

TITLE 2 PUBLIC FINANCE
CHAPTER 80 PUBLIC EMPLOYEES RETIREMENT
PART 1000 DISABILITY RETIREMENT BENEFITS

2.80.1000.1 ISSUING AGENCY: Public Employees Retirement Association, 33 Plaza La Prensa, Santa Fe, New Mexico 87507
[2.80.1000.1 NMAC – Rp, 2.80.1000.1, 10/10/2023]

2.80.1000.2 SCOPE: This rule affects the members, disability retirees, beneficiaries, affiliated public employers, the retirement board and the association under the Public Employees Retirement Act.
[2.80.1000.2 NMAC – Rp, 2.80.1000.2, 10/10/2023]

2.80.1000.3 STATUTORY AUTHORITY: Sections 10-11-10.1 and 10-11-130 NMSA 1978.
[2.80.1000.3 NMAC – Rp, 2.80.1000.3, 10/10/2023]

2.80.1000.4 DURATION: Permanent.
[2.80.1000.4 NMAC – Rp, 2.80.1000.4, 10/10/2023]

2.80.1000.5 EFFECTIVE DATE: October 10, 2023, unless a different date is cited at the end of a section.
[2.80.1000.5 NMAC – Rp, 2.80.1000.5, 10/10/2023]

2.80.1000.6 OBJECTIVE: The objectives of this rule are to define terms used in the disability retirement provision of the PERA Act; to set forth with particularity the membership of the committee; to clarify the compensation applicable to various members of the committee; to set forth procedures for initial disability retirement applications and for reevaluation of retirees' continued eligibility for disability payments; to provide a procedure for trial employment; and to provide for notice to retirees of pension reclassifications. The intent of the board in promulgating these rules is to encourage continued employment of members while providing protection in cases of disability. Vocational rehabilitation is strongly recommended in every case possible.
[2.80.1000.6 NMAC – Rp, 2.80.1000.6, 10/10/2023]

2.80.1000.7 DEFINITIONS: For purposes of disability retirement the following definitions shall apply:

A. "Commensurate" employment means that the applicant is able to engage in some profitable employment or enterprise in the state of New Mexico, which approximates to a substantial degree the applicant's pre-injury compensation but is not necessarily equal to the applicant's pre-injury employment.

B. "Course of the member's performance of duty" means place or activity for which the employer's business requires the presence of the employee, but shall not include travel or time on the way to assume the duties of employment or travel or time leaving such duties, except when the employee is temporarily assigned to a destination other than his or her normal work station or is within the "special errand" rule, in which case such time will be considered to be in the course of employment. Mere presence on the employer's premises while coming to or going from the job shall not establish this element unless the member has also assumed or is performing job duties.

C. "Currently employed, contributing employee of an affiliated public employer," in the case of an applicant for duty disability benefits, means the employment and contribution status on the date the disability was incurred.

D. "Likely to be permanent" means that the weight of the medical evidence presented indicates that the applicant has either reached maximum medical improvement and the disability will probably last at least until the applicant reaches the age at which he or she will become eligible for normal retirement or that the medical information supports a determination of permanent disability, even though maximum medical improvement has not been reached.

E. "Solely and exclusively" means the member's work is so substantial a factor of the disability that the disability would not have occurred at the time without it and a pre-existing condition is not a significant contributing factor material to the disability.

F. “**Totally incapacitated**” means inability, as a result of either sudden injury or illness or the cumulative long-term effects of injury or illness, to work the member's regular work week.
[2.80.1000.7 NMAC – Rp, 2.80.1000.7, 10/10/2023]

2.80.1000.8-19 [RESERVED]

2.80.1000.20 DISABILITY REVIEW COMMITTEE:

A. The disability review committee shall consist of at least one physician licensed in New Mexico and at least three, but not more than five members of the board; the physician need not be either a board member or association member, but may be either or both. The committee may also engage a psychologist (Ph.D.) or a psychiatrist (M.D.) licensed in New Mexico to serve on an as-needed basis to evaluate and advise the committee regarding applications for disability retirement based in whole or in part on mental incapacity.

B. The executive director or designated representative shall act as secretary for the committee.

C. Compensation: Members of the committee shall receive no compensation other than that authorized by the Per Diem and Mileage Act, except that physicians, psychiatrists or psychologists who are not board or association members and are engaged by the board to serve on the committee may be compensated at the rate established by the board.

[2.80.1000.20 NMAC – Rp, 2.80.1000.20, 10/10/2023]

2.80.1000.21-29 [RESERVED]

2.80.1000.30 INITIAL APPLICATION PROCEDURE:

A. Application. The association shall provide application forms for members to use in complying with these provisions. No member shall be deemed an applicant for disability retirement until the member or his or her representative or employer has completed and filed the disability application package, including all the forms required in order to process the application. The following forms shall be required in order to process the application:

(1) Employer's report of disability (not applicable to members who are not currently employed contributing members). If the employer refuses to provide the report, the committee may take whatever steps it deems necessary to obtain the required information.

(2) Member's examining physician's statement for disability retirement benefits. If the application is for disability retirement based on physical incapacity, the examining physician must be a medical doctor (M.D.), doctor of osteopathic medicine (D.O.), certified nurse practitioner (CNP), or a physician's assistant (PA). An M.D., D.O., or CNP must be licensed in the state in which he or she practices. If the application is for disability retirement based on mental incapacity, the examining physician must be either a psychologist (Ph.D.) certified in the state in which he or she practices, ~~or~~ a psychiatrist (M.D.), or certified nurse practitioner (CNP) licensed in the state in which he or she practices. If the application is for disability retirement based on both physical and mental incapacity, reports must be made for each kind of incapacity. The examining physician's statements shall be based on an examination of the member not more than 3 months prior to the date of submitting the application.

(3) Employer's first report of injury, if any.

(4) A list of all health care practitioners consulted who have examined or treated the member regarding the disability and all records, reports, narratives, evaluations, diagnoses, prognoses or notes discussing, establishing, evaluating or measuring the disability. Such records shall include, but not be limited to, one or more reports, evaluations, analyses or narratives made within 90 days of application.

(5) Copies of any and all vocational rehabilitation reports and work performance evaluation reports made since the disability was incurred.

(6) Release of medical information to PERA on a form signed by the applicant or his or her legal representative.

(7) Any other information requested by members of the committee.

B. If information requested by members of the committee is not provided by the disability applicant within 120 days of the written request, the application, if otherwise complete, will be considered by the committee in the absence of the requested information and the applicant's failure to provide the requested information may be considered by the committee in its consideration of the application.

C. Notification: The applicant shall be given notice of every meeting at which his or her application is to be considered. Such notice shall be in writing and mailed not less than five days prior to such disability review

committee meeting, unless the applicant waives, in writing, the notification requirement in order to expedite any action on his or her application.

D. Meetings: The committee shall hold its regular meetings at designated times at the PERA building, Santa Fe, New Mexico. A majority of the committee members, at least one of whom must be a physician, shall constitute a quorum. No action may be taken by the committee in the absence of a quorum.

(1) Confidentiality: Meetings of the committee shall not be open to the public in order to preserve the confidentiality of medical records pursuant to Section 14-2-1 NMSA 1978. The applicant and the applicant's guest(s) or representative may be present to hear discussion and to address the committee during consideration of his or her application.

(2) Testimony and oral statements or arguments made by an applicant or his or her representative shall be tape recorded.

E. Release of medical reports: Copies of medical reports may be given to the applicant or his or her representative, provided a release of information form is signed by the applicant or his or her legal representative.

F. Examination: Upon receipt and consideration of the completed disability retirement forms required in Subsection A of Section 30 above, the committee may notify the applicant in writing if further examination is necessary, and if so, the type of examination and information necessary to document the disability application. If, after the applicant has been notified in writing, the applicant fails without good cause to report to an examining physician within 90 days, his or her application for disability retirement benefits shall become void.

G. The committee shall determine whether the applicant meets the requirements for disability retirement, and approve or deny the application. The applicant shall be notified by letter of the committee's action within 10 working days of its meeting. If the application is approved, the type (duty or non-duty) of the retirement pension and the effective date shall be submitted to the board for ratification at the next regular meeting following the effective date of retirement.

H. If the application for disability retirement is approved, the member, unless excluded from coverage by the federal social security administration, shall apply for federal disability benefits within 30 calendar days of approval of the application for disability retirement. A copy of the federal social security administration application shall be submitted to PERA.

I. If an application for disability retirement benefits is approved and the member does not terminate employment within 45 calendar days, a new application must be filed and approved by the committee before a disability retirement pension can be paid.

J. If an application for disability retirement benefits is denied, and the applicant either fails to appeal or appeals and the denial is upheld on appeal, the applicant may re-apply and present new medical evidence in support of a new application for disability retirement benefits based on the same disorder one year after the date of the initial denial. The applicant may not re-apply for disability benefits for the same medical condition without new medical evidence made within 90 days of the re-application.

[2.80.1000.30 NMAC – Rp, 2.80.1000.30, 10/10/2023]

2.80.1000.31-39 [RESERVED]

2.80.1000.40 APPEAL: If the committee denies disability retirement benefits, the applicant may appeal the action. Any appeals under this section shall be conducted according to Section 10-11-120 NMSA 1978 and 2.80.1500 NMAC. An applicant's withdrawal or refund of contributions at any time before or during the pendency of an appeal causes the forfeiture of service credit and shall result in the automatic dismissal of the appeal and the issuance of a notice of dismissal.

[2.80.1000.40 NMAC – Rp, 2.80.1000.40, 10/10/2023]

2.80.1000.41-49 [RESERVED]

2.80.1000.50 CONTINUATION PROCEDURE:

A. At the end of the first year that a disability retirement pension is paid, the disability retired member's condition shall be reevaluated to determine eligibility for continuation of payment of a disability retirement pension.

B. The disability retired member must submit a copy of the application for benefits with the federal social security administration and written evidence of payment of federal disability benefits in the following form: 1) a copy of a warrant for federal disability benefits; or 2) a letter from the federal social security administration confirming that the disability retired member is receiving federal disability benefits.

C. If the disability retired member has not applied for federal disability benefits, has applied and has not received a written final determination, or has received federal social security disability for a different condition than presented in the application for PERA disability, the committee shall determine the disability retired member's eligibility for continuation of payment of a state disability retirement pension. The following forms and information are required for re-evaluation for continuation of disability retirement benefits:

(1) Examining physician's statement for continuation of disability retirement pension. If disability retirement was granted based on mental incapacity, the examining physician must be either a psychologist (Ph.D.) certified in the state in which he or she practices, a psychiatrist (M.D.), or a certified nurse practitioner (CNP) licensed in the state in which he or she practices. If the disability retirement was granted based on both physical and mental incapacity, reports must be made for each kind of incapacity by the appropriate health care professionals. The examining physician's statements shall be based on an examination of the disability retired member not more than three months prior to the date of consideration of the re-evaluation;

(2) Disability retired member's statement for continuation of disability retirement pension;

(3) A list of all health care practitioners consulted who have examined or treated the disability retired member regarding the disability;

(4) Copies of any and all vocational rehabilitation reports and work performance evaluation reports made since the disability was incurred. At re-evaluation for continuation of disability retirement benefits, at least one vocational rehabilitation report by a vocational rehabilitation evaluator approved by PERA must be submitted to the committee. In addition to any other vocational rehabilitation reports, if the disability retired member was referred by PERA to the division of vocational rehabilitation ("DVR") at the time of initial approval of disability retirement benefits, a report from DVR must be submitted at re-evaluation.

(5) Any other information requested by the committee.

D. Disability retired members whose examination reports are under consideration by the committee have the right to be heard by and to present any pertinent evidence which they may have to the committee. They may also review any and all evidence that the committee may have which pertains to their case.

E. Appeals of denial of continuation of disability retirement pensions by members who are not covered by or who are not eligible to apply for federal disability benefits shall be conducted according to Section 10-11-120 NMSA 1978, and 2.80.1500 NMAC.

F. If the disability retired member fails to appeal as provided herein the committee's decision becomes final.

G. If continuation of disability retirement benefits is denied, and the applicant either fails to appeal or appeals and the denial is upheld on appeal, the applicant may not re-apply for disability retirement benefits based on the same condition(s) for at least one year after the initial denial of continuation of disability retirement benefits. [2.80.1000.50 NMAC – Rp, 2.80.1000.50, 10/10/2023]

2.80.1000.51-59 [RESERVED]

2.80.1000.60 TRIAL EMPLOYMENT:

A. A disability retired member who desires to return to employment for a trial period of not more than 120 calendar days shall first request, in writing, approval from the association not less than 30 days before the first day of work. The request for approval shall contain the following information:

(1) name, address, and telephone number of the proposed employer;

(2) job title;

(3) salary;

(4) trial employment start date.

B. If the disability retired member successfully completes a trial period of employment with an affiliated public employer, the disability retired member shall be reinstated as a PERA member and resume contributions to PERA.

[2.80.1000.60 NMAC – Rp, 2.80.1000.60, 10/10/2023]

2.80.1000.61-69 [RESERVED]

2.80.1000.70 EARNINGS FROM EMPLOYMENT:

A. Except for trial employment, a disability retired member who desires to return to employment by an employer covered by any state system shall comply with the applicable rule regarding post-retirement

employment, Subsection G of 2.80.700.10 NMAC for PERA retirees, 2.84.1100.20 NMAC for magistrate retirees or 2.83.1100.20 NMAC for judicial retirees.

B. If the amount earned from any employment, except for trial employment, is \$15,000 or more, disability benefits shall be suspended immediately and any amounts paid after that limit is reached must be reimbursed by the retiree to PERA.

C. PERA shall require all disability retired members to provide a statement of earnings from any employment during the preceding calendar year. Such statement of earnings shall include the internal revenue service tax return or other proof of earnings, acceptable to PERA, if an IRS tax return does not exist.
[2.80.1000.70 NMAC – Rp, 2.80.1000.70, 10/10/2023]

2.80.1000.71-79 [RESERVED]

2.80.1000.80 PENSION RECLASSIFICATION: When a disability retired member reaches the combined age and years of service that qualifies a member for normal retirement benefits under the coverage plan under which the disability retired member was last employed before receiving disability retirement benefits, PERA shall reclassify that person's pension from disability to normal retirement. The disability retired member shall be notified in writing by PERA of this action within 30 days of reclassification.
[2.80.1000.80 NMAC – Rp, 2.80.1000.80, 10/10/2023]

HISTORY of 2.80.1000 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: Rule 1000.00, Disability Benefits, filed on 10/4/1979; PERA Rule 1000.00, Disability Benefits, filed on 11/19/1881; PERA Rule 1000.00, Disability Benefits, filed on 11/23/1982; PERA Rule 1000.00, Disability Benefits, filed on 7/1/1987; PERA Rule 1000, Disability Benefits, filed on 10/21/1988; PERA Rule 1000, Disability Benefits, filed on 7/10/1990; PERA Rule 1000, Disability Benefits, filed on 7/1/1991; PERA Rule 1000, Disability Retirement Benefits, filed on 7/1/1993; PERA Rule 1000, Disability Retirement Benefits, filed on 12/1/1995.

History of Repealed Material:

2 NMAC 80.1000, Paragraph 60.2 - Repealed 1/15/1999.

2.80.1000 NMAC, Disability Retirement Benefits, filed 12/28/2000 was repealed, and replaced with 2.80.1000 NMAC, Disability Retirement Benefits, effective 10/10/2023.