

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE**

DEPARTMENT/AGENCY Arkansas Teacher Retirement System
 DIVISION Administration
 DIVISION DIRECTOR George Hopkins
 CONTACT PERSON Laura Gilson, General Counsel
 ADDRESS 1400 West Third Street, Little Rock, AR 72201
 PHONE NO. 501-682-1266 FAX NO. 501-682-6326 E-MAIL laurag@artrs.gov
 NAME OF PRESENTER AT COMMITTEE MEETING George Hopkins
 PRESENTER E-MAIL georgeh@artrs.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
 Administrative Rules Review Section
 Arkansas Legislative Council
 Bureau of Legislative Research
 Room 315, State Capitol
 Little Rock, AR 72201

1. What is the short title of this rule? Manifest Injustice (Rule 17-1)

2. What is the subject of the proposed rule? Sets up a process to claim the equitable remedy of manifest injustice

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
 If yes, please provide the federal rule, regulation, and/or statute citation.

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes No
 If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes No

5. Is this a new rule? Yes No

If yes, please provide a brief summary explaining the regulation.

The attached summary explains the new Rule.

Does this repeal an existing rule? Yes No

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes No

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule?

If codified, please give Arkansas Code citation.

Act 303 of 2013

7. What is the purpose of this proposed rule? Why is it necessary?

This rule sets up a process for a member to claim an equitable remedy of manifest injustice.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

www.artsr.gov

9. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

August 29, 2013

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

December 1, 2013

12. Do you expect this rule to be controversial? Yes No

If yes, please explain.

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

N/A

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Teacher Retirement System
DIVISION Administration
PERSON COMPLETING THIS STATEMENT Laura Gilson
TELEPHONE NO. 501-682-1266 **FAX NO.** 501-682-6326 **EMAIL:** laurag@artrs.gov

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Manifest Injustice (Rule 17-1)

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
2. Does this proposed, amended, or repealed rule affect small businesses? Yes No
If yes, please attach a copy of the economic impact statement required to be filed with the Arkansas Economic Development Commission under Arkansas Code § 25-15-301 et seq.

3. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.

N/A

4. If the purpose of this rule is to implement a federal rule or regulation, please give the incremental cost for implementing the rule. Please indicate if the cost provided is the cost of the program.

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 party subject to the proposed, amended, or repealed rule? Identify the party subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

6. What is the total estimated cost by fiscal year to the agency to implement this rule? Is this the cost of the program or grant? Please explain.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

Summary of Proposed Rule Change
for
Arkansas Teacher Retirement System

Rule 17-1 Manifest Injustice

This is a new rule authorized under Act 303 of 2013. "Manifest Injustice" is an equitable remedy used in rare and special circumstances where a traditional remedy is unavailable. This rule sets up a process for the referral and review of a claim of "manifest injustice" by a member, a benefit participant, or an employer.

RULE 17-1

MANIFEST INJUSTICE

I. BACKGROUND AND PURPOSE.

The 89th General Assembly provided the ATRS Board the extraordinary remedy of waiving any rule, provision, or law that does not violate a federal law or rule in order to prevent a manifest injustice to a member, benefit participant, ATRS employer, or ATRS. Act 303 of 2013 grants that authority to the Board, and is codified at A.C.A. § 24-7-205 as follows:

*"(e) The board or its designee may waive or modify the impact of a rule, provision, or law that does not violate federal law or jeopardize the tax-qualified status of the system to correct or prevent a **manifest injustice** (emphasis added) that would affect the system, benefit participant, or employer in a particular instance."*

The definition of manifest injustice can be found at Ark. Code. Ann 24-7-202(40)(A) as follows:

"(40)(A) "Manifest injustice" means an obvious unfairness that has a direct and observable unconscionable effect that will occur as a result of a technical error or error of judgment, when the error made by the system, a benefit participant, or employer, and the disparity of outcome to the parties, when taken together and supported by clear and convincing evidence, show a great harm to the integrity of the system as a whole, the benefit participant, or an employer, unless the system is afforded the discretion to resolve the matter in a fair manner.

(B) In determining manifest injustice the system may consider:

- (i) The degree of fault of the system, benefit participant, or employer;*
- (ii) An ambiguity in the interpretation of the circumstances, rule, or law;*
- (iii) The cost to the system of correcting the error that is far outweighed by the benefit afforded to the system, benefit participant, or employer;*
- (iv) Whether or not an expedited decision is in the public interest;*
- (v) The fundamental fairness of a remedy in a particular situation;*
- and*

(vi) Whether or not the status quo would result in an unconscionable outcome."

II. GENERAL

The process of declaring a manifest injustice is a rare and extraordinary remedy that shall not be used as a routine method of addressing error, oversight, or simple mistake. As an extraordinary remedy, manifest injustice shall be cautiously and carefully used to prevent unfairness, to preserve the integrity of ATRS, and to avoid or correct unduly harsh or unconscionable outcomes.

III. DELEGATION TO ATRS EXECUTIVE DIRECTOR.

- A. The ATRS Executive Director is hereby given authority to implement a resolution of a manifest injustice once a determination is made that a manifest injustice exists using the review process set forth herein. The Executive Director may implement a resolution of a manifest injustice of up to \$10,000 of direct financial impact to ATRS. The Executive Director is specifically prohibited from waiving any deadlines that may apply in the ATRS Rules or law. Any waiver of a deadline is exclusively a Board remedy and not a remedy available to the ATRS Executive Director. Provided however, if any resolution that has a direct financial impact of more than \$5,000, then ATRS Executive Director shall provide the Chair of the ATRS Board of Trustees written notice about the manifest injustice determination and proposed resolution prior to implementing the resolution.
- B. The Executive Director is specifically prohibited from waiving any deadline that may apply in the ATRS Rules or law. A waiver of a deadline is exclusively a Board remedy and not a remedy available to the Executive Director.
- C. The Executive Director shall provide a report to the Board at least biannually that outlines the facts and circumstances of each manifest injustice referral, sets forth the findings and recommendations of the Manifest Injustice Committee, and sets forth and explains the resolution of the manifest injustice, if a manifest injustice is found. Members' names or other information that is not material to the findings shall not be required in the report to the Board.

IV. MANIFEST INJUSTICE COMMITTEE.

- A. The ATRS General Counsel, Assistant Director of Fiscal Affairs, and Member Services Administrator shall act as a 3-person Manifest Injustice Committee (the "Committee") to review all manifest injustice referrals.
- i. The Committee will meet on a reasonable schedule or as needed to review any referral.
 - ii. A majority vote of the Committee shall constitute a recommendation on the referral.
 - iii. The Committee shall make an initial recommendation to the Executive Director based upon its review of the referral regarding whether or not a manifest injustice exists. If a manifest injustice exists, then the Committee shall propose a resolution of the manifest injustice to the Executive Director.
- B. If the Committee determines that no manifest injustice exists in a referral, then the Executive Director shall review the referral and the Committee's basis for the recommendation. The Executive Director may either accept the recommendation or return the referral to the Committee for further consideration.
- i. If the Executive Director accepts the recommendation from the Committee, the discretionary review is officially ended and the matter is to be considered officially closed.
 - ii. If the referral is returned to the Committee, the Committee shall consider the matter again in light of any additional information provided by the Executive Director. If the Committee's recommendation remains that no manifest injustice exists, the matter shall be considered officially closed, unless referred to the Board.
- C. If the Committee determines that a manifest injustice does exist, then the Executive Director may implement the resolution suggested by the Committee or adopt an alternate resolution that falls within the Executive Director's delegated authority.

- D. If the Executive Director disagrees with the Committee's determination that a manifest injustice exists, then the Executive Director may return the referral for further consideration. If the Committee maintains the determination that a manifest injustice exists after the return of the referral, and the Executive Director continues to disagree, then the Executive Director may place the item on the Board agenda for the Board to consider and resolve, with input from both the Committee and Executive Director concerning the referral.
- E. If a member of the Committee has a conflict or otherwise cannot act on a manifest injustice referral due to absence, sickness, or work load, a Committee member may appoint a representative from their Staff for a committee meeting.
- F. A party may not administratively appeal a determination of a referral of manifest injustice, regardless of whether the determination occurs from the Executive Director's decision or through the Board's decision.

V. The Executive Director may suspend an Executive Director Review if a manifest injustice determination might resolve the issue within the Executive Director review. The Executive Director review shall not be suspended absent the consent of the affected party/parties in the Executive Director review.

VI. REFERRALS.

- A. A referral of a potential or alleged manifest injustice may be made to the Executive Director by any:
 - i. ATRS Trustee;
 - ii. ATRS Staff member, including the Executive Director;
 - iii. Benefit Participant;
 - iv. Beneficiary;
 - v. ATRS-covered Employer; or
 - vi. Other interested party such as guardian or fiduciary.

- B. A referral shall be made to the Executive Director in order to create and preserve an appropriate record with ATRS.

- i. Each referral shall be given a number and a year designation. For example: "2013-MI-1, 2013-MI-2, 2013-MI-3" and so forth.
- ii. The Executive Director shall submit all referrals to the Committee.

VII. The Committee or the Executive Director may request that a party to a manifest injustice referral provide information or input concerning the referral. A party is not required to provide information.

VIII. A Board decision on a manifest injustice referral is a final discretionary decision and is not subject to further review.

Approved by Board: July 26, 2013

Adopted:

Effective:

RULE 17-1 MANIFEST INJUSTICE

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