



PERA

Investments & Pensions Oversight Committee

Overview of Return to Work Program

Representative Patricia Roybal Caballero, Chair
Senator Roberto “Bobby” J. Gonzales, Vice-Chair

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Claudia Armijo, Chair
Diana Rosales Ortiz, Vice Chair
Greg Trujillo, Executive Director

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 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.
- 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	State police allowed to be employed by a municipal or county law enforcement agency
1969	Any retiree could be reemployed by any municipal or county government
1973	Earnings Cap added- \$150 per month or \$1,800 annually
1981	Retirees allowed to earn up to 75% of the highest maximum earnings allowed under the federal social security program
1987	Retirees or elected officials could earn up to 100% of the highest maximum earnings allowed under the federal social security program
1992	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.
2003	Earnings cap removed for reemployed retirees after completion of 90-day sit out. Removed exemptions for elected officials, chiefs-of-police and undersheriffs.
2010	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.
2013	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.
2014	Suspended the Cost of Living Adjustment for retirees employed and covered pursuant to the Judicial Retirement Act or the Magistrate Retirement Act
2020	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.

Current Statutory Exemptions:

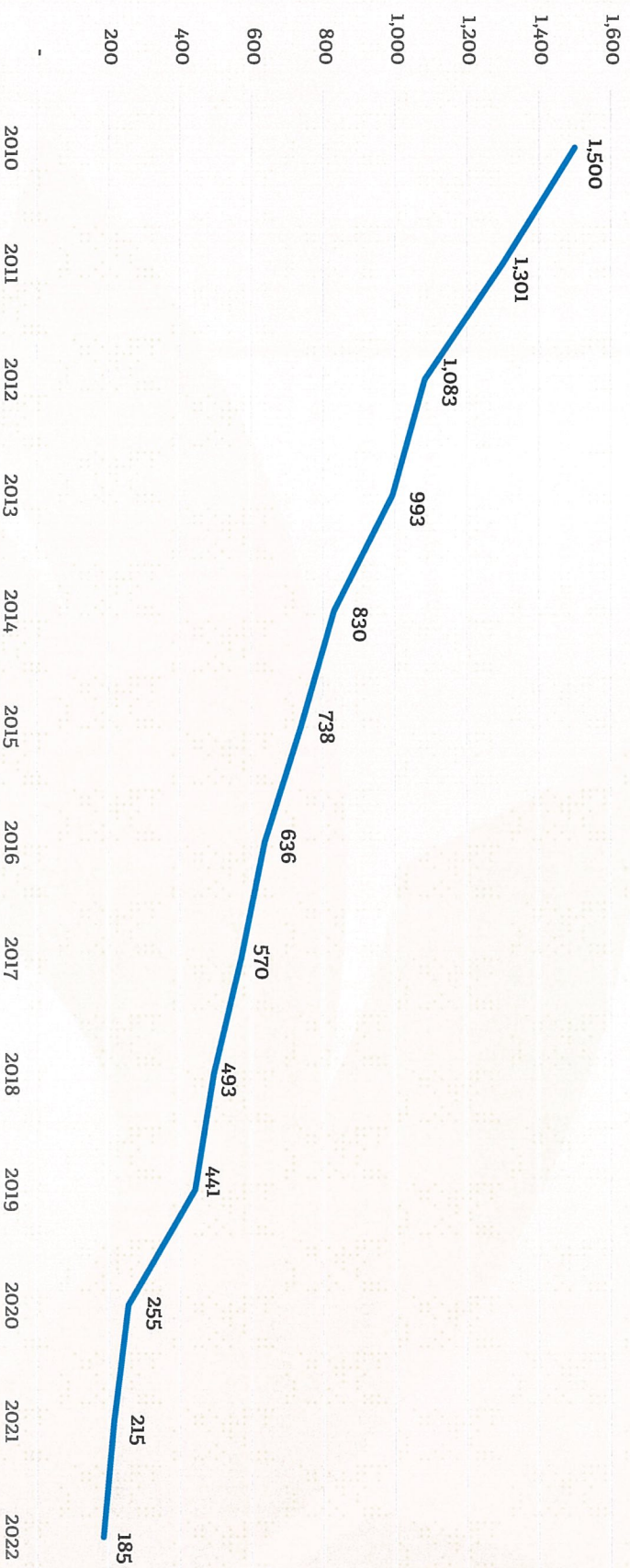
- A retired member employed by the Legislature for Legislative Session work
- A retired member employed temporarily as a precinct poll worker for a municipal election; and
- A retired member who is elected to serve a term of office and files a timely exclusion form with PERA

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Return-to-Work By the Numbers

of Participants



EE Contributions	\$36,351	\$10,457,978	\$ 0,231,084	\$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
ER Contributions	\$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	\$2,168,992	\$2,168,992	\$1,931,436
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

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:

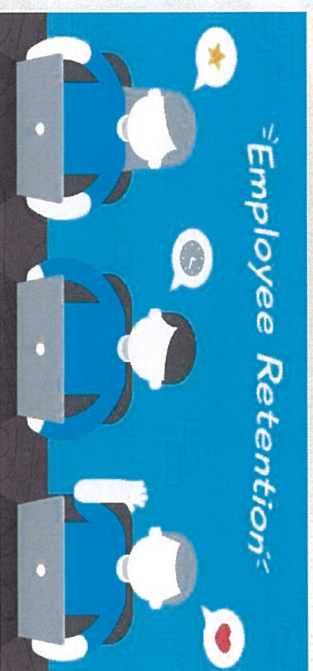
- A member retired from ERB can return to work for a PERA employer without affecting their retirement benefit. No employee/employer contributions or layoff period is required.

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

- SB27 increased the pension maximum to 90% of a member's Final Average Salary (FAS) to incentivize longer PERA careers.
- SB72 recommended lifting the cap completely, however the provision was ultimately removed before final passage.
- The Law Enforcement Protection Fund was amended to provide municipalities up to \$7,500 in matching funds for retention purposes.
- Many municipalities have expanded recruitment and retention efforts with increased wages, longevity bonuses and additional leave accruals.



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Prior Legislation

- HB50 sponsored by Rep. Phelps Anderson in 2022 session: high level overview of the bill as follows:
 1. Pension benefits shall continue during the period of RTW;
 2. Cost-of-living adjustments (COLA) shall continue during the period of RTW;
 3. RTW retirees will not accrue additional service credit during the period of re-employment;
 4. Requires nonrefundable employee and employer contributions be made under the applicable coverage plan for the period of re-employment;
 5. RTW occurs for a period of no more than thirty-six consecutive or nonconsecutive months;
 6. Limited the program to members retired as of December 31, 2021.
- HB50 required the member and employer to pay the employee and employer contributions with no additional accruals resulting in a small positive impact to the fund.
- ***The PERA Board ultimately did not support the legislation because of policy concerns and historically has not supported return to work as a matter of policy.***
- HB50 did not impact:
 - A change in retirement behavior – limited to members already retired
 - Employment is temporary – limited re-employment to no more than 36 months

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).

