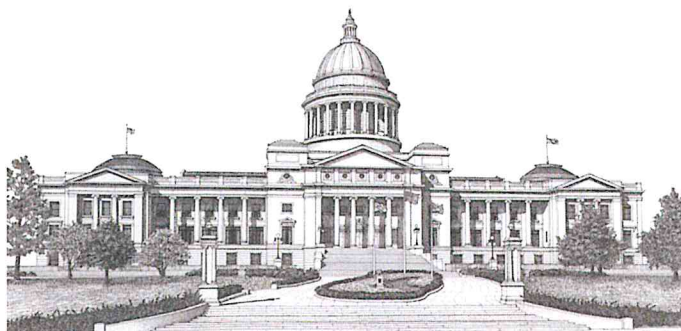


ARKANSAS REGISTER

Transmittal Sheet

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



Secretary of State

John Thurston

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency ARKANSAS TEACHER RETIREMENT SYSTEM

Department ADMINISTRATION

Contact Clint Rhoden E-mail clintr@artsr.gov Phone 501-588-4367

Statutory Authority for Promulgating Rules A.C.A. §24-7-305

Rule Title: Rule 7: REPORTING AND ELIGIBILITY

Intended Effective Date
(Check One)

☐ Emergency (ACA 25-15-204)

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

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

Legal Notice Published

Final Date for Public Comment

Reviewed by Legislative Council

Adopted by State Agency

Date

02-06-2020

03-06-2020

05-14-2020

05-15-2020

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

Tammy Porter

tammyp@artsr.gov

05-18-2020

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

501-588-4367

clintr@artsr.gov

Phone Number

E-mail Address

EXECUTIVE DIRECTOR

Title

MAY 18, 2020

Date

ATRS Rule 7

REPORTING AND ELIGIBILITY

A.C.A. §§ 24-7-103, 24-7-202, 24-7-401, 24-7-406, 24-7-411,
24-7-601 — 24-7-611, 24-7-705, 24-7-708, 24-7-736, 24-7-1303, 24-2-701

I. Calculation of Final Average Salary

A. Definitions

1. "ATRS Employer" means an employer who participates in the Arkansas Teacher Retirement System whose employees are eligible for membership under A.C.A. § 24-7-501 or other applicable law.
2. "Full service year" means employment by a covered employer for one hundred sixty (160) days or more in a fiscal year.
3. "Partial service year" means less than a full service year of credited service in a fiscal year.

B. Salary Limitations

1. To calculate final average salary, ATRS will include salary received during a fiscal year from all ATRS employers.
2. Partial service years are excluded from the calculation of final average salary unless the partial service year is higher than a full service year, or if the member has less than the required numbers of years to calculate a final average salary.
3. Regardless of any provision in a State statute, rule, or regulation to the contrary, salary or other compensation paid which exceeds the limitations set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. The limitation on compensation for "eligible employees" shall not be less than the amount allowed under ATRS in effect on July 1, 1993. For this purpose, an "eligible employee" is an individual who was a member of ATRS before the first plan year beginning after December 31, 1995.
4. Certain remuneration paid by an ATRS employer to ATRS members shall not be treated as salary in the calculation of ATRS benefits although it would otherwise meet the definition of salary.
 - a. Paid or unpaid accrued, unused sick leave shall not be credited as service unless the member dies while an active member, in which case it shall be credited as service in the fiscal year of the member's death.
 - b. Any remuneration or salary paid as an incentive payment, bonus,

separation payment, additional salary or a special payment made in return for or in consideration of an ATRS member's agreement to separate from the ATRS employer, retire, or not renew the member's contract with the ATRS employer shall not be treated as salary by ATRS.

i. This salary limitation applies if:

1. The ATRS employer's offer applies to two (2) or more ATRS members;
2. The ATRS employer offers a voluntary early retirement incentive plan, staff reduction plan, or buyout plan to ATRS members to retire or separate employment from the ATRS employer as a condition of participating in the plan;
3. The ATRS member voluntarily participates in the program in return for the additional remuneration or salary.

ii. This salary limitation does not apply if:

1. It is payment to purchase service credit or additional salary as a part of a separation agreement and as a result of the resolution of a claim of wrongful termination; or
2. It is payment made for accumulated, unused sick leave in excess of the number of sick days that a member's employer allows them to carry forward, and that are accrued during years immediately prior to termination of covered employment.

- c. ATRS employers shall not withhold member contributions or pay employer contributions from the remuneration paid that is subject to the salary limitation established by this Rule.
 - d. Any ATRS employer who offers an early retirement plan, separation plan, or contract non-renewal plan, that pays remuneration subject to the salary limitation shall notify ATRS prior to any payment under such plan.
 - e. At the request of an ATRS employer, ATRS shall review any potential plan or payment that could be subject to this salary limitation and provide guidance as to whether the salary limitation would apply.
 - f. Any decision by ATRS staff on a particular plan or payment may be appealed to the ATRS Board using the ATRS appeal procedure as set forth in Rule 13.
5. If a conflict exists between ATRS's calculation of final average salary and the ATRS employer's laws or policies relating to the compensation of final average salary ATRS's laws and rules shall control.

6. Effective July 1, 2018, ATRS shall calculate final average salary using the five (5) years in which the member received the highest salary from an ATRS employer subject to the foregoing limitations.
 - a. For active members as of July 1, 2018 who have three (3) or more full service years, ATRS shall determine the benchmark final average salary using the highest salary from a member's three (3) separate full service years through fiscal year 2018, as if the member were retiring or entering T-DROP as of June 30, 2018.
 - b. If, at the time of actual retirement, a five (5) year calculation of the final average salary of a member who qualifies for the three (3) year calculation is higher, the five (5) year calculation will be used.
 - c. The three (3) year final average salary calculation above is a permanent benchmark for comparison to a five (5) year average salary calculation,
7. The benchmark final average salary is not provided to inactive ATRS members unless proof is provided to ATRS indicating the member was active in a reciprocal or alternative system in fiscal year 2018.
8. The final average salary for members with reciprocal service shall be the highest salary years credited by either the ATRS employer or the reciprocal system under A.C.A. § 24-2-402.
9. For members who are retiring and who are employed in agencies or other institutions that use the state 26-week payroll, employers should report to ATRS the salary, contributions, and actual days worked through the current year payroll period. Contributions should not be withheld on any salary earned after the close of the current year's payroll, nor should any salary or days of service be reported for that period.
10. For members who are retiring and who are employed by employers using a fiscal year ending June 30, employers should report to ATRS the salary contributions, and actual days worked through the current fiscal years ending June 30. Contributions should not be withheld on any salary earned after the end of the current fiscal year, nor should any salary or days of service be reported for that period.
11. For retiring members, employee contributions remitted on salary paid after the end of the current fiscal year or current year payroll period, whichever applied, will be refunded as promptly as possible.

II. Proof of Service Credit

- A. The Board shall determine the number of years and fractions thereof for paid service credited to members of ATRS. No fewer than one hundred sixty

(160) days of employee service in a fiscal year (ending June 30) shall be credited as a full service year.

- B. Members employed less than forty (40) days during a fiscal year are not eligible for credit or benefits in ATRS for that fiscal year; however, beginning in the 2011-2012 fiscal year, a contributory member's service days are carried forward from previous fiscal years until at least forty (40) days of service are earned by the member. When a contributory member obtains at least forty (40) days of service in a fiscal year, whether using regular service days or accumulated service days, or both, the member begins the next fiscal year with no days of service carried forward.
- C. For members with service after July 1, 1971, actual service credited to a member's account shall be determined in accordance with the following table:

Number of Days Worked in a Fiscal Year	Service Credit Earned
1 –39	None
40-79	0.25 year
80-119	0.50 year
120-159	0.75 year
160 days or over	1.00 year

- D. ATRS shall utilize the days specified in a contract between an ATRS employer and member to establish days of service worked.
- E. If a member is employed in a position for which a regular and typical work day includes eight (8) hours or more of work time (full-day position), then at least four (4) hours of work in a day shall be required for a "day" of service.
- F. A member who is not employed in specialized support positions and who does not work four (4) hours or more a day will earn service credit by dividing by four (4) the total number of hours worked in a fiscal quarter to arrive at to be credited. the number of days
- G. ATRS employers have specialized support positions that include bus drivers, custodial workers, cafeteria workers, and similar positions that may require less than eight (8) hours of work a day. Beginning July 1, 2011, a member employed in a specialized support position that has been certified to ATRS as a specialized support position shall receive a full day of service credit if the ATRS employer reasonably determines that the member performed the regular and usual service expected of a

member in that position during the service day.

- H. A specialized support employee who is employed without a contract specifying the numbers of days of serviced shall be credited a full service day for each day worked, regardless whether the member works fewer than four (4) hours during the day.
- I. ATRS employers shall certify proof of service on forms and with documentation required by ATRS.
- J. If a member has accrued a full service year credit for a fiscal year and then retires, the member's annuity shall not begin earlier than on the July 1 of the following fiscal year.
- K. The Board of Trustees has the final authority to decide the amount of service creditable to a member for any particular circumstance.

III. Employee (Member) Contributions

- A. Each employer will remit the member contributions by employer "pick up" from the salary earned by contributory members, and those member contributions are treated as employer contributions under the applicable provisions of the Internal Revenue Code and the Arkansas Income Tax Act. The employer may pay these contributions by a reduction in the cash salary of the member, by a setoff against future salary increases, or by a combination of both.
- B. The rate of member contributions is set by Board resolution.
- C. Overpayments or underpayments of member contributions in an amount determined by the Board to be "de minimus" shall be pursuant to the following:
 - 1. ATRS shall not collect an underpayment of member contributions of for an amount less than twenty-five dollars (\$25.00) or adjust member service credit for such amount.
 - 2. ATRS will refund an overpayment of member contributions of less than twenty-five dollars (\$25.00) if the member requests.
 - 3. If an underpayment of member contributions occurs because the member changed status from noncontributory to contributory, the member must remit to ATRS the contributions due based on gross salary earned retroactive to the beginning of that fiscal year. Service will not be credited until the underpayment is fully paid to ATRS.
 - 4. If an overpayment of member contributions occurs as a result of erroneous reporting, ATRS will refund the overpayment of member contributions to the employer, subject to the de minimus amount.

- D. If ATRS is owed member contributions with accrued interest, the interest may be waived by the Board or its designee under ATRS Rules.

IV. Employer Contribution Rate

- A. The Board shall annually set the employer contribution rate for the following fiscal year.
- B. ATRS shall annually notify ATRS employers of the employer contribution rate set by the Board.

V. Employee and Employer Remittances and Reports

- A. Remittances of employee and employer contributions are due monthly.
- B. Employer reports required by ATRS are due on a monthly and quarterly basis.
- C. The employer must remit reports and required supporting documentation to ATRS electronically on ATRS-approved forms
- D. An employer report or remittance shall not be delinquent if received by ATRS on the 15th day of the month in which it is due or postmarked by the 14th day of the month. If the 14th falls on Saturday, Sunday, or a holiday, the postmarked date is extended to the next business day.
- E. A one-hundred and fifty dollar (\$150) late report penalty will be assessed on any required employer report not received by its due date.
- F. If an employer fails to remit employee or employer contributions by the date due above, an interest penalty of eight percent (8%) shall be assessed with daily interest accrual until paid.
- G. The Board or its designee may waive penalties and interest due from an employer if in its discretion it finds:
 - 1. The delinquency was not the result of the employer's nondisclosure, fraud, or other misrepresentation; and
 - 2. Based on the facts and circumstances, the required payment of the penalties and/or interest would be unduly penal, burdensome, or manifestly unjust.
- H. The Board designates the Executive Director to waive penalties and interest from an employer in an amount not to exceed one thousand dollars (\$1000) per fiscal year. The Executive Director shall report to the Board any amounts waived under this section. Any request to waive employer penalties and interest exceeding one thousand dollars (\$1000) per fiscal year shall be submitted to the ATRS Board for consideration.

VI. Reporting Employer Contributions

- A. The employer contributions to be paid each fiscal year by ATRS employers shall be the current employer contribution rate multiplied by the employees' total salaries.
- B. The Department of Education shall pay from the Public School Fund, in accordance with rules established by the Board, the ATRS employer contributions due for eligible employees of certain State agencies as allowed under the Transformation and Efficiencies Act of 2019, and for eligible employees of Cooperative Education Services Areas, Vocational Centers, Arkansas Easter Seals, and the school operated by the Department of Correction. ATRS shall certify to the Department of Education at the close of each quarterly report the amount of employer contributions due. The amount will be based on the employers' reported salaries.
- C. ATRS may certify to the state's Chief Fiscal Officer the names of ATRS employers who are delinquent in reporting and remitting contributions under this rule. Upon notification, the Chief Fiscal Officer may direct a transfer of funds on deposit in the State Treasurer's Office for any delinquent employer payments plus the eight percent (8%) interest penalty to ATRS. (A.C.A. § 19-5-106)
- D. Supplemental salary payment reports for previous years will be accompanied by the employer contributions due.
- E. The Arkansas Teacher Retirement System shall return to ATRS employers overpaid contribution amounts due to erroneous submission of payments or incorrect reporting of Salary Option 2 (first \$7,800) member salaries. If an overpayment of a contribution amount is less than \$25, the refund will not be issued to the employer unless requested in writing by the employer.
- F. The Arkansas Teacher Retirement System shall not collect from ATRS employers an underpayment of employer contribution amount if less than \$25.
- G. For members retiring and who are employed by agencies or other institutions that use the state's 26-week payroll schedule, employers should adhere to and report the salary, contributions, and actual days worked through the state's fiscal year payroll schedule and for the termination date of employment. Contributions should not be withheld on any salary earned after the close of the current year's payroll, nor should any salary or days of service be reported for that period of time.
- H. A public school employer shall pay any additional employer contributions above fourteen percent (14%) from additional funds appropriated by the State for the purpose of paying ATRS employer contributions.

Summary of Proposed Rule Change REVISED 3/13/2020

Arkansas Teacher Retirement System Rule 7 – Reporting and Eligibility

SUBSTANTIVE CHANGES:

- Definition of "Full service year" added.
- Amends the language to reflect changes enacted under **Acts 427, 594, and 595 of 2019** that the calculation of "final average salary" will exclude partial service years.
- Clarifies when sick leave, payments for claims of wrongful termination, or payments under an early retirement plan or contract non-renewal can be used as "salary" in the calculation of "final average salary" per **Act 427 of 2019**.
- Clarifies that "final average salary" is set annually by the Board for the highest three, up to five, years of service, within standards of actuarial appropriateness per **Act 427 of 2019**.
- Clarifies Proof of Service Credit as based on number of days or hours worked, and the days specified in a contract between an ATRS employer and member, including those employed in specialized support positions.
- Adds that additional employer contributions will be paid from additional funds appropriated per **Act 594 of 2019**. See Section VI.H.

NON-SUBSTANTIVE CHANGES:

- Correct formatting issues, renumbering, grammar, and spelling, where appropriate
- Amend language for consistent use of defined terms, i.e. use "final average salary" instead of "final average compensation" per **Act 595 of 2019**.
- Significant rewrite of sentences for ease of understanding

CHANGES AS A RESULT OF PUBLIC COMMENTS:

- Insert the word “additional” before “funds appropriated” to conform to **Act 594 of 2019**.
- Correct typographical errors where appropriate.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT ARKANSAS TEACHER RETIREMENT SYSTEM _____

DIVISION ADMINISTRATION _____

PERSON COMPLETING THIS STATEMENT MARTHA MILLER, GENERAL COUNSEL _____

TELEPHONE NO. (501) 682-3332 FAX NO. (501) 682-2359 EMAIL: martham@artrs.gov _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

SHORT TITLE OF THIS RULE ATRS Rule 7: Reporting and Eligibility

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

Next Fiscal Year

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

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

Total \$ 0.00

Total \$ 0.00

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

Current Fiscal Year

Next Fiscal Year

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

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

Total \$ 0.00

Total \$ 0.00

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

\$ _____

\$ _____

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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

\$ _____

\$ _____

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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;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.