



OPTIONS FOR RETURNING TO ERB EMPLOYMENT AFTER RETIREMENT

Many employees who retire from employment covered by the New Mexico Educational Retirement Board (ERB) choose to work while receiving their pension. There are several choices for earning an income after retirement. You can work for any non-ERB employer after retirement. Such earnings will have no effect on your retirement benefit. The following information will help you if you plan to work for an ERB employer while receiving a pension.

.25 FTE or \$15,000

Employees who work a quarter (.25) or less than the full time equivalent (FTE) of a job may not participate in the ERB retirement plan. If you are a retiree who works .25 FTE or less you may continue to receive your pension plus the .25 FTE or less income. Your employer determines whether you are working .25 FTE. If you are retired you may earn the greater of .25 FTE or \$15,000 in any fiscal year (July 1 to June 30) without affecting your pension benefit.

For example, Bill retires on July 1 and is offered a job for the next school year. He is offered \$20,000 for a full time job. He could accept a position for \$15,000 for the school year,

either working part of the year or on a part-time basis. Jane retires and is offered a position that normally pays \$80,000. She could accept .25 FTE or \$20,000. Teachers who return to work as substitute teachers before the one year Return to Work layout requirement work under this .25 FTE or \$15,000 rule.

If you work under the .25 or \$15,000 rule for an ERB covered employer in New Mexico you will not qualify for the Return to Work program until you have terminated your employment relationship and not performed any work for an ERB employer for a full year prior to accepting employment under the RTW program.

How do you figure .25 FTE?

.25 FTE is determined by the employer. An employer will have on record the hours per day or days per year for the full time job. For example, a teacher contract may be for 181 days per year at 6.5 hours per day. A .25 contract could be for a maximum of any of: 45 days per year, 8.125 hours per week, or 1.625 hours per day. If a college instructor is determined to be a full time employee teaching 5 courses per semester then two courses would be .4 FTE and one course would be .2 FTE. The instructor could teach one course per semester and meet the .25 or less rule. A secretary may work 40 hours per week; .25 would be 10 hours per week. The pay for .25 FTE has no relation to past earnings.

INDEPENDANT CONTRACTOR

For Employers:

Educational Retirees who are working under the \$15,000/.25 FTE rule do not contribute to the ERB. The employer does not contribute to the ERB **UNLESS** the retiree has a Return to Work approval from ERB. The employer of a retiree with an approved Return to Work application always contributes the employer share to ERB.

contractor relationship and have not performed any work for an ERB employer for a full year.

If you are returning to an ERB employer as a contractor send a letter explaining your plan to Robert Shulman, ERB's attorney, at the Santa Fe office. Also include a completed **Employee vs. Independent Contractor (IC) Determination** form.

I have friends that returned as Independent Contractors

ERB rules apply to all employees. Independent contractors, as defined by the IRS, cannot participate in the ERB retirement plan since they are not employees. Independent contractors are typically hired on a short term basis, not provided an office or tools to do a task, have flexible work times, and offer the same services to other employers. If you have reporting times and are given specific directions about how to perform your job you are more likely an employee rather than an independent contractor. Visit the IRS website (www.irs.gov)

after they retired. Can I do the same thing?

The IRS does not allow employees to return to the same job they held as an employee and then work as a contractor. A person can be a contractor for a different job or with a different employer as long as the IRS rules pertaining to Independent Contractor are followed. All retirees planning to work as independent contractors must have prior ERB approval.

to get information about rules concerning independent contractors.

One of the IRS rules concerning independent contractors specifically does not allow an employee to retire and then return as an Independent Contractor to the same or essentially same job from which they retired.

If you work as an Independent Contractor for an ERB covered employer in New Mexico you will not qualify for the Return to Work program until you have terminated the independent

For Employers:

Be sure that NMERB retirees have reported to ERB that they are planning to work as independent contractors. Make sure that they are not returning to essentially the same job from which they retired, especially if they worked for you in that position. If you have any concerns call our attorney, Robert Shulman, in Santa Fe at (505)827-8030.

RETURN TO WORK PROGRAM

The Return to Work Program was enacted by the 2001 legislature as a way to help ease the anticipated teacher shortage by making it attractive for retired teachers to return to their profession.

- You must have an ERB approved
- Return to Work application
- BEFORE starting back to work.

Rule 1A from Statute 22-11-25.1A

The Return to Work Program allows all educational retirees (not just teachers) to return to work after taking a **12 consecutive month layout** from any kind of work for an ERB covered employer. The layout must be in the 12 months immediately preceding the effective Return to Work application date. The retiree may not have worked for an ERB covered employer as an employee, independent contractor (or have worked for an ERB employer through another contractor), or as a volunteer in a typically paid position. This option is the **ONLY** option for those who retired after January 1, 2001.

Rule 1 B from Statute 22-11-25.1B

Employees who retired before January 1, 2001 and are current employees (substitutes, contractors, .25 FTE) may return without any layout period.

A **Return to Work Application** must be sent to ERB before moving to a different employment status. If you have any questions about whether your employment change might change your retirement status please contact your nearest ERB office and make sure that your choices do not jeopardize your pension or your work options.

Rule 1 from Statute 22-11-25.1B

Another RTW option is for employees who **retired before January 1, 2001 and suspended their retirement.** This means you cancelled/suspended your retirement and became an active, contributing, ERB member after retiring the first time. If you want to then enter the Return to Work Program you must have had a 12 month layout at some time and must terminate current employment. You must complete a **90 day layout period** from the date of re-retirement which does not include scheduled breaks (summer), vacations, paid administrative or sick leave or holidays consisting of more than two business days.

• Unless you retired before 2001, you need a one year layout immediately prior to participating in the Return to Work program.

• Under all RTW rules the employee continues to receive ERB benefits but does not earn service credits toward future retirement benefit improvement. The RTW employee does not

make contributions to the retirement fund.

While this law makes returning to work very appealing, the
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financial benefit is only for the short term. Any retiree considering Return to Work should evaluate the long-term improvement to their pension by simply stopping their pension and going back to work. Especially if a teacher has been retired for several years, adding years of service and a much higher final average salary may result in a significantly larger pension that will continue for the retiree's lifetime. Contact your closest ERB office to help you evaluate whether the Return to Work Program is your best choice.

The Return to Work Program is set to sunset in 2012. There has been discussion about this

For Employers:

- It is the employee's responsibility to let the employer know that they are a New Mexico ERB retiree participating in the Return to Work program. The Return to Work employee must present you with a copy of the authorized **Return to Work Application** before they begin any work. You may accept employment applications and offer employment before the RTW application has been approved.
- When the **Return to Work Application** has been signed by an authorized ERB employee the member may return to work in any capacity without regard to FTE or income. The eligibility box checked in the section of the form marked "For ERB Use Only" does not effect employment options.
- When a retiree returns to employment and has an approved **Return to Work Application** you must make the employer contribution. The RTW approval supersedes the retiree working under the .25/\$15,000 rule.

law the last several years in legislation, this program could the legislature. As with any be changed in the future.

SUSPEND YOUR PENSION

Occasionally an educational retiree may choose to suspend or stop their pension and return to employment as a regular, contributing, ERB member. This may be attractive if the member returns at a significantly higher

salary and can then re-retire with a higher final average salary and more years of service. The new Final Average Salary is based on the highest consecutive 5 years in which there were earnings.

QUESTIONS?

Call the
NMERB
Albuquerque
office

888-1560

For Employers:

- The member now contributes to ERB as does the employer.
- The member is a regular employee.