - 2.84.1100.9** [Reserved]

**2.84.1100.10 PAYMENT OF PENSION:** Pension payments will be processed or mailed monthly, not later than the last day of the month for which they are paid.

**A.** A retired member may have the pension warrant mailed directly to any location specified in writing by the retired member; provided however, that after December 31, 1998, the provisions of Paragraph (4) of Subsection B of 2.84.700.10 NMAC shall apply. Arrangements providing for electronic transfer of pension payments to the retiree's banking institution are permitted so long as the retired member's right to receipt of the funds is not altered except as ordered by a court of competent jurisdiction.

**B.** In the event a retired member is incapacitated or unable to sign his or her pension warrant, proof that a guardian has been appointed for the retired member, or proof of appointment of a conservator for the estate, or a copy of a durable power of attorney for a third party shall be filed with PERA.

[2.84.1100.10 NMAC - Rp, 2.84.1100.10 NMAC, 7/1/15]

**2.84.1100.11 - 2.84.1100.19** [Reserved]

**2.84.1100.20 POST-RETIREMENT EMPLOYMENT:**

**A.** A member who retires must remain unemployed by an employer covered by any state system or the educational retirement system. This section does not apply to a retired member who:

(1) performs work for an employer covered by any state system or the educational retirement system as an independent contractor under a contract approved by PERA;

(2) is elected to serve a term as an elected official and filed an irrevocable exemption from membership in any state system with PERA within 30 days of taking office; or

(3) is appointed to serve as a magistrate judge pro tempore.

**B.** When a retired member is subsequently employed by an affiliated public employer or an employer covered by the educational retirement system, the retired member shall notify PERA immediately of the hire date, position and salary of the subsequently employed retired member.

**C.** The retired member's pension shall be suspended effective the first of the month following the month in which the subsequent employment begins.

**D.** If a retired member fails to report earnings from subsequent employment with an affiliated public employer or an employer covered by the educational retirement system, and consequently continues to receive pension payments after such payments should have been suspended pursuant to the requirements of Section 10-12C-16 NMSA 1978 and rules promulgated thereunder, the retired member will be required to repay to PERA any amounts erroneously received, plus interest at the rate set by the board for overpayments. If erroneously paid pension payments have not been repaid when the subsequent employment is terminated and the retired member has applied for reinstatement of the pension, the erroneously paid amount must be repaid in full before the pension may be reinstated or the subsequently employed retired member must make arrangements acceptable to PERA for the erroneously paid amount to be withheld from the reinstated pension until fully repaid.

[2.84.1100.20 NMAC - Rp, 2.84.1100.20 NMAC, 7/1/15]

**2.84.1100.21 - 2.84.1100.29** [Reserved]

**2.84.1100.30 REINSTATEMENT OF PENSION:** When a retired member is subsequently employed by an affiliated public employer, causing suspension of pension and resulting in re-establishment of PERA membership, that person will be eligible to reinstate his or her pension at the termination of the subsequent employment period under the following conditions:

**A.** the retired member's subsequent employer shall provide PERA with a certificate, in the form prescribed by PERA, of the date of termination of employment;

**B.** the pension shall be reinstated effective the first day of the month following the month of termination;

**C.** unless the Public Employees Retirement Reciprocity Act applies, the amount of the reinstated pension shall be the same amount as the suspended pension.

[2.84.1100.30 NMAC - Rp, 2.84.1100.30 NMAC, 7/1/15]

**2.84.1100.31 - 2.84.1100.39** [Reserved]

**2.84.1100.40 INDEPENDENT CONTRACTORS:** If a retired member contracts to perform work for any public employer, the following conditions shall apply:

**A.** Post-retirement employment contracts with public employers must be submitted to PERA at least 15 working days prior to the effective date of the contract. PERA shall evaluate the contract to determine whether, under the terms of the contract, the retired member is an "employee" or an "independent contractor". In making this determination, PERA shall refer to the common-law control test guidelines as expressed in the social security handbook published by the U.S. department of health and human services, as revised and amended. If PERA determines the retired member is actually an "employee" rather than an "independent contractor" under the terms of the contract, the retired member's pension will be suspended immediately. If the retired member disagrees with PERA's determination, the retired member may appeal PERA's decision pursuant to 2.84.1000 NMAC.

**B.** Renewals, amendments or modifications of previously approved post-retirement contracts shall also be submitted to PERA for evaluation 15 working days prior to their effective date. The provisions of this section will apply to such renewals, amendments or modifications.

[2.84.1100.40 NMAC - Rp, 2.84.1100.40 NMAC, 7/1/15]

**HISTORY of 2.84.1100 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under:

MRA Rule 1100, Retired Members, filed on 11-1-94;

MRA Rule 1100, Retired Members, filed on 12-1-95.

**History of Repealed Material:**

2.84.1100 NMAC, Magistrate Retirement - Retired Members, filed 12/28/2000, repealed 7/1/2015.