

# ARKANSAS REGISTER

## Transmittal Sheet

Use only for FINAL and EMERGENCY RULES



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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@artrs.gov Phone 501-588-4367

Statutory Authority for Promulgating Rules A.C.A. §§ 24-7-305 and 25-15-216

Rule Title: Rule 7 - Reporting and Eligibility

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

Jennifer Liwo

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5/10/2022

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

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Executive Director

Title

05/05/2022

Date

**ATRS RULE 7**  
**SERVICE CREDIT, CONTRIBUTIONS, REPORTING, AND FINAL AVERAGE**  
**SALARY**

Arkansas Code §§ 24-2-701, 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, and 24-7-1303

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**I. Definitions**

- a. "Actual service" means service rendered in a position covered by the Arkansas Teacher Retirement System (ATRS), not including purchased service credit, free service credit, or reciprocal service;
- b. "Credited service" means service that is creditable as service by ATRS;
- c. "Covered employer" as it relates to outsourcing means a public school, public educational agency, or other eligible employer participating in ATRS;
- d. "Eligible employee" for the purpose of salary or compensation limitations concerning the calculation of a final average salary means a person who was a member of ATRS before the first plan year beginning after December 31, 1995;
- e. "Embedded Employee" means a person who:
  - 1. Provides an outsourced service on the premises of a covered employer; and
  - 2. Is employed and paid by an outsource contractor;
  - 3. Is not employed by:
    - A. A covered employer listed under Arkansas Code § 24-7-202; or
    - B. An employer that offers ATRS as optional retirement plan as of the date of outsourcing;
- f. "Full service year" means employment by with a covered employer for one hundred sixty (160) days or more in a fiscal year;
- g. "Partial service year" means employment with a covered employer for less than one hundred sixty (160) days in a fiscal year;
- h. "Participating employer" means a covered employer that outsources and opts for the embedded employees of all of the covered employer's outsource contractors to become members of ATRS;
- i. "Service" means employment rendered as an employee;
- j. "Specialized support position" means a position requiring less than eight (8) working hours per day, including without limitation the positions of bus driver, custodial worker, and cafeteria worker;
- k. "Surcharge employer" means a covered employer that outsources and pays a surcharge to ATRS in lieu of opting for the embedded employees of outsource contractors to accrue credited service in ATRS; and
- l. "Youth participant" means an individual:
  - 1. Who is:
    - A. Enrolled in a secondary public school as a student; and

- B. Employed through his or her participation in a summer work program for a period between the first day of June and the last day of August; and
- 2. Whose compensation is disbursed by a covered employer as part of an agreement between the covered employer and an administrator of the summer work program that designates the covered employer as a pass-through fiscal agent.

## **II. Service Credit**

### **a. Generally**

- 1. The Board of the Arkansas Teacher Retirement System (Board) shall determine the:
  - A. Number of years and corresponding fractions for service that may be credited to a member; and
  - B. Amount of service to be credited to a member.
- 2. A member shall earn one (1) year of credited service if the member completes a full service year.
- 3. A member shall not earn more than one (1) year of credited service in a fiscal year.
- 4. ATRS shall certify proof of a member's service on forms and with documentation required by ATRS.

### **b. Unused Leave**

- 1. Unless otherwise provided by law, paid or unpaid accrued, unused sick leave shall not be credited as service in ATRS.
- 2. If a member dies during active service on or after July 1, 2013, the member's unused catastrophic leave and unused donated leave shall not be credited as service.

### **c. Contract Buyouts, Settlements, Claims, Awards, and Court-Ordered Payments**

- 1. A member shall not accumulate service credit in ATRS during the time that payments under a contract buyout agreement, settlement, claim, judgment, arbitration award, decree, or court-ordered payment are paid to the member by a covered employer unless the member continues to work on-site for the covered employer.
- 2. A member shall not receive service credit or additional salary from ATRS under a settlement agreement or court order unless purchased at actuarial cost.

d. Service Provided After July 1, 1971

1. Actual service credited to a member with service after July 1, 1971, shall be as follows:

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

e. Members Employed for Less Than Forty (40) Days

1. Unless otherwise provided by the law applicable to ATRS or the ATRS Rules, a member who is employed for less than forty (40) days during a fiscal year is ineligible for credited service or retirement benefits for that fiscal year.

f. Rollover Service Days

1. Beginning in the 2011-2012 fiscal year, a contributory member's service days shall be carried forward from previous fiscal years until at least forty (40) days of service are earned by the member.
2. Service days shall not be carried forward for a contributory member if the member earns at least forty (40) days of service in a fiscal year by using regular service days, accumulated service days, or both regular service and accumulated service days.

g. Full-Time Employees

1. A member who is employed full-time or employed in a position for which a regular or typical work day includes at least eight (8) working hours shall earn one (1) day of credited service if the member works for at least four (4) hours of the eight-hour working day.

h. Employees in Specialized Support Positions

1. Employment with Less Than Eight-Hour Working Days
  - A. Beginning July 1, 2011, a member employed in a specialized support position shall earn one (1) day of credited service if the:
    - i. Specialized support position is certified as a specialized support position to ATRS; and
    - ii. Covered employer reasonably determines that the member performed the regular and usual service expected of an employee in that position during the work day.
2. Employment with Unspecified Contractual Work Days
  - A. A member who is employed in a specialized support position and does not have a contractual obligation to work a specified number of days shall earn one (1) day of credited service for each day of service provided by

the member.

B. A member described in this ATRS Rule 7 II.h.2.A shall earn one (1) day of credited service for each day of service provided by the member regardless of whether the member works for less than four (4) hours on a work day.

i. Employees in Non-Specialized Support Positions

1. The credited service earned by a member who is employed in a non-specialized support position and does not work for at least four (4) hours each working day shall be calculated by dividing the total number of hours worked by the member in a fiscal quarter by four (4).

**III. Member and Employer Contributions**

a. Contributions — Generally

1. The Board shall annually set member and employer contribution rates for the following fiscal year.
2. ATRS shall notify annually each covered employer of the contribution rates set by the Board.
3. A member's and covered employer's contributions are due monthly, regardless of the member's concurrent membership status.

b. Member Contributions

1. Authority of the Board

- A. The Board shall not set the member contribution rate at less than six percent (6%).
- B. The Board may increase the member contribution rate to maintain actuarial soundness.

2. Contribution Rate

- A. A contributory member shall contribute the percentage of his or her salary that is set by the Board.
- B. A member's contribution is due monthly, regardless of the member's concurrent membership status.

3. Remittance of Member Contributions by Covered Employer

- A. A covered employer shall remit member contributions by pick-up from the salary earned by each member.
- B. Member contributions shall be treated as employer contributions under the applicable provisions of the Internal Revenue Code and the Income Tax Act of 1929, Arkansas Code § 26-51-101 et seq.
- C. A covered employer may remit a member's contributions by implementing a:
  - i. Reduction in the cash salary of the member;
  - ii. Setoff against the member's future salary increases; or
  - iii. Both a reduction in the cash salary of the member and a setoff

against the member's future salary increases.

c. Employer Contributions — Public School Employers and Covered Employers

1. Covered Employers and Public School Employers

- A. A covered employer's employer contributions shall be the sum of the current employer contribution rate set by the Board for the fiscal year multiplied by the total gross salaries of all the covered employer's employees.
- B. A public school employer shall pay up to fourteen percent (14%) of the employer contribution rate.
- C. Up to fifteen percent (15%) of any additional employer contributions required from a public school employer shall be paid from additional funds appropriated by the state for the purpose of paying employer contributions to ATRS.

2. Employer Contributions Not Paid by the Department of Education

- A. A covered employer shall pay annually, for its employees, employer contributions that are not required to be paid by the Department of Education.
- B. The employer contribution rate shall be the current state contribution percent multiplied by the total covered salaries of the covered employer's employees in the fiscal year.

3. Employer Contributions Paid by the Department of Education

- A. In accordance with rules established by the Board and the Department of Education's appropriations act, the Department of Education shall pay employer contributions due for eligible employees of covered employers, including without limitation the following:
  - i. State agencies as allowed under the Transformation and Efficiencies Act, Acts 2019, No. 910;
  - ii. Cooperative Education Services Areas;
  - iii. Vocational Centers;
  - iv. Arkansas Easter Seals; and
  - v. A school operated by the Corrections School System.
- B. The Department of Education shall pay the employer contributions for eligible employees of covered employers from the Public School Fund.
- C. At the close of each quarterly report, ATRS shall report the amount of employer contributions due from the Department of Education.
- D. The employer contributions due from the Department of Education shall be based on the salaries of the eligible employees reported to ATRS by each covered employer.

d. Employer Contributions — Participating Employers

- 1. The Board shall annually notify each participating employer of the employer contribution rate established by the Board for the upcoming fiscal year.

- e. Employer Contributions — Surcharge Employers
  - 1. A surcharge employer's employer contributions shall be a monthly surcharge on the total salaries paid to all the surcharge employer's embedded employees on an aggregate basis as provided under Arkansas Code § 24-7-506(c).

#### **IV. Employer Reports**

- a. Generally
  - 1. A covered employer shall submit:
    - A. Reports and supporting documentation required by ATRS on a monthly and quarterly basis; and
    - B. Reports and supporting documentation electronically to ATRS on forms approved by ATRS.
- b. Covered Employers
  - 1. Youth Participant — Summer Work Programs
    - A. At the request of ATRS, a covered employer shall provide ATRS with a memorandum of understanding, partnership agreement, or another similar document related to the covered employer's actions as a pass-through fiscal agent for a youth participant in a summer work program.
    - B. A covered employer shall provide ATRS with all documents related to the agreement designating the covered employer as a pass-through fiscal agent before disbursing compensation to a youth participant.
    - C. A covered employer that acts as a pass-through fiscal agent shall not report a youth participant as an employee for ATRS purposes.
  - 2. Twenty-Six (26) Week Payroll
    - A. A covered employer that uses a twenty-six-week payroll system shall report an employee's salary, contributions, and actual working days through the current fiscal year ending June 30 if the employee is a member of ATRS and retiring.
    - B. If an employee is a member of ATRS and retiring effective July 1, a covered employer shall not:
      - i. Withhold contributions on a salary earned by the member after the close of payroll for the current fiscal year; and
      - ii. Report any salary paid to the member or actual working days performed by the member after the close of payroll for the current fiscal year.
    - C. ATRS shall refund employee contributions and employer contributions remitted to ATRS from a salary paid to the employee after the end of the current fiscal year or payroll period for the current fiscal year.
- c. Surcharge Employers and Participating Employers
  - 1. Generally
    - A. A covered employer may submit a request to ATRS for a determination

on whether a service or position is subject to the provisions of Arkansas Code § 24-7-506.

2. Surcharge Employers
    - A. A surcharge employer shall submit a surcharge report monthly to ATRS with all other reports required by ATRS.
  3. Participating Employers
    - A. A participating employer shall submit a contribution report monthly to ATRS with all other reports required by ATRS.
- d. Employer Submission of Reports
1. Electronic Submission of Reports
    - A. Beginning on July 1, 2022, a covered employer shall:
      - i. Electronically report employee contributions and employer contributions made by the covered employer through the ATRS portal; and
      - ii. Pay employee contributions and employer contributions through electronic transfer.
  2. Electronic Submission of Reports — Waiver
    - A. A covered employer shall submit a written request for a temporary waiver to the Board by July 1, 2022, if the covered employer is unable to:
      - i. Electronically report employee contributions or employer contributions; or
      - ii. Pay employee contributions or employer contributions through electronic transfer.
    - B. A request for a temporary waiver shall include a timeline for when the employer will be able to comply with submitting reports electronically and paying employee contributions or employer contributions through electronic transfer.
  3. Deadline for Submission of Reports
    - A. A report and supporting documentation submitted by a covered employer shall not be considered untimely if:
      - i. The report and supporting documentation are received by ATRS on the tenth (10<sup>th</sup>) day of the month in which the report and supporting documentation are due; or
      - ii. In the case of a covered employer that obtains a waiver as provided under this ATRS Rule 7 IV.d.2. or is unable to electronically submit a report and supporting documentation, the report and supporting documentation are mailed and postmarked by the fourteenth (14<sup>th</sup>) day of the month.
        - a. If the fourteenth (14<sup>th</sup>) day of the month falls on a Saturday, Sunday, or holiday, the postmarked date shall be the next business day.



4. Failure to Submit Report or Remit Contributions and Penalties
  - A. Late Fee for Untimely Reports
    - i. A one hundred fifty dollar (\$150) late fee shall be assessed on a covered employer for each occurrence in which a report and supporting documentation is untimely submitted to ATRS.
  - B. Interest Penalty
    - i. If a covered employer does not remit member or employer contributions, including surcharge contributions, by the monthly due date, ATRS shall assess an interest penalty equal to ATRS' actuarially assumed rate of return on investments and daily interest accrual against the covered employer until the member or employer contributions, whichever is applicable, are paid.
    - ii. The Board or its designee, in its discretionary authority, may waive an interest penalty assessed against a covered employer if:
      - a. The delinquency is not a result of the covered employer's nondisclosure, fraud, or other misrepresentation; and
      - b. Based on the facts and circumstances, payment of the penalty interest would be unduly penal, burdensome, or manifestly unjust.
    - iii. The Board shall not instruct the Executive Director of ATRS (executive director) to waive one (1) or more interest penalties assessed against a covered employer if the amount will exceed one thousand dollars (\$1,000) for the fiscal year.
    - iv. A covered employer may submit an interest penalty waiver request for one (1) or more interest penalties exceeding one thousand dollars (\$1,000) for the fiscal year to the Board.
    - v. The executive director shall report each interest penalty waived under this ATRS Rule 7 IV.d.4.B to the Board.
5. Report to Chief Fiscal Officer of the State
  - A. ATRS may certify the names of each covered employer that fails to timely report and remit member or employer contributions, including surcharge contributions, to the Chief Fiscal Officer of the State.
  - B. After receiving the certification from ATRS, the Chief Fiscal Officer of the State may direct a transfer of funds on deposit in the State Treasury for the payment of delinquent member or employer contributions and an assessed interest penalty. (Arkansas Code § 19-5-106)
6. Refunds
  - A. Service History Conflicts
    - i. A conflict in a member's service history due to concurrent service shall be resolved at the end of the fiscal year and ATRS shall issue refunds as appropriate.

## B. Overpayments and Underpayments

- i. ATRS shall return overpayments of employee contributions and employer contributions resulting from erroneous contribution submissions or incorrect reporting of Salary Option 2 member salaries (first seven thousand eight hundred dollars (\$7,800)) to the appropriate covered employer.
- ii. Contribution Overpayments
  - a. ATRS shall send written notification to a covered employer of a contribution overpayment that is less than the de minimis amount that may be refunded.
  - b. A contribution overpayment that is less than the de minimis amount shall not be refunded to the appropriate covered employer unless the covered employer submits a written request for a refund to ATRS within fourteen (14) days of receiving the written notice of the contribution overpayment from ATRS.
  - c. If a covered employer does not submit a written request for a refund within fourteen (14) days of receiving the written notice of the contribution overpayment from ATRS, the amount of the contribution overpayment shall be forfeited to the trust assets of ATRS.
- iii. Contribution Underpayments
  - a. ATRS shall not collect a contribution underpayment of less than the de minimis amount from a covered employer.

## V. Final Average Salary

- a. Salary Limitations
  1. Authority of the Board
    - A. The Board may adopt rules to modify the definition of salary for the purpose of calculating ATRS retirement benefits. (Arkansas Code § 24-7-202)
  2. Salary – Multiple Covered Employers
    - A. ATRS shall include the salary received from each of a member's covered employers when calculating the member's final average salary.
  3. Internal Revenue Code § 401(a)(17)
    - A. Regardless of any provision in a state statute, rule, or regulation to the contrary, remuneration, salary, or other compensation that exceeds the limitations set forth provided in the Internal Revenue Code of 1986, 26 U.S.C. § 401(a)(17), as it existed on January 1, 2011, shall not be used for the purposes of calculating the final average salary on which ATRS benefits are based.
    - B. The limitation on remuneration, salary, or compensation for an eligible employee shall not be less than the amount that was allowed to be considered by ATRS as in effect on July 1, 1993.

4. Excluded Remuneration, Salary, or Compensation
  - A. ATRS shall not consider remuneration, salary, or compensation paid by a covered employer to a member as a salary earned by the member if the:
    - i. Remuneration, salary, or compensation is paid as an incentive payment, bonus, separation payment, additional salary, or special payment in consideration for the member's agreement to retire, terminate employment, or not renew a contract with the covered employer;
    - ii. Offer described in this ATRS Rule 7 V.a.4.A.i. is extended by the covered employer to two (2) or more members;
    - iii. Remuneration, salary, or compensation is not offered as an additional salary or payment for the purchase of service credit that is part of a separation agreement resulting from the resolution of a claim of wrongful termination;
    - iv. Remuneration, salary, or compensation is not payment for accumulated, unused sick leave that:
      - a. Accrued in the years immediately preceding the member's termination of covered employment; and
      - b. Were in excess of the number of sick days that the covered employer allowed the member to carry forward;
    - v. Covered employer offers a voluntary early retirement incentive plan, staff reduction plan, or buyout plan that would require the member as a participant of the plan to retire or terminate his or her employment with the covered employer; and
    - vi. Member voluntarily participates in the plan in exchange for the remuneration, salary, or compensation offered by the covered employer.
  - B. A covered employer shall not withhold a member's contributions or pay employer contributions from a remuneration, salary, or compensation paid to a member if the remuneration, salary, or compensation is subject to a salary limitation as provided by this ATRS Rule 7.
  - C. A covered employer that offers an early retirement plan, separation, plan, or contract nonrenewal plan and intends to pay remuneration, salary, or compensation that is subject to a salary limitation as provided by this ATRS Rule 7 shall notify ATRS before making a payment under the plan.
  - D. At the request of a covered employer, ATRS shall:
    - i. Review a potential plan or payment that may be subject to a salary limitation as provided by this ATRS RULE 7; and
    - ii. Provide guidance to the covered employer concerning the applicability of the salary limitation to the plan or payment.
  - E. A covered employer may appeal ATRS' decision concerning the applicability of a salary limitation to a plan or payment to the Board using ATRS' appeal procedures provided in ATRS Rule 13.

5. Conflict of Laws

- A. The law applicable to ATRS and the ATRS Rules shall be controlling if a conflict exists between ATRS' calculation of final average salary and a covered employer's laws or policies concerning the compensation of final average salary.

b. Service Years Included in Computation of Final Average Salary

1. Unused Leave

- A. If a member dies during active service on or after July 1, 2013, the member's paid or unpaid accrued, unused sick leave, shall be credited as service in the fiscal year of the member's death for the purpose of determining the member's retirement eligibility, final average salary, and eligibility for other ATRS benefits.

2. Full Service and Partial Service Years

- A. A partial service year shall be excluded from the calculation of a member's final average salary unless the:
  - i. Partial service year is higher than a full service year; or
  - ii. Member has less than the required number of years to calculate a final average salary.

3. Number of Service Years Used to Calculate Final Average Salary

- A. The Board shall set annually the applicable number of years to be used in computing final average salary for retirement benefits at not less three (3) years and not more than five (5) years.

- B. Unless otherwise provided by law applicable to ATRS or the ATRS Rules, effective July 1, 2018, ATRS shall calculate a member's final average salary using the five (5) years in which the member received the highest salary from a covered employer.

C. Members with Insufficient Credited Service or Full Service Years

- i. If a member has less than the minimum number of years of credited service that would be used to calculate a final average salary, the member's final average salary shall be the total salary paid to the member for his or her years of credited service divided by the member's total credited years of service.
- ii. If a member does not have full service years for the total years of service used in the calculation of final average salary, the Board may establish by rule a fair base salary for a member's final average salary for purposes of comparing the member's highest salary years.

D. Active Members with Three (3) Full Service Years as of July 1, 2018

- i. For an active member who has three (3) or more full service years as of July 1, 2018, ATRS shall:
  - a. Treat the active member as if he or she was retiring or entering the Teacher Deferred Retirement Option Plan (T-DROP) as of June 30, 2018; and

- b. Determine the benchmark final average salary using the highest salary from the member's three (3) full service years through fiscal year 2018.
  - ii. A final average salary calculation using three (3) full service years shall be the benchmark comparison for a five-year final average salary calculation to which the active member may be entitled.
  - iii. ATRS shall calculate the active member's final average salary using the five (5) years in which the active member received the highest salary from a covered employer if at the time of the active member's retirement using a five-year calculation of the final average salary is higher than using a three-year calculation.
- E. Inactive Members Who May Have Three (3) Full Service Years of July 1, 2018
  - i. ATRS shall not use a benchmark final average salary for an inactive member unless the inactive member provides ATRS with appropriate documentation showing that the inactive member was active in a reciprocal system or alternate retirement plan during the 2018 fiscal year.
- F. Members with Reciprocal Service Credit
  - i. For a member with reciprocal service credit, ATRS shall use the highest final average salary calculated, at the time of the member's retirement, by ATRS or a reciprocal system in which the member has at least two (2) years of service credit pursuant to Arkansas Code § 24-2-402.

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**HISTORY**

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