

# INTERNAL AUDITING NEWSLETTER

JUNE 2022

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## *It's Employer Reporting Workshop Season*

The school year is over and that means its time once again for the NPERS employer reporting workshops. These workshops cover topics such as: changes in laws, forms and procedures, and reporting through the Nebraska Public Retirement Information System (NPRIS).

This year, we're offering four in-person workshops and one online webinar workshop. We're excited to be bringing both representatives from our accounting team as well as a member of our internal audit team, who will be joining us again this year after a successful first season in 2021. Seating is assigned on a

first come, first served basis for the in-person events, so sending in a registration at your earliest convenience is encouraged. The 2022 registration brochure can be found [here](#). It provides more information on the workshops and how to register. We hope to see you in July!

### UPCOMING EMPLOYER REPORTING WORKSHOPS

| <i>DATE</i> | <i>LOCATION</i>   |
|-------------|---|
| 7/12/2022   | Norfolk, NECC Lifelong Learning Center, 701 E. Benjamin Ave.  |
| 7/13/2022   | La Vista, Educational Service Unit #3, 6949 S. 110th St.      |
| 7/14/2022   | Kearney, Educational Service Unit #10, 76 Plaza Blvd.         |
| 7/19/2022   | Lincoln, SCC Continuing Education Center, 301 S. 68th St. Pl. |
| 7/20/2022   | Online Workshop on WebEx                                      |

*The registration deadline for the in-person workshops is July 8, 2022.*

*The registration deadline for the online workshop is July 19, 2022.*

To register for one of these upcoming workshops, please follow the steps listed on the [registration brochure](#).

# So You've Terminated Employment...

## How Does LB 147 Apply?



Since LB 147 became effective June 1, 2021, a focus has been placed on the exact rules employers and members must follow after termination. The law further defines the rules for a bona fide termination and days of service allowable. With the new law, there has been a lot of confusion over how to treat members who have terminated from their regular and ongoing positions. Let's take a look at how the new guideline applies to your school district/ESU.

First, let's look at the changes. Before we received our new guidelines, the number of days retirees or recently terminated employees could work as subs during the 180-day separation period was undefined. Thanks to LB 147, current law sets a number of days that allows retirees and recently terminated employees to work a significant amount of time as a sub, and still have a termination of employment so they can receive their distribution.

The important thing to note is that LB 147 rules apply to **ALL** terminations of employment, not just retirements. Remember, people who haven't yet reached retirement age can still take a refund or rollover from retirement.

Forget the "Once In, Always In" phraseology. You need to classify an employee as "regular", "substitute" or "temporary," for retirement purposes to determine what rules apply.

### Let's review the steps for a bona fide termination:

1. Intent must be determined. Is the member terminating one permanent position and starting a different permanent position where they will continue contributions OR is the member terminating their permanent position completely and will only render substitute service?

2. If the member is simply changing their job classification from one permanent position to another, termination with that employer did not occur. Contributions should continue and there should be documentation to support the new permanent employment (even if it's an on-call status).
3. If the member is terminating their permanent position only to return as a substitute or volunteer, a separation of service must occur. The employer must submit a non-contributing member form, stop reporting service credit and compensation, and stop contributions on all substitute service.
4. Confirm that the member will not be employed at any other employer covered by the School Plan in any capacity other than a substitute or volunteer.
5. Notify the member that they must inform your school district/ESU if they render **any** service at another employer covered by the School Plan.
6. The member must incur at least 180 days of separation from their termination date of their regular and ongoing position with **NO** prearranged return to service.
7. The member must not render more than 8 calendar days of substitute and/or volunteer service in a calendar month during this separation period at **ANY** employer under the School Plan.

8. Employer and member must track **ALL** substitute and volunteer service in this 180-day separation period.
9. **If a violation occurs, both the member and the employer must correct the violation.**
10. If a violation occurs, the member must incur a new 180 days of separation.

### Substitute Employee:

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 cannot fill in for a vacant position or be hired as a regular employee as a permanent/full-time substitute.

### Regular Employee:

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 provides service for an average of 20 or more hours per week (3) in any 3 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 beginning the next payroll period.

### When does my 180-day separation period start?

The last day service is rendered. The exception to this is when a contracted member terminates service prior to the end of the contract period, but receives compensation for a full contracted amount, the member will not be deemed to have terminated services until the end of the contract period. This could result in a later termination date from their last physical day services were rendered.

### Why is this change good?

The schools are short on substitutes and believe that retirees and recently terminated employees are great substitutes.

## EXAMPLES:

*Sally terminated her permanent position on May 18. She plans on being available for substitute service after termination. Her 180-day separation period would be from May 18 to November 14.*

*What happens if...*

### EXAMPLE 1:

***The employer continues retirement contributions on all substitute service rendered after termination and Sally does not go over the 8 days of substitute service in a calendar month over the 180-day period?***

The employer should have submitted a Non-Contributing Member form, stopped contributions and reporting of service hours and compensation. Adjustments will have to be made to take out all ineligible service credit, compensation, and excess contributions.

### EXAMPLE 2:

***The employer continues retirement contributions on all substitute service rendered after termination and Sally renders 9 days of substitute service in September?***

The employer should have stopped contributions and reporting of service hours and compensation initially. As there was a violation, the 180-day separation period must restart from the following day after the violation. The employer must submit a Non-Contributing Member form, discontinue contributions and reporting service credit and compensation.

### EXAMPLE 3:

***The employer submits a Non-Contributing Member form and discontinues contributions. Sally renders 5 days of substitute service at this school and 5 days at another employer in the School Plan in September?***

As there was a violation (5 days + 5 days = 10 days of services rendered), the employer is responsible for making up contributions from termination to the violation. An adjustment form will need to be submitted adding the service credit, compensation, and contributions. The 180-day separation period must restart from the following day after the violation.

**EXAMPLE 4:**

***The employer submits a Non-Contributing Member form and discontinues contributions. Sally applies for and takes a distribution but renders 10 days of substitute service in September?***

As there was a violation (10 days of services were rendered), the employer is responsible for making up contributions from termination to the violation. The member must repay any distributions received (with applicable interest). The 180-day separation period must restart.

**EXAMPLE 5:**

***The employer submits a Non-Contributing Member form and discontinues contributions. Sally does not render more than 8 days of substitute service during the 180-day separation period. After the 180-day separation period, Sally continues with her seasonal coaching assignment that she had when she was working her regular employment?***

Refereeing, officiation, and coaching are considered regular employment for retirement purposes. Temporary or seasonal suspension of service that does not permanently terminate employment, is not a termination for retirement purposes, even if the seasonal suspension is for more than 180 days. NPERS reviews each termination of employment on a case-by-case basis after evaluating the unique facts and circumstances. Returning to the regular coaching seasonal assignment could be seen as a prearrangement of service and a violation.

**EXAMPLE 6:**

***The employer submits a Non-Contributing Member form and discontinues contributions. Sally starts part-time regular employment at another employer under the School Plan in August but does not meet eligibility at the new employer. Sally takes a distribution for her NPERS account?***

Because Sally started regular employment at another employer under the School Plan, she did not have a bona fide termination in order to receive a distribution. Sally must repay any distributions received (plus applicable interest). Sally must decide if she wants to restart her 180-day separation period or continue her regular employment at the new employer.

**EXTRA DUTY:**

***NPERS strives to work with all employers covered by the School Plan to ensure extra duty wages/hours are being timely and accurately tracked and reported when worked so we can more easily pay our plan members the retirement benefits to which they are entitled. We hope school districts and the local educator unions will also work towards paying base salary in a similar manner. However, given how many, but not all, master negotiated agreements are worded, we plan on continuing to allow educators' base salaries to be reported on a yearly straight-line basis if that is the wording in the master negotiated agreements.***

We know there are still questions about extra duty and how/when to report it. NPERS has offered two options listed below, but it is important to remember that when it comes to an audit, we will be checking to see what your documentation says. Make sure the documents for your school or ESU align with how you are reporting extra duty wages and hours.

**Extra duty wages should be reported when they are earned, whether or not it is performed during the season, school year, or year-round. Extra duty hours should be reported when they are worked, whether it is after the regular work day, in the evenings, or in the summer months (do not report extra duty hours performed during the regular work day as to eliminate any double reporting of hours).**

**Our standard guidance for all on how to proceed with adhering to this is the following:**

- Consider changing master negotiated agreements to pay extra duty wages when earned to allow for a payroll change, OR
- Submit an adjustment report at the end of the contract year to move the extra duty wages/hours to the month(s) in which they were earned/worked. For more information on submitting an adjustment report, please refer to the [Employer Reporting Manual](#). NPERS Employer Reporting Agents can be reached at: 402-471-2053 Ext. 3.

# REMINDERS...

## CITIZENSHIP

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*Determining eligibility for the NPERS School Plan is not only one of the most important tasks of the employer reporting agent, but it can also be one of the most confusing. Often, an already complicated step is made more difficult when the issue of citizenship is part of the equation.*

### **Here's some guidance to help you determine citizen eligibility:**

An employee must be a United States (US) citizen or a qualified alien to be eligible to participate in the retirement plan. Qualified aliens include individuals whose USCIS I-94, I-551, I-688B, I-766, court order, or other USCIS documentation, as applicable, show the individual is:

1. A lawful permanent resident,
2. An asylee [*under 8 U.S.C. § 1158*]
3. A refugee [*under 8 U.S.C. § 1157*]
4. An alien paroled into the US for a period of at least 1 year [*under 8 U.S.C. § 1182(d)(5)*]
5. An alien whose deportation is being withheld under a court order [*under 8 U.S.C. §§ 1253 or 1231(b)(3)*]
6. An alien granted conditional entry [*under section 8 U.S.C. § 1153(a)(7)*]
7. An alien who is Cuban or Haitian entrant [*as defined in § 501(3) of the Refugee Education Assistance Act of 1980*]

The member and/or employer must provide NPERS documentation establishing the employee's status. NPERS will review the documentation to verify the employee's eligibility.

**NOTE: This guidance is subject to change based on changes in law or regulation, an AG's opinion, a court order, a PERB decision, a NPERS Director decision, etc.**

## MILITARY SERVICE

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This month, NPERS produced the [Military Service Guidebook for Plan Members & Reporting Agents](#) that provides instructions for when a plan member is called into military service. It's available on the School Plan's [Employer Reports](#) page.

## NEBRASKA PUBLIC EMPLOYEES RETIREMENT SYSTEMS

### CONTACT US

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