

HOUSE LABOR, VETERANS' AND MILITARY AFFAIRS
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 236

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO PUBLIC EMPLOYEES RETIREMENT; AMENDING THE PUBLIC
EMPLOYEES RETIREMENT ACT TO ALLOW CERTAIN PUBLIC SAFETY
EMPLOYEES TO RETURN TO WORK UNDER CERTAIN CONDITIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 10-11-8 NMSA 1978 (being Laws 1987,
Chapter 253, Section 8, as amended) is amended to read:

.227828.1AIC February 11, 2024 (11:06pm)

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"10-11-8. NORMAL RETIREMENT--RETURN TO EMPLOYMENT--
BENEFITS CONTINUED--CONTRIBUTIONS.--

A. A member may retire upon fulfilling the following requirements prior to the selected date of retirement:

(1) a written application for normal retirement, in the form prescribed by the association, is filed with the association;

(2) employment is terminated with all employers covered by any state system or the educational retirement system;

(3) the member selects an effective date of retirement that is the first day of a calendar month; and

(4) the member meets the age and service credit requirement for normal retirement specified in the coverage plan applicable to the member.

B. The amount of normal retirement pension is determined in accordance with the coverage plan applicable to the member.

C. Except as provided in [~~Subsection~~] Subsections D, J and K of this section, on or after July 1, 2010, a retired member may be subsequently employed by an affiliated public employer only pursuant to the following provisions:

(1) the retired member has not been employed as an employee of an affiliated public employer or retained as

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an independent contractor by the affiliated public employer from which the retired member retired for at least twelve consecutive months from the date of retirement to the commencement of subsequent employment or reemployment with an affiliated public employer;

(2) the retired member's pension shall be suspended upon commencement of the subsequent employment;

(3) except as provided in Subsection F of this section, the retired member shall not become a member and shall not accrue service credit, and the retired member and that person's subsequent affiliated public employer shall not make contributions under any coverage plan pursuant to the Public Employees Retirement Act; and

(4) upon termination of the subsequent employment, the retired member's pension shall resume in accordance with the provisions of Subsection A of this section.

D. The provisions of Subsections C, G, ~~and~~ H, J and K of this section do not apply to:

(1) a retired member employed by the legislature for legislative session work;

(2) a retired member employed temporarily as a precinct board member for a municipal election or an election covered by the Election Code; or

(3) a retired member who is elected to serve a

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term as an elected official in an office covered pursuant to the Public Employees Retirement Act; provided that:

(a) the retired member files an irrevocable exemption from membership with the association within thirty days of taking office; and

(b) the irrevocable exemption shall be for the elected official's term of office.

E. A retired member who returns to employment during retirement pursuant to Subsection D of this section is entitled to receive retirement benefits but is not entitled to accrue service credit or to acquire or purchase service credit in the future for the period of the retired member's subsequent employment with an affiliated public employer.

F. At any time during a retired member's subsequent employment pursuant to Subsection C of this section, the retired member may elect to become a member and the following conditions shall apply:

(1) the previously retired member and the subsequent affiliated public employer shall make the required employee and employer contributions, and the previously retired member shall accrue service credit for the period of subsequent employment; and

(2) when the previously retired member terminates the subsequent employment with an affiliated public

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employer, the previously retired member shall retire according to the provisions of the Public Employees Retirement Act, subject to the following conditions:

(a) payment of the pension shall resume in accordance with the provisions of Subsection A of this section;

(b) unless the previously retired member accrued at least three years of service credit on account of the subsequent employment, the recalculation of pension shall: 1) employ the form of payment selected by the previously retired member at the time of the first retirement; and 2) use the provisions of the coverage plan applicable to the member on the date of the first retirement; and

(c) the recalculated pension shall not be less than the amount of the suspended pension.

G. A retired member who returned to work with an affiliated public employer prior to July 1, 2010 shall be subject to the provisions of this section in effect on the date the retired member returned to work; provided that on and after July 1, 2010, the retired member shall pay the employee contribution in an amount specified in the Public Employees Retirement Act for the position in which the retired member is subsequently employed.

H. Effective July 1, 2014, if a retired member who,

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subsequent to retirement, is employed and covered pursuant to the provisions of the Magistrate Retirement Act or Judicial Retirement Act, during the period of subsequent employment:

(1) the member shall be entitled to receive retirement benefits;

(2) the retired member's cost-of-living pension adjustment shall be suspended upon commencement of the employment; and

(3) upon termination of the employment, the retired member's suspended cost-of-living pension adjustment shall be reinstated as provided under Section 10-11-118 NMSA 1978.

I. The pension of a member who has earned service credit under more than one coverage plan shall be determined as follows:

(1) the pension of a member who has three or more years of service credit earned on or before June 30, 2013 under each of two or more coverage plans shall be determined in accordance with the coverage plan that produces the highest pension;

(2) the pension of a member who has service credit earned on or before June 30, 2013 under two or more coverage plans but who has three or more years of service credit under only one of those coverage plans shall be

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determined in accordance with the coverage plan in which the member has three or more years of service credit. If the service credit is acquired under two different coverage plans applied to the same affiliated public employer as a consequence of an election by the members, adoption by the affiliated public employer or a change in the law that results in the application of a coverage plan with a greater pension, the greater pension shall be paid a member retiring from the affiliated public employer under which the change in coverage plan took place regardless of the amount of service credit under the coverage plan producing the greater pension; provided that the member has three or more years of continuous employment with that affiliated public employer immediately preceding or immediately preceding and immediately following the date the coverage plan changed;

(3) the pension of a member who has service credit earned on or before June 30, 2013 under each of two or more coverage plans and who has service credit earned under any coverage plan on or after July 1, 2013 shall be equal to the sum of:

(a) the pension attributable to the service credit earned on or before June 30, 2013 determined pursuant to Paragraph (1) or (2) of this subsection; and

(b) the pension attributable to the

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service credit earned under each coverage plan on or after July 1, 2013;

(4) the pension of a member who has service credit earned only on and after July 1, 2013 shall be equal to the sum of the pension attributable to the service credit the member has accrued under each coverage plan; and

(5) the provisions of each coverage plan for the purpose of this subsection shall be those in effect at the time the member ceased to be covered by the coverage plan.

"Service credit", for the purposes of this subsection, shall be only personal service rendered an affiliated public employer and credited to the member under the provisions of Subsection A of Section 10-11-4 NMSA 1978. Service credited under any other provision of the Public Employees Retirement Act shall not be used to satisfy the three-year service credit requirement of this subsection.

J. A retired member may be subsequently employed by an affiliated public employer; provided that the retired member has not been employed as an employee of an affiliated public employer or retained as an independent contractor by the affiliated public employer from which the retired member retired for at least ninety consecutive days from the date of retirement to the commencement of subsequent employment or reemployment with an affiliated public employer; and further

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provided that the:

(l) retired member shall only be employed in one of the following positions:

- (a) adult correctional officer;
- (b) adult detention officer;
- (c) courthouse security officer;
- (d) emergency medical dispatcher;
- (e) emergency medical technician or

paramedic;

- (f) firefighter;
- (g) juvenile correctional officer;
- (h) juvenile detention officer;
- (i) municipal police officer;

~~Hf11→HJC→(j) peace officer;←HJC←Hf11~~

Hf11→(j) peace officer;

(k) protective services

investigator;←Hf11

~~Hf11→HJC→(j)←HJC HJC→(k)←HJC←Hf11~~

Hf11→(l)←Hf11 public safety telecommunicator;

~~Hf11→HJC→(k)←HJC HJC→(l)←HJC←Hf11~~

Hf11→(m)←Hf11 sheriff's deputy; Hf11→HJC→or←HJC←Hf11

Hf11→or←Hf11

~~Hf11→HJC→(l)←HJC HJC→(m)←HJC←Hf11~~

Hf11→(n)←Hf11 state police officer; Hf11→HJC→or←HJC←Hf11

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Hf11→HJG→(m) protective services
investigator;←HJG←Hf11

(2) retired member shall have retired prior to December 31, 2023;

(3) retired member's pension, including any cost-of-living adjustment, shall continue to be paid during the period of subsequent employment;

(4) retired member shall not become a member during the period of subsequent employment;

(5) retired member shall not accrue service credit for any portion of the period of subsequent employment;

(6) retired member and the retired member's subsequent affiliated public employer shall make the contributions that would be required for members and employers under the applicable coverage plan during the entire period of subsequent employment;

(7) contributions paid by or on behalf of the retired member during the term of subsequent employment shall not be refundable at the termination of the subsequent employment;

(8) retired member shall have no seniority based on pre-retirement employment for purposes of selecting shifts;

(9) retired member shall have no limitation on

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the length of time that the retired member can be subsequently employed or reemployed by an affiliated public employer; provided that the retired member shall only receive up to thirty-six consecutive months of pension payments while reemployed;

(10) retired member shall not be hired for reemployment into an employment position with a vacancy rate that is lower than ten percent at the time of the retired member's hiring; and

(11) subsequent employment begins prior to July 1, 2027.

K. An affiliated public employer that employs a retired member provided in Subsection J of this section shall:

(1) track and document:

(a) the date of hire and date of separation for each reemployed retired member;

(b) the retired member's employment position prior to retirement;

(c) the salary of each reemployed retired member; and

(d) the monthly vacancy rate for each employment position at the affiliated public employer; and

(2) if the affiliated public employer has to lay off employees due to budgetary restrictions, lay off

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reemployed retired members before laying off any members.

L. For the purposes of this section:

(1) "adult correctional officer" means a person who is employed as an adult correctional officer or an adult correctional officer specialist by a state correctional facility of the corrections department or its successor agency;

(2) "adult detention officer" means a person who is employed by an affiliated public employer other than the state and who has inmate custodial responsibilities at a facility used for the confinement of adults charged with or convicted of a violation of a law or ordinance;

(3) "courthouse security officer" means a person who is employed by the administrative office of the courts who provides security or protective services for a courthouse;

(4) "emergency medical dispatcher" means a person who is trained and licensed pursuant to the Emergency Medical Services Act and who receives calls for emergency medical assistance, provides pre-arrival medical instructions, dispatches emergency medical assistance and coordinates its response;

(5) "emergency medical technician" means a person who is licensed as an emergency medical technician or paramedic and who provides patient care pursuant to the

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Emergency Medical Services Act;

(6) "firefighter" means a person who is employed as a full-time non-volunteer firefighter by an affiliated public employer who has taken the oath for firefighters and who serves in a non-management position serving or supporting the delivery of emergency services in a front line capacity;

(7) "juvenile correctional officer" means a person who is employed as a juvenile correctional officer by the children, youth and families department or its successor agency;

(8) "juvenile detention officer" means a person who is employed as a juvenile detention officer or youth program officer by an affiliated public employer other than the state;

(9) "municipal police officer" means a person who is employed by an affiliated public employer other than the state or a county and who is a law enforcement officer who serves in a uniformed patrol capacity responding to dispatched calls for service;

~~Hf11→HJC→(10) "peace officer" means a person who is appointed by the attorney general or district attorney and who is a certified law enforcement officer who investigates and enforces state laws, rules and regulations, including the~~

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~~execution of warrants;~~ ←HJC ←Hf11

Hf11 → ~~HJC → (10) "protective services investigator" means a person who is an employee of the protective services division of the children, youth and families department who investigates child abuse referrals, assesses the risk and safety of the child and takes appropriate action or prepares cases for transfer to child protective services permanency planning;~~ ←HJC ←Hf11

Hf11 → (10) "peace officer" means a person who is appointed by the attorney general or district attorney and who is a certified law enforcement officer who investigates and enforces state laws, rules and regulations, including the execution of warrants;

(11) "protective services investigator" means a person who is an employee of the protective services division of the children, youth and families department who investigates child abuse referrals, assesses the risk and safety of the child and takes appropriate action or prepares cases for transfer to child protective services permanency planning; ←Hf11

Hf11 → ~~HJC → (10) ←HJC HJC → (11) ←HJC~~ ←Hf11
Hf11 → (12) ←Hf11 "public safety telecommunicator" means a person who is an employee of a safety agency who receives calls or dispatches the appropriate personnel or equipment in response to calls for police, fire or medical services and

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makes decisions affecting the life, health or welfare of the public or safety employees and who has qualified for the certification set forth in the Public Safety Telecommunicator Training Act;

Hf11→~~HJC→(11)←HJC~~ ~~HJC→(12)←HJC~~←Hf11

Hf11→(13)←Hf11 "sheriff's deputy" means a person who is employed by a county and who is a law enforcement officer who serves in a uniformed patrol capacity responding to dispatched calls for service Hf12→or serves as a courthouse security officer employed by a county←Hf12 ; and

Hf11→~~HJC→(12)←HJC~~ ~~HJC→(13)←HJC~~←Hf11

Hf11→(14)←Hf11 "state police officer" means a person who is an officer of the New Mexico state police division of the department of public safety, who has taken the oath prescribed for such officers and who serves in a uniformed patrol capacity responding to dispatched calls for service."

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2024.

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