



State of New Mexico
Educational Retirement Board

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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.

- 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