

Internal Auditing Newsletter

Be Prepared

If there's one lesson we can all take away from 2020, it's that you never know when situations are going to change at the drop of a hat. Maybe your walk-in closet needed to change into an office. Perhaps your kitchen table suddenly turned into a classroom. Empty retail spaces transformed into testing sites overnight. Fancy, candle-lit restaurant dining rooms became take-out and delivery centers. Massive arenas, used to hosting superstar athletes and cheering crowds, turned into mass vaccination clinics.

So, what does any of that have to do with employer reporting? As we all know, these changes happen all the time in our public schools. Duties change. Job descriptions change. Hours change. Workers' employment categories change. Part-time non-contributing employees' duties change, and they become regular employees. Temporary duties turn into permanent responsibilities. Temporary employees become regular employees.

Correctly tracking hours is one of the most vital things you can do as a reporting agent. Tracking hours allows us to be prepared when changes to an employee's status occur and help us avoid scrambling to fix a problem with underreported hours after the fact.

This newsletter is dedicated to outlining the importance of tracking employee hours, regardless of employment category, for the purpose of correctly calculating their retirement benefit. Included will be statutory definitions and scenarios that outline the importance of proper tracking.

You have a role where I'm sure it probably seems like the only constant is change. Let's be prepared when change comes by correctly tracking hours every time service is rendered to make sure the correct amount of creditable service is assigned.

Analyzing Employee Hours

There are statutory definitions for various employment categories for retirement purposes that may not be consistent with the "school industry standard." Proper categorization is vital to ensuring the employee receives the correct retirement benefit!

Regardless of category, all employees must have their hours tracked every time they render service, at the time they render service, to document eligibility and ensure they receive the correct retirement benefit!

Substitute Employees: For retirement purposes, a substitute employee is (1) a person hired by a public school (or ESU) as a *temporary employee* (2) to assume the duties of a regular employee (3) due to a temporary absence of any regular employee. A substitute employee, for retirement purposes, is *not*

(1) a person hired by a public school (or ESU) as a *regular employee* (2) on an ongoing basis (3) to assume the duties of other regular employees who are temporarily absent.

Regular Employees: For retirement purposes, a regular employee is an employee hired by a public school (or ESU) or under contract, (1) in a full-time or part time position (2) who works a full-time or part-time schedule (3) on an ongoing basis (4) for 20 or more hours per week. An employee who is hired as described (1) to provide less than 20 hours per week, but (2) who provided service for an average of 20 or more hours per week (3) in any calendar months of a plan year (July to June) is also deemed a *regular employee* for all future employment with the same employer and *must begin making retirement contributions* with the next payroll period.

Analyzing Employee Hours (cont'd.)

Temporary Employees: For retirement purposes, a temporary employee is an employee hired by a public school (or ESU) who is not a regular employee and who provides service for a limited period of time, not to exceed one year, to accomplish a specific purpose of task. When the specific purpose of task is complete, the employment terminates.

Examples

Annie

Annie is hired by a school district to temporarily fill in for regular employees when they are temporarily absent. Annie does not work any extra duties for the employer and will sit by the phone and wait for a call to come to work. Annie is a *substitute employee*.

SO, DOES THE EMPLOYER NEED TO TRACK ANNIE'S HOURS?

Yes! Although the hours are not reportable and do not qualify for retirement, it is the employer's responsibility to track hours for substitute employees and for whom they substituted. This way you can provide documentation that Annie is a *substitute employee* and should Annie's status change, you have the needed documentation.

Bernie

Bernie is hired by a school district as a substitute to temporarily fill in for regular employees when they are absent. After 4 months, Bernie also picks up hours cleaning the building for 2 hours a day, three days a week, on an ongoing basis. Bernie is no longer a substitute once Bernie starts working on an ongoing basis cleaning the building.

DO BERNIE'S HOURS NEED TO BE TRACKED BY HIS EMPLOYER?

Yes! As Bernie now has a permanent position cleaning the building for 2 hours a day, Bernie is no longer a true substitute. All hours for both positions must be tracked and added together for eligibility from the start date of the permanent position, to ensure timely and proper enrollment in retirement if Bernie works an average of 20 or more hours a week in any 3 calendar months of the plan year (July 1 to June 30).

Charlie

Charlie is hired as a permanent employee to drive a bus 15 hours a week on an ongoing basis. Charlie starts to fill in for other bus drivers when they are temporarily absent.

DOES THIS EMPLOYER NEED TO TRACK HOURS FOR CHARLIE FOR THE PERMANENT POSITION?

Yep! (Are you seeing a pattern here?) The hours should be tracked (by hours, NOT bus routes) even when Charlie is not picking up additional shifts to ensure Charlie is not working an average of 20+ hours a week.

BUT DOES THIS EMPLOYER NEED TO TRACK HOURS FOR CHARLIE WHEN SHE PICKS UP THE ADDITIONAL SHIFTS, TEMPORARILY FILLING IN FOR REGULAR EMPLOYEES WHO ARE TEMPORARILY ABSENT?

Yes! These additional hours are *not* true substitute hours as Charlie has a permanent, ongoing position with this employer. These hours need to be tracked and added together with Charlie's regularly scheduled hours to ensure Charlie is not working an average of 20 or more hours a week in any 3 calendar months of a plan year (July 1 to June 30), which would require Charlie to be enrolled in the plan and begin contributions with the next payroll period.

Edgar

Edgar is hired as a regular employee working 40 hours a week. Edgar is immediately enrolled in retirement and starts contributions. After six months, Edgar begins temporarily filling in for regular employees who are temporarily absent.

DOES EDGAR'S EMPLOYER NEED TO TRACK HOURS FOR REGULAR EMPLOYMENT?

Of course! Although Edgar's hours worked will be over 1000 hours a year, it's still important to track hours. If something happens in the year where Edgar is unable to work the full year, they need to receive the correct amount of service credit for the portion of the year worked.

BUT SHOULD THE EMPLOYER TRACK EDGAR'S HOURS WHEN FILLING IN FOR REGULAR EMPLOYEES WHO WERE TEMPORARILY ABSENT?

For sure! These cannot be considered true substitute hours as Edgar is already a regular employee at this employer and contributing to retirement. These hours also need to be tracked in case something happens in the year where Edgar is unable to work the full year. This will ensure Edgar receives the correct amount of service credit for the portion of the year Edgar worked.

Why Does It Matter?

At this point it may seem like we're beating a dead horse. Let's look at an example as to why it's so important to track hours every time service is rendered at the time that services are rendered.

Let's say Francis works one extra duty hour a day with a final average salary of \$1000 per month. If Francis was a half time employee working 4 hours a day for 185 days a year, Francis would receive 740 hours of service, equaling 0.74 creditable service for the year. Over 30 years of service, that equals 22.2 years of creditable service, and Francis's benefit would be \$444 per month.

If Francis were to add 1 hour of extra duty per day, that increases hours of service to 925, equaling 0.925 creditable service for the year. Over 30 years of service, that equals 27.75 years of creditable service and would increase the Francis's benefit to \$555 per month.

And even if Francis were a full-time employee working over 1000 hours per year, that one extra hour could make a difference if Francis ended up not working the full year due to COVID19, injury, illness, etc. If the hours were to be tracked as they ought to be, Francis would be sure to receive the creditable service earned.

Wrapping Up

As you can see from these examples, tiny little changes can make big differences when calculating a retirement benefit. An extra hour a day can add up to a substantially larger benefit in the future. Tracking those hours every time services are rendered, at the time services are rendered, is the best way that reporting agents can be prepared when the changes come.

How Do You Figure?

Here's a quick guide to help you calculate if an employee worked an average of 20 or more hours a week in any 3 calendar months of a plan year:

1. Take the number of hours worked in one calendar month
2. Divide that by the actual days in the calendar month (all days, not just weekdays)
3. Multiply that by 7 (days in a week)
4. The total equals the number of average hours worked per week that month.

Example:

Let's say Darla worked 85.5 hours in April. If that were the case, how many hours did she work, on average, per week? Let's plug the numbers into our formula to figure that out.

85.5 Hours / 30 days in April X 7 = 19.95 average hours worked per week in April

Note that in this example, if Darla would have worked as little as 30 more minutes during the month of April, Darla would have gone over the 20 hours per week average mark. So as you can see, it is vitally important that hours are tracked every time services are rendered, at the time services are rendered.

Good news! We have the following new tools on our website to help track these hours:

- [Calculator Tool](#) – for monitoring employee hours for plan eligibility
- [Extra Duty Log Sheet](#) – to track hours and duties electronically
- [Sub Log Sheet](#) – to track time/hours electronically and who they sub for

Audit Excellence Award

The 2021 Audit Award goes to:

The 2021 Audit Excellence Award goes to **Education Services Unit #9**. The NPERS internal auditing staff found no errors or issues for this employer for the 2019/2020 fiscal year. We would like to commend the reporting agent and school staff for this accomplishment. Your efforts in ensuring compliance with the state statutes that govern the School Employees Retirement Plan are greatly appreciated!

IMPORTANT NOTICE:

Non-Contributing Member Forms

Effective **August 1st, 2021**, NPERS will no longer accept paper, e-mailed, or faxed Non-Contributing Member Forms for the School Plan. From that date on, ALL Non-Contributing Member Forms will need to be submitted via the Electronic Non-Con Portal accessed through your Employer Reporting account. If you have not already registered to have access to the Electronic Non-Con Portal, please submit a new [Employer Contact/Reporting Agent NPERS3605 form](#) to your Employer Reporting contact Tony Munson, tony.munson@nebraska.gov, and review the step-by-step guide that is available to you on page 8-6 of the School Manual for Employer Contacts found [HERE](#), entitled Submitting An Electronic Non-Contributing Member Form. If you would like to learn more about the Electronic Non-Con Process, you may attend one of our [2021 Employer Reporting Workshops](#), as this will be one of the topics we are covering this year.

2021

Legislative Extra

2021 Legislation

Understanding that Nebraska legislation drives changes to your retirement plan is vital to remaining informed and up-to-date for your retirement planning. We wanted to showcase some of the bills that were passed during this session of the 107th legislature that may impact the School, Judges, and State Patrol retirement plans, or Nebraska retirees, in general. If you wish to see the bills, in their entirety, there is a link under each one that will take you to the legislative page for that specific bill.

LB 17 - JUDGES

[LB 17](#) increases a dedicated court fee to provide additional revenue into the Judges' plan. This fee will increase from \$6 to \$8 on July 1, 2021, until it reaches \$12 July 1, 2025.

In addition, it adds an annual contribution from the State of Nebraska to the Judges' plan of 5% percent of total compensation of the members of the Judges' plan beginning July 1, 2023. This rate cannot rise above 5% and can be reduced or eliminated by the Legislature.

It adopted a shorter amortization period to reflect recent changes to actuarial standards. Beginning July 1, 2021, closed 25-year amortization periods will apply, rather than the older 30-year amortization period, for the Judges, State Patrol, and School retirement plans.

LB145, LB146, LB147, & LB582 - SCHOOL

These bills, amongst other things, direct the transfer of management of the OSERS (Omaha School Employees Retirement System) from the Board of Trustees to NPERS (Nebraska Public Employees Retirement Systems), and the tasks associated with the transfer of management.

[LB 145](#) requires the completion of a compliance audit by November 15, 2021, and the first annual audit by the state auditor done by July 1, 2022.

[LB 146](#) clarifies membership eligibility in the Omaha Public School (OPS) plan and redefines termination of employment. Specifically, it sets forth that voluntary and/or substitute service is allowed on an intermittent basis, defined as no more than eight service days during a calendar month, during the 180-day period following termination of employment.

2021 LEGISLATION CONT'D.

[LB 147](#) transfers duties and responsibilities for management of the OSERS to the PERB/NPERS effective September 1, 2024. The bill specifies that OPS remains solely liable for the retirement system's funding obligations and will cover all costs for the management transfer.

[LB 582](#) reinstates the Board of Education as the primary party responsible for the administration of the OSERS plan during the time it takes to transfer the management of the OSERS Board of Trustees to the PERB/NPERS, making the Board of Trustees a subset of that Board of Education, effective July 1, 2021.

LB 209 - DEFERRED COMPENSATION PLAN (DCP)

[LB 209](#), as amended, does not impact the Deferred Compensation Plan administered by NPERS.

LB 64 - RETIREES

[LB 64](#) changes how Social Security benefits are taxed in the state of Nebraska. The changes allow federal adjusted gross income (AGI) to be reduced by a percentage of the Social Security benefits received. The percentages change would be based on marital status and AGI. The pertinent percentages are:

- 5% for taxable years beginning or deemed to begin on or after 1/1/2021, and before 1/1/2022
- 20% for taxable years beginning or deemed to begin on or after 1/1/2022, and before 1/1/2023
- 30% for taxable years beginning or deemed to begin on or after 1/1/2023, and before 1/1/2024
- 40% for taxable years beginning or deemed to begin on or after 1/1/2024, and before 1/1/2025

- 50% for taxable years beginning or deemed to begin on or after 1/1/2025, and before 1/1/2026

Amendment 1360, filed May 11, 2021, adds a legislative intent clause that states the intent to exclude Social Security benefits from taxation to:

- 60% for taxable years beginning or deemed to begin on or after 1/1/2026
- 70% for taxable years beginning or deemed to begin on or after 1/1/2027
- 80% for taxable years beginning or deemed to begin on or after 1/1/2028
- 90% for taxable years beginning or deemed to begin on or after 1/1/2029
- 100% for taxable years beginning or deemed to begin on or after 1/1/2030

LB 386 - JUDGES

[LB 386](#) increased salaries for Nebraska Supreme Court Justices thereby increasing the salaries for district, juvenile, appellate, and workers' Compensation Court judges, since their salaries are a percentage of the Supreme Court Justices' salaries.

LB 387 - RETIREES

[LB 387](#) excludes military retirement benefit payments from state income tax.

LB 428 - SCHOOL

[LB 428](#) requires youth rehabilitation and treatment centers to establish educational standards to ensure residents have access to educational opportunities equivalent to other Nebraska schools. This may increase the number of employees at these facilities that participate in the School plan.

FAQ About LB 147's Changes to the Termination of Employment Rules

With the recent passage of [LB 147](#) in the Unicameral there are significant changes to what voluntary and/or substitute service can be provided by a School plan member during the 180-day period after termination from employment. With the knowledge that our School plan members will have questions regarding what is now acceptable, please reference our [Frequently Asked Questions \(FAQ\) about LB 147's Changes to the Termination of Employment Rules](#). After reviewing the FAQ document, if questions still remain regarding how this will affect the voluntary and/or substitute service provided after termination without violating reemployment rules, contact Tony Munson, your Employer Reporting contact.

FREQUENTLY ASKED QUESTIONS

1. WHAT IS LB 147?

[LB 147](#) is a bill passed by the Nebraska Legislature in 2021. Among other things, it set a limit on the total number of days of intermittent unpaid voluntary service and/or intermittent substitute service a School plan member may work during the 180 days following termination of employment.

2. HOW DID LB 147 CHANGE THE TERMINATION OF EMPLOYMENT AND DISTRIBUTION FROM RETIREMENT RULES?

LB 147 did not change several important rules.

- (a) A member may not take a distribution from retirement if the member prearranged a return to work with any employer covered by the School plan.
- (b) A member may not take a distribution from retirement unless the member terminates employment.
- (c) A member does not terminate employment for retirement purposes if the member provides service to any employer participating in the School plan within 180 calendar days after the member's termination date unless the service is limited voluntary service provided on an intermittent basis and/or limited substitute service provided on an intermittent basis (hereinafter collectively referred to as "voluntary and/or substitute service").

LB 147 changed the termination rules by defining "intermittent basis" and "day of service."

3. WHAT DOES "INTERMITTENT BASIS" MEAN?

"Intermittent basis" means no more than 8 days in a calendar month of voluntary and/or substitute service provided on a day-to-day basis (no prearrangement).

4. WHAT DOES "DAY OF SERVICE" MEAN?

"Day of service" means any length of voluntary and/or substitute service provided during a single calendar day (whether that is 5 minutes or 8 hours of service).

5. WHEN DO LB 147'S RULES TAKE EFFECT?

The law became effective May 27, 2021. This means members and employers must immediately begin limiting, tracking, and documenting, voluntary and/or substitute service performed by School plan members who terminated within the past 180 calendar days.

6. MAY A MEMBER WORK 8 DAYS OF VOLUNTARY SERVICE AT AN EMPLOYER AND AN ADDITIONAL 8 DAYS OF SUBSTITUTE SERVICE, FOR A TOTAL OF 16 DAYS OF SERVICE, IN A CALENDAR MONTH DURING THE 180 DAYS AFTER TERMINATION?

NO. A member is limited to a combined total of 8 days of voluntary and/or substitute service in each calendar month across all employers covered by the School plan, regardless of whether it is:

- 8 days of voluntary service,
- 8 days of substitute service, and/or
- A combination of voluntary service and/or substitute service totaling 8 days (such as, 4 days of voluntary service and 4 days of substitute service, or 1 day of voluntary service and 7 days of substitute service).

7. MAY A MEMBER WORK 8 DAYS OF VOLUNTARY AND/OR SUBSTITUTE SERVICE AT SCHOOL DISTRICT 1 AND ANOTHER 8 DAYS OF VOLUNTARY AND/OR SUBSTITUTE SERVICE AT SCHOOL DISTRICT 2 IN THE SAME CALENDAR MONTH?

NO. A member is limited to a combined total of 8 days of voluntary and/or substitute service in each calendar month across all employers covered by the School plan.

8. MAY A MEMBER AND EMPLOYER AGREE TO HAVE THE MEMBER RETURN TO TRAIN THE MEMBER'S REPLACEMENT?

NO. This is a prearranged return to work. Further, training a replacement is regular service, not substitute service. Substitute service is defined as temporarily backfilling for a permanent employee who is temporarily absent. In this case, the returning member is not backfilling for anyone.

9. MAY A MEMBER WORK 8 DAYS OF REFEREEING, OFFICIATING, OR COACHING PAID BY AN EMPLOYER COVERED BY THE SCHOOL PLAN DURING EACH CALENDAR MONTH OF THE 180 DAYS FOLLOWING TERMINATION?

NO. Refereeing, officiating, and coaching are considered regular employment for retirement purposes. If these services are provided during the 180 days following termination, then the member has not incurred a bona fide separation of service.

Additionally, a bona fide termination of service does not occur if the employer and member prearrange the member's return as a referee, official, or coach before the member terminates even if the prearranged return time is outside the 180-day period.

FAQS CONT'D.

10. WHAT HAPPENS IF A MEMBER DOES NOT FOLLOW THESE RULES?

If NPERS determines a bona fide termination did not occur, NPERS is required by law to:

- (a) Collect missed contributions from the member (with applicable interest),
- (b) Collect missed contributions from the employer (with applicable interest),
- (c) Have hours of service and compensation reported for the member by the employer, and
- (d) Collect back any distributions made to the member (with applicable interest).

11. THIS SOUNDS LIKE A LOT OF WORK. HOW WILL THESE DAYS BE MONITORED?

NPERS is preparing sample logs members and employers can use to document the service performed during the 180 days after termination. The logs are designed to have the member enter their service, have the employer(s) verify the service (preferably by signing and dating the log), and have both the member and employer keep a copy of the log so they can produce it when asked to document service after termination.

Employers may develop their own logs. However, the logs should, at a minimum, include all of the information shown on NPERS' sample logs.

LB 147 gave NPERS authority to hire another auditor. Our Internal Audit Team is incorporating new testing protocols as part of their auditing process, including requiring employers to produce documentation showing voluntary and/or substitute service during the 180 days after termination. The logs will be cross-checked against payroll and other records to ensure accurate reporting.

