



6.15 – Re-Employment of Retirees

arp.nmsu.edu/6-15

PART 1: PURPOSE

To clarify the terms and conditions under which the New Mexico Educational Retirement Board (“NM ERB”) retirees may be re-employed by NMSU subsequent to retirement and how that re-employment may affect retirement benefits. This Rule is governed by NMSA 1978, § 22-11-25.1 and the NMERB’s Rules 2.82.5.15 and 2.82.2.11, which may be accessed at

<http://www.nmcpr.state.nm.us/nmac/> [Note: from the New Mexico Administrative Code website, click as follows: “Browse Compilation”; Title 2 (Public Finance); Chapter 82 (Educational Retirement); 2.82.5 (Retirement Benefits); Rule 2.82.5.15 (Return to Work) and Rule 2.82.2.11 (Employees Excluded from Coverage)]. Retirees should also refer to the NM ERB’s website at [NMERB](#) for updates.

PART 2: RULE ADMINISTRATOR

The Assistant Vice President for Human Resource Services administers this Rule; however, it is the responsibility of each NM ERB retiree to individually coordinate with the NM ERB regarding ERB approval of eligibility for re-employment, as well as to monitor the employee’s compliance relating to ~~earnings~~ and FTE percentage in order to avoid or minimize any adverse impact to retirement benefits.

PART 3: DEFINITIONS

- A. “ARP” refers to the “Alternative Retirement Plan”, also sometimes referred to as the defined contribution plan, one of the two types of retirement plans administered by the ERB. *To avoid confusion between the acronym for the Administrative Rules and Procedures of NMSU (also the “ARP”), this term (Alternative Retirement Plan) will be used in lieu of ARP.*
- B. “DCP” refers to the “Defined Contribution Plan”, one of the two types of

retirement plans administered by the ERB, and sometimes referred to as the “Alternate Retirement Plan”.

- C. “DBP” refers to “Defined Benefit Plan”, one of the two types of retirement plans administered by the ERB.
- D. “FTE” refers to “full time equivalency”. FTE typically refers to the number of hours, days, classes, required for a position to be considered full time. FTE may vary between positions and retirees should check with their department head to confirm what the FTE is for a particular position.
- E. “Fund” “Fund” refers to the Educational Retirement Fund.
- F. “LAU” refers to “local administrative unit” also known as an NM ERB covered institution and for purposes of this Rule typically means NMSU as the educational employer.
- G. “Layout” refers to the 12 month period in which the retired member must not have rendered service of any nature whatsoever to a local administrative unit (NM ERB covered institution). This includes all employment whether full time or part time, substitute teaching, performing duties as a volunteer, which would otherwise be, or in the past have been performed for the local administrative unit by a paid employee or independent contractor, services rendered as an independent contractor, or services as an employee of an independent contractor. The 12 month layout is a pre-requisite for participation in NM ERB’s Return to Work program.
- H. “NM ERA” refers to the state of New Mexico’s Educational Retirement Act, Sections 22-11-1 through 22-11-55, NMSA 1978.
- I. “NM ERB” refers to the state of New Mexico’s Educational Retirement Board, the statutorily authorized administrator of the NM ERA, which governs the retirement rights of eligible employees.
- J. “NM ERB Retiree” includes both defined benefit plan retirees and alternative retirement plan retirees.

PART 4: RULE STATEMENT(S)

NM ERB retirees may be re-employed by NMSU consistent with New Mexico law and NM ERB rules and regulations, as they may be amended from time to time. In the event of a conflict between this Rule, and the NM ERA or NM ERB rules/regulations, the latter shall govern.

A. Return to Work Program

The New Mexico Return to Work Program permits qualified NM ERB retirees to return to work, without limitations ~~being placed on annual earnings or on the FTE~~

percentage.

1. For employees who retired *after* January 1, 2001:
 - a. The NM ERB retiree must not work for NMSU (or any other LAU) for 12 consecutive months; and
 - b. Prior to the date of re-employment, the retiree/prospective employee must have submitted a ~~notarized~~ Return to Work application to the NM ERB, and have received NM ERB approval, verifying the retiree's eligibility to participate in the Return to Work program.
2. For employees who retired *before* January 1, 2001, and since that time have not voluntarily suspended their retirement benefits, or were not required to suspend their benefits (e.g. worked less than .25 FTE ~~and/or earned less than \$15,000~~ per fiscal year):
 - a. The 12 consecutive month layout requirement does not apply; and
 - b. Prior to the date of re-employment, the retiree/prospective employee must have submitted a ~~notarized~~ Return to Work application to ERB, and have received ERB approval, verifying the retiree's eligibility to participate in the Return to Work program.
3. For employees who retired *before* January 1, 2001, and since that time have voluntarily suspended their retirement benefits or were required to suspend their retirement benefits:
 - a. Retirees must have had a 12 consecutive month period in which they did not work for a NM ERB institution; and
 - b. Retirees/prospective employees must not have rendered services in any capacity to a local administrative unit for an additional ninety (90) consecutive days prior to returning to employment under the Return to Work Program. The 90 day period shall not include any part of a summer, winter, or spring break period or vacation or sick leave.
 - c. Prior to the date of re-employment, the retiree/prospective employee must have submitted a ~~notarized~~ Return to Work application to the NM ERB, and have received NM ERB approval, verifying the retiree's eligibility to participate in the Return to Work program.

B. No Service Time or Refundable Contributions

1. Consistent with NMSA 1978, § 22-11-25.1 C., Return to Work Program retirees shall continue to receive retirement benefits, but shall not be entitled to acquire service credit, nor to acquire or purchase service credit in the future for the period of the retired member's reemployment.
2. Consistent with NMSA 1978, § 22-11-25.1 E., both the Return to Work retiree, and NMSU shall pay to the fund an amount equal to the amount of the member contributions that would have been required under NMSA

1978 § 22-11-21 if the re-employed member had been a non-retired employee. Contributions paid pursuant to this section shall not be refunded to the employer or to the employee.

C. Return to Work Exception Provision

As described below, the NM ERB does not consider limited employment with an LAU to fall within the Return to Work Program.

1. ERB retirees, which includes both DBP and DCP retirees, may work for an LAU without satisfying the Return to Work Program requirements if the retiree earns ~~less than the greater of (i) \$15,000 or (ii) works~~ an amount equal to 0.25 FTE (i.e., 25% of the full-time equivalency) ~~of annual salary of the position in which the retiree will work after retirement (the "Return to Work Exception," a/k/a "Greater of 0.25 FTE or \$15,000 Return to Work Exception"). See Rule NMAC 2.82.2.11 (B). (The earnings limit is calculated on a fiscal year basis from July 1 to June 30). (Retirees working under the .25 FTE provision, whether from the Defined Benefit Plan or the Alternative Retirement Plan must be working .25 or less than a Full time Equivalency.) A retiree who works under the Return to Work Provision Exception is not required to apply for the Return to Work Program and will not have to pay member contributions. Time worked under the Return to Work Provision Exception does not qualify for the 12 consecutive month break in service or layout required for the Return to Work Program. If the retiree's earnings exceed \$15,000 or the retiree's workload exceeds 25% of what is considered full time employment, the retiree no longer is eligible for the provision exception and The retiree member's retirement benefit will be suspended for the duration of the employment and will ~~must~~ return to active status and pay contributions (non-refundable) at the rates established for active members. See Also Part 5. subsections E. 2 and 3 below.~~
2. As indicated above, Alternative Retirement Plan retirees may work for an LAU pursuant to the NM ERB's Return to Work Provision Exception. Retired Alternative Retirement Plan participants who exceed the limitations of the Return to Work Provision Exception will be required to pay contributions (non-refundable) at the rates established for active members as required by NMSA 1978 § 22-11-25.1 (E). See Also Executive Director's Policy Regarding Contributions By Retirees Working Pursuant to the Return to Work Program, Return to Work Contribution. See Also Part 5. subsections E. 2 and

3 below.

D. Consequences for Violation of NM Educational Retirement Law

1. If a NM ERB retiree returns to employment without first completing twelve consecutive months of retirement or otherwise fails to complete other requirements for the Return to Work Program, the retiree's retirement benefits may be immediately suspended, and the retiree will also be required to pay the fund a sum equal to the retirement payments received while the retiree was ineligible, plus interest at the rate set by the Educational Retirement Board.
2. Retirees under the Alternative Retirement Program who return to work also must comply with the Return to Work Program or the Return to Work Program Provision Exceptions. See Section 22-11-25.1 (E) NMSA 1978 of the Educational Retirement Act and all applicable NM ERB Return to Work rules, including Rule NMAC 2.82.5.15 and Rule NMAC 2.82.2.11 (B). *See Also* Executive Director's Policy, Return to Work Contribution.
3. Before the retiree's monthly retirement benefits will be resumed, the retiree member must certify to the NM ERB that the retiree has ceased the employment that would violate the Return to Work rules.
4. If the retiree member desires to re-qualify for the Return to Work program, the retired member shall complete the required minimum break in service.

E. Additional Requirements for Re-Employment of NM ERB Retirees

1. Upon re-employment under the NM ERB Return to Work program, NM ERB retirees, which includes both DBP and DCP (Alternative Retirement Plan) retirees, shall provide to the Office of Human Resource Services, a copy of the approval granted by the NM ERB, finding the retiree eligible for participation in the Return to Work program.
2. Upon re-employment, and in accordance with the state's rule on the Return to Work provision exception, NM ERB retirees, which includes both DBP and DCP (Alternative Retirement Plan) retirees, shall be limited to ~~less than the greater of (i.) \$15,000 or (ii) working~~ an amount equal to the 0.25 FTE (i.e., 25% of the full-time equivalency) in a fiscal year. It shall be the responsibility of the retiree to ensure that the NM ERB Return to Work Provision Exception limits are not exceeded; NMSU will not be responsible for any administrative consequences imposed by the NM ERB in the event that the limitations of the exception are exceeded.
3. NM ERB retirees, which includes both DBP and DCP (Alternative Retirement Plan) retirees, who work for more than one local administrative unit covered by ERB are obligated to inform each employer about all NM ERB-covered jobs. The law requires the earnings of all NM ERB-covered jobs to be combined in the determination of whether the retiree complies with the

Return to Work Provision Exception limit on earnings and/or the 0.25 FTE. NM
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retirees ~~who earn more than the applicable limits or~~ who work more than 25% of the full time equivalency (FTE), will be returned to active status in the Defined Benefit Plan, even if the retiree originally retired under the Alternative Retirement Plan. To avoid disruption in receipt of retirement benefits, the NM ERB retiree should ensure that ~~the salary earned and~~ the percentage FTE worked do not exceed the limits set by the NM ERB. See Part 5. subsection E. 2 above.

4. NM ERB retirees shall be subject to the same hiring policies and procedures as other prospective applicants, if re-employed, including the competitive hiring process required for certain positions. However, NM ERB retirees returning to faculty positions may only be employed as college non-contract faculty.
5. NM ERB retirees who are hired in a regular or non-regular term position will accrue the same number of annual leave days per fiscal year (prorated based on FTE) as regular employees. All earned annual leave must be used or forfeited by June 30th of every fiscal year. Retirees will not be paid any annual leave upon termination of employment with the university.

Details

Scope: NMSU System

Source: ARP Chapter 6 | HR - Hiring, Work Rules and Assignments

Rule Administrator: [AVP Human Resource Services](#)

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Related

Cross-Reference:

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06/27/2016 Change in Benefits approved by Board of Regents

06/21/2016 Change in Benefits approved by Chancellor

10/21/2015 former Policy 7.15.05 replicated by Board of Regents as initial Rule 7.15.05

08/19/2013 Amendment to Policy 7.27 approved by Board of Regents

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