

# **POLICY SERVICES**

## **ADVISORY**

Volume 24, Number 1

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Policy Advisory No. 246----- GE – Retiree Return to Work

#### **Policy Advisory Discussion**

**Policy Advisory 246 – GE – Retiree Return to Work.** On July 22, 2024, the Educational Retirement Board (ERB) notified school districts of changes to the Retiree Return to Work regulation (NMAC 2.82.5.15) that took effect on July 1, 2024. That notice is attached hereto. The new regulation requires each “local administrative unit” (LAU), which includes all public school districts, to create, maintain, and distribute to its employees an internal return to work policy consistent with NMAC 2.82.5. Rather than attempt to recreate the entirety of the return to work regulations in policy, Policy Service decided to provided a more simplified policy statement that any ERB retiree who works for an LAU in any capacity, including as independent contractor, must apply for and receive approval from ERB or incur penalties to their retirement benefits. The policy changes are to G-9400 GE as shown below in Policy Advisory 246.

#### **NMSA 22-11-25.1**

<https://nmonesource.com/nmos/nmsa/en/item/4368/index.do#!fragment/zoupio-Toc184744413/BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoAvbRABwEtsBaAfX2zgEYAOAFgHYegjgGYAlABpk2UoQgBFRIVwBPAAHI14iITC4ECpao1adekAGU8pAEKqASgFEAMg4BqAQQByAYQfjSYABG0KTsoqJAA>

#### **NMAC 2.82.5.15 – 18**

<https://nmonesource.com/nmos/nmac/en/item/18059/index.do#!fragment/zoupio-Toc185868085/BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoAvbRABwEtsBaAfX2zgEYAOAVi4DYuABl4BKADTJspQhACKiQrgCe0AORrxEQmFwIFS1Rq069IAMp5SAIVUAlAKIAZBwDUAggDkAwg-GkwACNoUnZRUSA>

If you have any questions, or requests call Policy Services at (505) 469-0193 or e-mail Dan Castille, Policy Services Director at [rdcpolicyservices@outlook.com](mailto:rdcpolicyservices@outlook.com).

**This Material is written for information only and is not intended as legal advice. Please consult your attorney for further explanation.**

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# Advisory 246

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## RETIREE RETURN TO WORK

A retired member of the Educational Retirement Board Association (ERBA) is ~~eligible to~~ who returns to work for the School District a Local Administrative Unit, as defined in the Educational Retirement Act, must submit a return to work application to the ERB and receive approval prior to working for the District as an employee or independent contractor. Retirees are responsible for complying with all return to work statutes and rules. A retiree who violates return to work statutes and rules may have their retirement benefits suspended, be required to reapply for retirement, and be required to pay back all pension payments the retiree received while ineligible without suspension of the member's retirement benefits provided that the retired member has not rendered service to a local administrative unit, including a local school district, for at least 90 days after the date of retirement, and returns to work for no more than 36 consecutive or nonconsecutive months. "Rendered service" under this provision shall mean full- or part-time employment, substitute teaching, independent contractor work or volunteer service which would otherwise be performed by a paid employee or independent contractor. The Superintendent shall adopt administrative rules procedures to implement and monitor employment falling within this provision.

*Adopted:* \_\_\_\_\_

LEGAL REF.: 22-11-25.1(I) NMSA 1978  
2.82.5.15 NMAC

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# RELEVANT SUPPORT MATERIALS



State of New Mexico  
Educational Retirement Board



701 Camino de los Marquez Santa Fe, New Mexico 87505  
Toll Free 1(866) 691-2345 Main Office (505) 827-8030

July 22, 2024

Dear Local Administrative Units,

I am writing to notify you of recent changes to Educational Retirement Board Rules 2.82.5 and 2.82.9 NMAC.

The changes to Rule 2.82.5 NMAC are effective as of July 1, 2024. A summary of the changes follow:

- **Requires each Local administrative Unit (“LAU”) to create, maintain and publicize to its employees an internal Return to Work (“RTW”), policy consistent with the applicable statutes and rules.** The policy should direct an employee to the Educational Retirement Board (ERB) to verify their retirement status if they are receiving a pension from either ERB or the Public Employees Retirement Association. For more information, please visit: [Returning to Work after Retirement | NM Educational Retirement Board](#)

Removes all references to the RTW program requiring a 12-month layout period authorized under Section 22-11-25.1 NMSA 1978. The program is no longer available to new applicants pursuant to Subsection A of Section 22-11-25.1 NMSA 1978. Any member in the program as of December 31, 2023, is “grandfathered” in and may remain in the program until they officially withdraw. Upon withdrawal, they may complete a new Return to Work application to switch to a different RTW program but cannot reapply for the RTW 12-month program.

- Creates a “grace period” for qualified members who return to employment with a local administrative unit (LAU) without prior Educational Retirement Board (ERB) approval. ERB will notify the member that they failed to file an application. If the member is qualified for any RTW program, they have 30 days to either terminate employment or file a RTW application. If they comply, their benefits would not be suspended, and they would not have to repay the benefits they received while ineligible. If they fail to terminate employment or file an application, their benefit is immediately suspended. Their benefits will not be reinstated until they verify that they have terminated employment and they must reapply for retirement.
- A member who fails to file a RTW application and who is not qualified for any RTW program will be suspended immediately and they must repay any benefits received while ineligible. Their benefits will not be reinstated until they verify that they have terminated employment and they must reapply for retirement.

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- Clarifies that a member who has satisfied the 90-day layout period does not have to complete another layout period to qualify for a RTW program. However, any time the member was employed, and any income received while they were employed without ERB approval would count against the time and income caps contained in the RTW programs.
- Allows all members employed under an approved RTW program to switch to another approved program once per fiscal year. Applications are accepted from July 1 to July 31, with the new program effective August 1. Members not currently in a RTW program can file an initial application for a RTW program at any time during the fiscal year.
- Clarifies that a member who wants to provide independent contractor services to an LAU must submit an independent contractor application and obtain approval from ERB. If they fail obtain approval prior to providing services, they may be considered employees, depending on the circumstances.
- Notifies members that penalties for RTW violations may be appealed.
- Adds a Subsection C to Sections 16, 17 & 18 of 2.82.5 NMAC to require a member whose benefits were suspended due to a violation to verify that they have terminated all LAU employment and they must reapply for retirement.

The changes to Rule 2.82.9 NMAC are effective as of July 1, 2025. **The amendment assesses monetary penalties against LAU's for errors in their monthly wage report.** The penalties would be \$500 for a 1st failure, \$1,000 for a 2nd failure, and \$1,500 for the 3rd and each subsequent failure. The ERB Executive Director can waive the penalty for a first violation. The Board of Trustees can waive the penalty for second and subsequent violations.

Sincerely,

David Archuleta

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