

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department _____

Agency or Division Name _____

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Name of Rule _____

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Summary of Proposed Rule Change

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 and 595 of 2019** that "final average salary" is set annually by the Board for the highest three, up to five, years of service, to exclude partial service years from the calculation of final average salary, and to require the Board to ascertain the actuarial appropriateness of any Board action concerning final average salary
- **Act 427 of 2019** Proof of service credit
- **Act 594 of 2019** Employee Contributions and
- **Act 594 of 2019** Reporting Employee and Employer Contributions

NON-SUBSTANTIVE CHANGES:

- Correct formatting issues, renumbering, grammar, and spelling, where appropriate
- Amend language for consistent use of defined terms
- Significant rewrite of sentences for ease of understanding

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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. "~~Participating~~ 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.
23. "~~Partial Year~~ service year" means service in a fiscal year that constitutes less than a full service year of credited service in a fiscal year due to less than the required service days at an ATRS employer due to a reduction in service credit caused by an adjustment in ATRS service credit because reciprocal service credit occurs in the same fiscal year, due to a member retiring prior to the end of a fiscal year, or due to any other law or policy that provides a member less than a full year of service in a fiscal year.

B. Rules Salary Limitations

1. ~~For purposes of calculating a member's~~ To calculate final average salary, ATRS will include salary received during a fiscal year from all participating ATRS employers during a fiscal year.
2. ~~For purposes of determining if a salary year constitutes a full service year, the following shall be excluded from the limits under A.C.A. § 24-7-736:~~
 - a. ~~Any salary year which constitutes member service during two (2) or fewer quarters in a fiscal year; or~~
 - b. ~~Any salary year that constitutes less than one (1) year of service credit under the schedule set forth in ATRS Rule 7.II. Proof of Service Credit.~~ 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

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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 ~~prior to the adoption of this Rule by the ATRS Board.~~

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.

a.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 offering by the~~ The ATRS employer ~~employer's offer~~ applies to two (2) or more ATRS members;
2. ~~The offering is proposed as an~~ The ATRS employer offers a voluntary early retirement incentive plan, staff reduction plan, or buyout plan ~~that is offered to ATRS members to either directly retire or separate employment from the ATRS employer as a condition of participating in the plan;~~
3. ~~The offering is made in return for the voluntary decision of the ATRS member to participate~~ voluntarily participates in the program in return for the additional remuneration or salary.

ii. This salary limitation does not apply if:

1. ~~It is an offering to one (1) ATRS member by the ATRS employer;~~ 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, and the member continues to work on-site for the employer; or
2. ~~It is part of a standing offer to all ATRS members at the time~~

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~~of retirement for the payment of annual time, sick time, or related retirement payment;~~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.

~~3. It is a payment or bonus made to all members or specific categories of members that is not dependent or conditioned upon the member's separation from or retirement from the employer;~~

~~4. It is a payment made in the settlement of litigation or paid to avoid threat of litigation.~~

~~bc.~~ 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.

~~ed.~~ Any ATRS employer offering of who offers an early retirement plan, separation plan, or contract non-renewal plan, that ~~would result in remuneration being paid by the employer~~ pays remuneration that would be limited from treatment of salary by this Rule subject to the salary limitation shall notify ATRS of the plan prior to ~~payment of any remuneration that is subject to this salary limitation~~ any payment under such plan.

~~de.~~ ~~Upon~~ At the request of an ATRS employer, the ATRS staff shall review any potential plan or payment that could be subject to this salary limitation ~~in order to~~ and provide guidance as to whether the salary limitation would apply ~~to the remuneration paid by the proposed plan or payment.~~

~~ef.~~ 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 the statute or policy governing the treatment of a member's salary between~~ ATRS's calculation of final average salary and the participating ATRS employer's laws or policies relating to the compensation of final average salary and ~~the calculating of a member's final average salary for benefits,~~ ATRS's laws and rules shall control.

6. Effective July 1, 2018, ~~when calculating a member's final average salary,~~ ATRS shall calculate final average salary using the five (5) years in which the member received the highest salary from a participating ATRS employer subject to the foregoing limitations-;

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- 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. ~~A one-time benchmark final average salary will be computed on service attained as of June 30, 2018. 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. The benchmark final average salary will be calculated using the three (3) years in which the member received the highest salary from a participating employer. This benchmark final average salary will be used at the time of retirement if it is higher than the five (5) year final average salary calculated above.~~
 - 8. The final average salary used for members with reciprocal service shall be the highest salary years credited by either the ATRS ~~participating~~ 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.

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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 ~~year of service~~ year.
- B. Members employed less than ~~one-fourth (1/4) of~~ forty (40) days during a fiscal year are not eligible for credit or benefits in ATRS for that fiscal year; ~~provided however, a contributory member's service days beginning in the 2011-2012 fiscal year, a contributory member's service days are carried forward from previous fiscal years until at least one-quarter year~~ forty (40) days of service is obtained are earned by the member. If When a contributory member obtains at least a-quarter year 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~~

- ~~1. Actual~~ 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

- ~~2.D. All contracts~~ ATRS shall utilize the days specified in a contract between an ATRS employer and member that specify the number of days worked by the member shall be used by ATRS to establish the number of days of service worked.

- E. If a member is employed in a position that 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. For "full-day" members

- F. A member who is not employed in specialized support positions and who ~~de~~ does not work four (4) hours or more a day; will earn service

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credit by dividing by four (4) the total number of hours worked in a fiscal quarter divided by four (4) will determine the number of days to arrive at the number of days to be credited.

- G. ATRS employers have specialized support positions that include bus drivers, custodial workers, cafeteria workers, and similar positions ~~for which a typical day of service by the member will be~~ that may require less than eight (8) hours of work a day. Effective for the 2011-2012 fiscal year Beginning July 1, 2011, a member employed, without a contract specifying the number of days of service to be worked, in a specialized support position that has been certified to ATRS as a specialized support position shall receive a full day of service credit, even if the member works less than four (4) hours in a service day, 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.
- ~~3.~~ ~~For purposes of days counted toward service credit, absences shall be counted as service if for paid leave including sick leave. However, for administrative leave, the member must be on call by the employer for the service to be counted.~~
- ~~4.~~ ~~ATRS shall not give service credit to a member until all required contributions and interest, if any, are remitted to ATRS.~~
- ~~5I.~~ ~~The participating ATRS employers shall certify proof of service on such forms and with any documentation required by ATRS.~~
- ~~6J.~~ ~~If a member is retiring with an effective date other than October 1, January 1, April 1, or July 1, service credited for the year in which a member retires shall not exceed one forth (1/4) year for each full calendar quarter worked during the fiscal year~~ has accrued a full service year credit for a fiscal year and then retires, the member's annuity shall no begin earlier than on the July 1 of the following fiscal year.
- ~~7K.~~ ~~In any case of question as to service credit of a member, the~~ 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.~~ ~~After June 30, 1997, each~~ Each employer will remit the member

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contributions by employer "pick up" from the salary earned by contributory members, and those member contributions ~~will then be treated as~~ are treated as employer contributions in ~~determining tax treatment under the provision applicable provisions~~ of the federal 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, ~~or by a setoff against future salary increases, or by a combination of a reduction in salary and a setoff against future salary increases~~ both.

- B. ~~Member~~ The rate of member contributions ~~shall be~~ is set by the Board by 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. ~~If ATRS shall not collect an underpayment of member contributions of for an amount less than \$25 twenty-five dollars (\$25.00) occurs, ATRS shall not collect the difference of this underpayment and no adjustment to or adjust member service credit will be made for such amount.~~
 - 2. ~~If ATRS will refund an overpayment of member contributions of less than \$25 twenty-five dollars (\$25.00) occurs, a refund will not be issued unless requested by if the member requests.~~
 - 3. ~~Should If an underpayment of member contributions occur occurs as a result of a member's changing 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 credit will not be credited until the total amounts due are underpayment is fully paid in full to ATRS.~~
 - 4. ~~Should If an overpayment of member contributions occur 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 ~~and with accrued interest by a member,~~ the interest ~~owed by the member~~ 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 ~~shall be the rate established by the Board of Trustees of the Arkansas Teacher Retirement System prospectively for each the following fiscal year.~~
- B. ATRS shall annually notify participating ATRS employers of the employer contribution rate established set by the Board for the ~~upcoming~~ fiscal year.

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- ~~C. Participating employers shall pay ATRS employer contributions for eligible employees in accordance with these rules.~~

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 reports required by ATRS must~~ remit reports and required supporting documentation to ATRS electronically ~~be on ATRS-approved forms or electronic media either furnished by ATRS or approved by ATRS, and shall be accompanied by supporting documentation as determined by ATRS.~~
- D. An employer report or remittance ~~by an employer~~ 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 ~~\$150~~ 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 ~~8%~~ eight percent (8%) shall be assessed with daily interest accrual until paid.
- G. The Board or its designee may, ~~but is not required, to~~ 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 ~~\$1,000~~ one thousand dollars (\$1000) per fiscal year. The Executive Director shall report to the Board any amounts ~~excused~~ waived under this section. Any request to waive employer penalties and interest exceeding ~~\$1,000~~ one thousand dollars (\$1000) per fiscal year shall be submitted to the ATRS Board for consideration.
- ~~I. Annual billings for underpayments of employee or employer contributions that result in a balance of \$25 or less may be written off by ATRS.~~

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VI. Reporting Employer Contributions

- A. The employer contributions to be paid each fiscal year by ~~participating~~ 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 ~~participating~~ 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 ~~participating~~ 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 ~~participating~~ 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 funds appropriated by the State for the

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purpose of paying ATRS employer contributions.