



PERA

Investments & Pensions Oversight Committee

Overview of Return-to-Work Program

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Why Understanding Post-Retirement Employment is Important

- **Plan Qualification Requirements**
 - *IRC §401 (a)*
- **Statutory Requirements**
 - *NMSA 1978, §10-11-8-Normal Retirement; return to employment; benefits continued; contributions.*
- **Administrative Code Requirements**
 - *NMAC 2.80.1100 – Rule Governing Retired Members*
 - *NMAC 2.40.2 – Rule Governing Approval of Contracts for the Purchase of Professional Services*

Plan Qualification Requirements

- *PERA is a defined benefit government pension plan that qualifies as tax-exempt under Section 401(a) of the Internal Revenue Code (IRC).*
- *Maintaining the plan's tax-exempt status under the IRC is a critical consideration in administering post-retirement employment.*
- *The IRC requires a “bona fide separation of service” for retirees receiving a benefit from a qualified plan.*

Bona Fide Separation from Service under the IRC

- *The IRS has issued many revenue rulings and other guidance about what constitutes a “bona fide separation from service” under the IRC. Because it is not defined, it is open to the interpretation of the IRS, however, two key factors are:*
 - *Legitimate Break; and*
 - *No Prearrangement for Future Service*
- *The IRS enforces “bona fide separation from service” to ensure that there is a reasonable period of retirement before a retiree who receives a pension but has not attained IRS retirement age returns to employment with an employer associated with the plan.*

History of Return-to-Work

Historically, the PERA Act has allowed some form of reemployment for retirees:

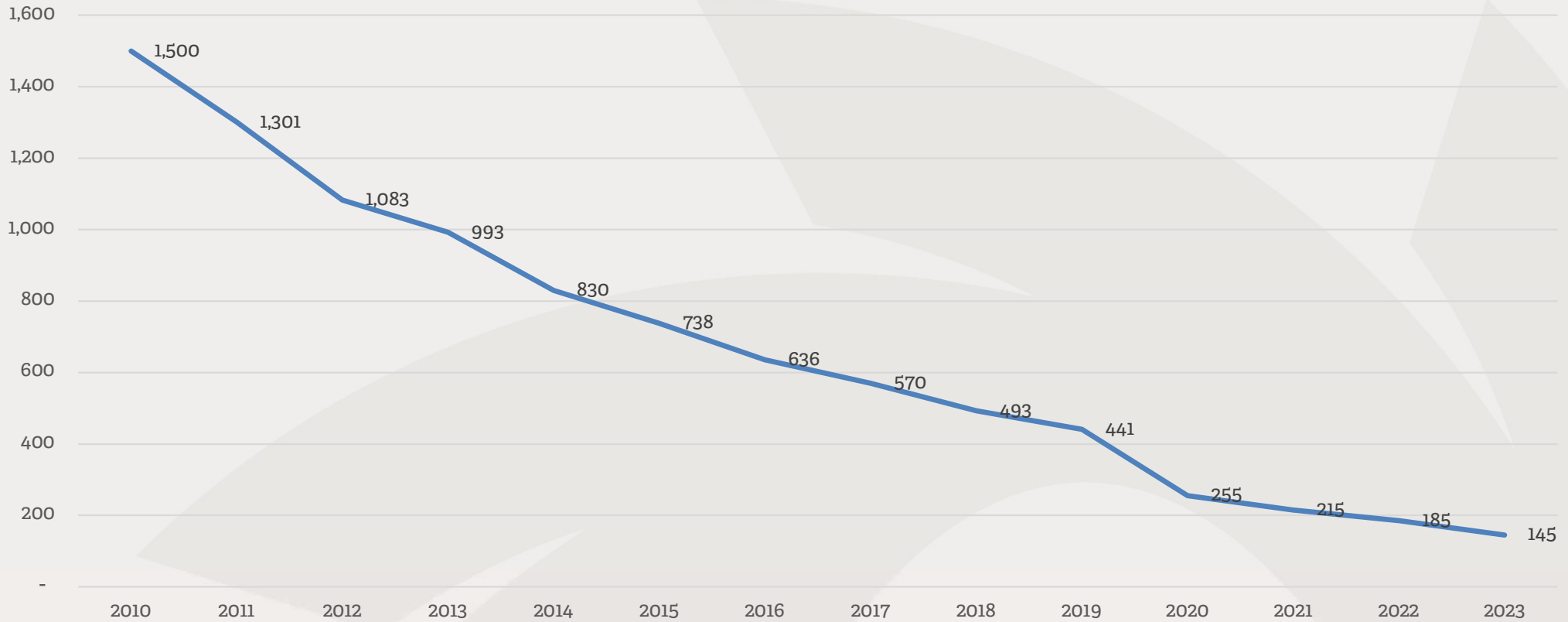
1967	<i>State police allowed to be employed by a municipal or county law enforcement agency</i>
1969	<i>Any retiree could be reemployed by any municipal or county government</i>
1973	<i>Earnings Cap added- \$150 per month or \$1,800 annually</i>
1981	<i>Retirees allowed to earn up to 75% of the highest maximum earnings allowed under the federal social security program</i>
1987	<i>Retirees or elected officials could earn up to 100% of the highest maximum earnings allowed under the federal social security program</i>
1992	<i>Retirees allowed to earn up to highest maximum earnings allowed under the federal social security program, undersheriffs and elected officials were excluded retirees and eligible to receive both a pension and a salary.</i>
2003	<i>Earnings cap removed for reemployed retirees after completion of 90-day sit out. Removed exemptions for elected officials, chiefs-of-police and undersheriffs.</i>
2010	<i>Effective July 1, 2010, the pension of a retiree who returns to work for a PERA affiliated employer is suspended. Retirees who were reemployed before July 1, 2010 are grandfathered in under the law in place when they retired. Both employee and employer contributions are required and are nonrefundable.</i>
2013	<i>SB27 suspended the Cost of Living Adjustment for “grandfathered in” re-employed retirees and retirees who become employed with an employer pursuant to the Education Retirement Act.</i>
2014	<i>Suspended the Cost of Living Adjustment for retirees employed and covered pursuant to the Judicial Retirement Act or the Magistrate Retirement Act</i>
2020	<i>SB72 restored the Cost of Living Adjustment for “grandfathered in” re-employed retirees and retirees who become employed with an employer pursuant to the Education Retirement Act.</i>

Current Statutory Exemptions:

- A retired member employed by the Legislature for Legislative Session work
- A retired member employed temporarily as a precinct poll worker for a municipal election; and
- A retired member who is elected to serve a term of office and files a timely exclusion form with PERA

Return-to-Work By the Numbers

of Participants



	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
EE Contr.	\$ 36,351	\$ 10,457,978	\$ 10,231,084	\$ 8,794,862	\$ 8,308,936	\$ 7,406,165	\$ 6,715,330	\$ 6,059,812	\$ 5,343,370	\$ 5,010,740	\$ 1,994,243	\$ 1,711,452	\$ 1,516,049	\$ 1,339,737
ER Contr.	\$25,519,339	\$ 14,237,190	\$ 11,540,565	\$ 19,774,988	\$ 9,976,209	\$ 9,123,935	\$ 8,310,706	\$ 7,601,650	\$ 6,713,045	\$ 6,267,638	\$ 2,514,934	\$ 2,168,992	\$ 1,931,436	\$ 1,738,019
Total Wages	\$106,047,019	\$ 99,444,571	\$ 87,111,118	\$ 79,374,483	\$ 71,623,468	\$ 64,551,800	\$ 58,958,288	\$ 53,681,355	\$ 46,830,379	\$ 44,237,483	\$ 16,928,838	\$ 14,184,031	\$ 12,656,755	\$ 11,136,831

Post-Retirement Employment in New Mexico

Other Options for a PERA Retirees:

- *A member retired from PERA can seek employment with a private company, federal or tribal government, or enter into an independent contract with a PERA employer with no adverse affect to their pension.*
- *A member retired from PERA can seek employment with another state system (ERB). The ERB employer must make the employer contribution on behalf of the employee, no employee contribution is required and the member is excluded from participation in the retirement plan.*

Options for ERB Retirees:

- *A member retired from ERB can return to work for a PERA employer without affecting their retirement benefit. No employee/employer contributions or layout period is required.*

Independent Contracts

- *PERA retirees may provide services to affiliated employers as independent contractors.*
- *PERA Rule 1100 requires professional services agreements or contracts to be reviewed by PERA's Legal Division to determine whether the retiree is an "employee" or an independent contractor.*
- *In order to make its determination, PERA applies the common-law control test set forth in the Social Security Handbook and factual legal analysis.*
- *A few considerations:*
 - *Whether or not there is a continuation of former employment*
 - *Whether there is a clear scope of work or project*
 - *Indemnification*
 - *No accrual of sick leave, benefits, etc.*

Alternatives to Return to Work

- HB106 (2023) increased the pension maximum to 100% of a member's Final Average Salary (FAS) to incentivize longer PERA careers. (up from 90% SB27)
- Several Statutes have been proposed in recent years for retention payments:
 - Law Enforcement Protection Fund – recruitment and retention funding for agencies employing law enforcement officers, detention officers and public attorneys who practice in the criminal justice.
 - Law Enforcement Retention Fund – 5% bonuses for law enforcement officers at the 4, 9, 14 and 19 year employment anniversaries.
 - The 2023 Legislative session saw similar proposals for other types of public safety employees.
- Many municipalities have expanded recruitment and retention efforts with increased wages, longevity bonuses and additional leave accruals.



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Legislation from 2023 Session

- HB64 – Rep. Rehm – RTW for law enforcement
 - HB65 – Rep. Rehm – RTW for all members
 - HB294 – Rep. Lane – RTW for law enforcement returning as school resource officers
 - HB344 – Rep. Lane – RTW for correctional officers
 - SB124 – Sen. Padilla – RTW for all members
- *The PERA Board remained neutral on the RTW proposals as long as no negative actuarial impacts were introduced. In most instances to ensure any return-to-work proposal is not harmful to the fund the member and employer must pay contributions with no additional accruals for future benefits. Each proposal has an actuarial analysis done to ensure no impact to the fund.*

Overview of Authority Granted to Systems in Other States

Public retirement systems in other jurisdictions have express authority granted by their legislatures that PERA does not have, for example:

- *Some systems have statutes that extend the opportunity for plan coverage to contractors that are under contract with a public agency. (Indiana)*
- *Some systems have statutes that require contractors and their employees that are under contract with a public agency to contribute to the plan. (Montana, California, Ohio)*
- *Some systems have statutes that require participation by a contractor that substitutes for a terminated public employer. (Wisconsin, usually when a public school becomes a private charter school)*
- *Some systems have statutes that require a public employer to contribute an amount equal to a significant increase in actuarial liability attributable to compensation paid to a persons who are not covered by the plan. (Louisiana, California)*
- *California requires public employers to evaluate the actual cost benefit anticipated from hiring contract workers instead of employees covered by civil service.*

PERA membership by comparison is limited to “employee[s] of affiliated public employer.” See NMSA 1978, § 10-11-2(G).

“Public employer” is defined under the PERA Act and does not include entities under contract with a public employer. See NMSA 1978, § 10-11-2(P).