

# ARKANSAS REGISTER

## Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

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For Office

Use Only:

Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency Arkansas Teacher Retirement System

Department N/A

Contact Laura Gilson E-mail laurag@artsr.gov Phone 501-682-1266

Statutory Authority for Promulgating Rules 24-7-305 (b)(1)

**Rule Title:** Rule 9-4 Disability Retirement

Intended Effective Date

(Check One)

Date

☐ Emergency (ACA 25-15-204)

Legal Notice Published ..... 9/28/2017

☒ 10 Days After Filing (ACA 25-15-204)

Final Date for Public Comment ..... 10/27/2017

☐ Other \_\_\_\_\_  
(Must be more than 10 days after filing date.)

Reviewed by Legislative Council ..... 12/12/2017

Adopted by State Agency ..... 02/05/2018

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Laura Gilson

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02/06/2018

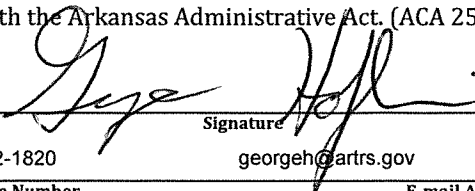
Contact Person

E-mail Address

Date

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

  
Signature

501-682-1820

georgeh@artsr.gov

Phone Number

E-mail Address

Executive Director

Title

February 6, 2018

Date

## **RULE 9-4**

### **DISABILITY RETIREMENT**

A.C.A. § 24-7-704

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#### **I. RULES**

A. Disability retirement benefits shall commence the month the member files a written application with ATRS if at the time the member files the application the member is no longer employed by an ATRS-covered employer, if the member is otherwise eligible under A.C.A. § 24-7-704 and these Rules, and if after the Medical Committee determines a disability exists for the member.

B. i. Termination of active membership for disability retirement benefits shall be the last date of any employer payment to the member due to the end of the employee/employer relationship.

ii. The member is considered active if they are using earned sick leave, Family Medical Leave Act (FMLA) leave, annual leave and catastrophic leave. Worker's compensation, which may or may not include the use of leave granted by the employer, is not considered leave by which a member is considered active, nor does it extend the date of active membership.

C. i. The following criteria and deadlines, applied to the individual member circumstances, affect eligibility for continued disability payments for a member who has been approved by ATRS for disability retirement, based upon the date of the first ATRS disability retirement check. The deadlines may be extended under the provisions of this Rule and A.C.A. § 24-7-704.

a. If the first disability retirement check to the member is dated before July 1, 2015, and the member is under fifty-seven (57) years before July 1, 2015, the member shall submit to ATRS a Social Security Administration (SSA) determination letter dated before July 1, 2018, that finds that the member is disabled. In the absence of a SSA determination letter, the member's disability retirement payments will cease on June 30, 2018.

b. If the first disability retirement check to the member is dated July 1, 2015, or after, and the member is under fifty-seven (57) years on the date of the first disability retirement check, member shall submit to ATRS a Social Security Administration (SSA) determination letter

dated within thirty-six (36) months from the date of the first disability retirement check that finds that the member is disabled. In the absence of a SSA determination letter, the member's disability retirement payments will cease thirty-six (36) months from the date of the first disability retirement check. For example:

- Date of 1<sup>st</sup> ATRS disability retirement check: January 2017, then
- Social Security Administration determination letter finding dated by: December 2019; or
- Date of last disability retirement check if no SSA determination letter: December 2019

ii. ATRS will grant an extension to the above deadlines if the member can provide documentation to ATRS that:

- a. The SSA disability claim was properly filed and remained active for at least twenty-four (24) months prior to the deadline above; and
- b. An active SSA disability claim is still under review by the SSA with no voluntary dismissal or withdrawal.

iii. Once the member who is receiving disability retirement reaches 60 years of age, the member thereafter will receive regular retirement benefits as if voluntarily retired under A.C.A. § 24-7-701 and no Social Security Administration determination letter is required.

iv. A member may apply for an additional review of a disability claim within three (3) months of disability benefits ceasing due to a denial letter and finding by the Social Security Administration that the member is not disabled. The member's disability claim review will follow the procedure set forth in A.C.A. § 24-7-704.

D. i. A member may be employed by an ATRS-covered employer and also receive ATRS disability retirement from ATRS if the member meets the specific criteria in A.C.A. § 24-7-704 for providing services to a covered employer. There are two (2) distinct employment situations outlined below. See also A.C.A. § 24-7-701 which prohibits a member from receiving disability retirement if the member performs work for an ATRS covered employer as an independent contractor in certain circumstances. The two (2) distinct employment situations for simultaneous employment with a ATRS-covered employer and receipt of an ATRS disability retirement are:

- a. The member may be employed in a position that is less than forty (40) days of actual service during a fiscal year; or

b. The member may be employed in a position that is forty (40) or more days of actual service during a fiscal year but in a substantially different position, where the job requirements and work duties are also substantially different from the position from which they received disability retirement and the yearly salary is less than the final average salary used to compute the member's disability benefit; and

c. Both of the employment situations described in this section may require the ATRS-covered employer to request and receive a waiver from ATRS. Before accepting any employment described here and forfeiting the disability retirement, the disability retiree and the ATRS-covered employer should review A.C.A. § 24-7-704 and request the waiver accordingly.

ii. If a member is approved for disability retirement but continues to work for the covered employer (directly or indirectly), the member must terminate employment with the covered employer or indirect employer by the proposed disability retirement effective date or up to two (2) full calendar months after the Medical Committee meets if the member is wrapping up final work for which the member is paid to receive disability retirement.

iii. If the member does not terminate employment under the Rules and A.C.A. § 24-7-502, the application is rescinded and the member can reapply.

iv. A member may choose to return to regular employment with an ATRS-covered employer after receiving ATRS disability retirement and, after return to employment, forego their disability retirement. In this instance, the member would no longer receive disability retirement and would be an active member. See A.C.A. § 24-7-738 for specific criteria that applies under the law (Act 549 of 2017).

E. If the application for disability retirement benefits is denied and the member elects and otherwise qualifies for voluntary retirement, the effective date for retirement shall be determined by the date the disability retirement application is filed.

F. If the member dies after the disability application is received by ATRS but before disability retirement is approved, then ATRS shall consider the member to have died in "active" service and survivor benefits under A.C.A. § 24-7-710 shall be paid, unless the member has designated an alternative residual beneficiary or beneficiaries.

G. The annuity formula for computing disability retirement benefits is the same as for voluntary age and service retirement.

H. i. For all disability retirement applications approved by the Medical Committee after May 31, 2011, in accordance with rule making authority granted to the ATRS Board under A.C.A. § 24-7-706(a)(3), the Board shall allow a disability retiree at the time of retirement to designate an Option A or Option B beneficiary. Option C beneficiaries shall not be available to disability retirees.

ii. If a disability retiree designates an Option A or Option B spouse beneficiary, and the disability retiree dies before reaching age 60, then the same rules that apply to active member option beneficiaries shall apply to the disability Option A and Option B beneficiaries under A.C.A. § 24-7-710(b).

iii. If a disability retiree designates an Option A or Option B incapacitated child beneficiary, and the disability retiree dies before reaching age 60, then the same rules that apply to an active member surviving child shall apply to the disability Option A or Option B beneficiary under A.C.A. § 24-7-710(c) until the disability retiree would have turned age 60, then the Option A or Option B incapacitated child beneficiary shall receive the greater of the surviving child annuity under A.C.A. § 24-7-710(c) or the Option A spouse annuity under A.C.A. § 24-7-710(a).

I. Disability retirants who are disapproved for further disability annuities due to a medical examination reviewed by the Medical Committee shall be removed from ATRS' retirant payroll the earlier of six months following the review date or the first of the month following the return to covered employment.

J. If a member applies for disability retirement and is disapproved, he/she has the right to file a new disability application submitting additional information for review as long as the member remains active.

## HISTORY

**Amended:** June 15, 2004  
July 18, 2005  
June 19, 2007  
December 18, 2009  
July 1, 2011  
**Adopted:** August 8, 2011  
**Effective:** November 11, 2011  
**Approved by Board:** **February 6, 2012**  
**Amended:** April 18, 2012  
**Effective:** May 29, 2012  
**Approved by Board:** **July 26, 2013**  
**Amended:** October 9, 2013  
**Effective:** November 8, 2013  
**Approved by Board:** **October 5, 2015**  
**Amended:** February 1, 2016  
**Effective:** February 10, 2016  
**Approved by Board:** February 5, 2018  
**Effective:**

## FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT ATRS

DIVISION Legal

PERSON COMPLETING THIS STATEMENT Laura Gilson

TELEPHONE 501-682-1266 FAX \_\_\_\_\_ EMAIL: laurag@artrs.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Rule 9-4 Disability Retirement

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☒
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes ☐ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☐ No ☐

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;

\_\_\_\_\_

- (b) The reason for adoption of the more costly rule;

\_\_\_\_\_

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

\_\_\_\_\_

- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

\_\_\_\_\_

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

**Current Fiscal Year**

General Revenue	_____
Federal Funds	_____
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	_____

**Next Fiscal Year**

General Revenue	_____
Federal Funds	_____
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	_____

(b) What is the additional cost of the state rule?

**Current Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

**Current Fiscal Year**

\$ \_\_\_\_\_

**Next Fiscal Year**

\$ \_\_\_\_\_ N/A

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

**Current Fiscal Year**

\$ \_\_\_\_\_

**Next Fiscal Year**

\$ \_\_\_\_\_ N/A

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☐

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;



# **Summary of Proposed Rule Change**

for  
Arkansas Teacher Retirement System

## **Rule 9-4 Disability Retirement**

### **Substantive changes**

This rule change is necessary after the passage of Act 549 of 2017 to give disability retirees flexibility and to encourage and enable them to return to work and this be off disability retirement.

The rule streamlines the ATRS disability process and allows disability retirees to return to work on a full-time or part-time basis to assist schools in meeting critical staffing needs. It also safeguards the disability retiree benefit if they attempt to go back to work full-time, but find that their disability prevents them from doing so. Furthermore, it helps prevent a disability retiree's loss of ATRS disability benefits by allowing a review by the ATRS' medical committee within three (3) months of disability benefits ceasing due to lack of a favorable disability determination letter from the Social Security Administration.

In addition, the rule also allows all reciprocal service credit with another Arkansas public retirement system to be counted for vesting purposes for disability retirement.

### **Non-substantive changes**

Minor modifications to improve clarity and consistency to language and numbering in the rule.