

# MARK-UP

## RULE 9-4 DISABILITY RETIREMENT

A.C.A. § 24-7-704

### I. **RULES** ~~(as amended by Acts 468 and 743 of 2009, Act 219 of 2015)~~

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 ATRS member circumstances, ~~affects~~ 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 Rule and A.C.A. § 24-7-704.

~~(a)a. If member is fifty seven (57) years or older before July 1, 2015, and is receiving disability retirement benefits, the member may continue to receive retirement benefits without submitting additional documentation to ATRS.~~

~~(b)~~ 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

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SSA determination letter, the member's disability retirement payments will cease on June 30, 2018.

~~(e)~~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)~~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)~~b. An active SSA disability claim is still under review by the SSA with no voluntary dismissal or withdrawal.

iii. ~~In any event, once~~ Once the member who is receiving disability retirement reaches 60 years of age ~~and they are still receiving disability retirement~~, 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 thereafter.

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 ~~cannot simultaneously~~ may be employed by an ATRS-covered employer and also receive ATRS disability retirement from ATRS

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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 also 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), he/she 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).

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- 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.

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## 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

1 State of Arkansas  
2 91st General Assembly  
3 Regular Session, 2017  
4

# A Bill

SENATE BILL 192

5 By: Senator E. Chatham  
6

## For An Act To Be Entitled

8 AN ACT TO ALLOW MEMBERS WITH RECIPROCAL SERVICE TO  
9 RETIRE UPON A DETERMINATION OF DISABILITY; TO AMEND  
10 DISABILITY RETIREMENT PROCEDURES; TO ENCOURAGE  
11 DISABILITY RETIREES OF THE ARKANSAS TEACHER  
12 RETIREMENT SYSTEM TO RETURN TO EMPLOYMENT; TO DECLARE  
13 AN EMERGENCY; AND FOR OTHER PURPOSES.  
14  
15

## Subtitle

16  
17 TO ALLOW MEMBERS WITH RECIPROCAL SERVICE  
18 TO RETIRE UPON A DETERMINATION OF  
19 DISABILITY; TO AMEND DISABILITY  
20 RETIREMENT PROCEDURES; TO ENCOURAGE  
21 DISABILITY RETIREES TO RETURN TO  
22 EMPLOYMENT; AND TO DECLARE AN EMERGENCY.  
23  
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
26

27 SECTION 1. Arkansas Code § 24-7-704(a)(1)(A), concerning disability  
28 retirement under the Arkansas Teacher Retirement System, is amended to read  
29 as follows:

30 (a)(1)(A) An active member in employer service with five (5) or more  
31 years of actual and reciprocal service who becomes totally and permanently  
32 physically or mentally incapacitated for his or her job duties as ~~the~~ a  
33 result of a personal injury or disease may be retired by the Board of  
34 Trustees of the Arkansas Teacher Retirement System upon a determination of  
35 disability consistent with this section and approval of a written application  
36 filed with the Arkansas Teacher Retirement System.



1  
2 SECTION 2. The introductory language of Arkansas Code § 24-7-  
3 704(a)(4), concerning disability retirement under the Arkansas Teacher  
4 Retirement System, is amended to read as follows:

5 (4) To ~~receive~~ begin receiving disability retirement, a member  
6 shall not:

7  
8 SECTION 3. Arkansas Code § 24-7-704(b)(3)(C), concerning disability  
9 retirement under the Arkansas Teacher Retirement System, is amended to read  
10 as follows:

11 (C) The system ~~will~~ shall terminate disability retirement  
12 benefits to a member or retirant when the member or retirant fails to:

13 (i) Provide a Social Security Administration  
14 determination letter finding that the member or retirant is disabled to the  
15 system within the thirty-six-month period under subdivision (a)(3)(A) of this  
16 section; ~~or~~

17 (ii) Receive an extension of time under subdivision  
18 (a)(3)(B) of this section to provide the system with a letter from the Social  
19 Security Administration finding that the member or retirant is disabled; ~~or~~

20 (iii) Apply for a review by the system's medical  
21 committee within three (3) months of disability benefits ceasing due to the  
22 lack of a Social Security Administration determination letter finding that  
23 the member or retirant is disabled.

24  
25 SECTION 4. Arkansas Code § 24-7-704(b)(3), concerning disability  
26 retirement under the Arkansas Teacher Retirement System, is amended to add an  
27 additional subdivision to read as follows:

28 (D)(i) A member or retirant who seeks and fails to receive  
29 a determination letter finding the member or retirant disabled by the Social  
30 Security Administration may seek a review permitted under subdivision  
31 (b)(3)(C)(iii) of this section no earlier than three (3) months before the  
32 date on which the member's disability retirement would otherwise end and no  
33 later than three (3) months after termination of disability retirement.

34 (ii) The system's medical committee shall hear all  
35 applications for review permitted under subdivision (b)(3)(C)(iii) of this  
36 section and render decisions consistent with the definition of disability

1 under subdivision (a)(1)(D) of this section.

2 (iii) The medical committee's recommendation after  
 3 its review of an application permitted under subdivision (b)(3)(C)(iii) of  
 4 this section shall be presented to the board for a final order.

5 (iv) After receiving the medical committee's  
 6 recommendation under subdivision (b)(3)(D)(iii) of this section, the board  
 7 shall issue a final order consistent with the provisions of this chapter and  
 8 the system's rules for initial disability retirement.

9 (v) The board's approval of the medical committee's  
 10 recommendation shall be a final disposition of the matter by the system,  
 11 under § 25-15-201 et seq.

12

13 SECTION 5. Arkansas Code § 24-7-704(b)(4), concerning disability  
 14 retirement under the Arkansas Teacher Retirement System, is repealed.

15 ~~(4) The requirements under subdivision (b)(3) of this section~~  
 16 ~~shall not apply to a member or retirant who is fifty-seven (57) years of age~~  
 17 ~~or older before July 1, 2015.~~

18

19 SECTION 6. Arkansas Code § 24-7-704(c), concerning disability  
 20 retirement under the Arkansas Teacher Retirement System, is amended to read  
 21 as follows:

22 ~~(c)(1)(A) At least one (1) time each year during the first five (5)~~  
 23 ~~years following a member's retirement on account of disability, and at least~~  
 24 ~~one (1) time in each three-year period thereafter, the board may require any~~  
 25 ~~disability retirant who has not attained sixty (60) years of age to undergo a~~  
 26 ~~medical examination to be made by or under the direction of the medical~~  
 27 ~~committee.~~

28 ~~(2) If the retirant refuses to submit to the medical examination~~  
 29 ~~in any period, his or her disability annuity may be suspended by the board~~  
 30 ~~until his or her withdrawal of his or her refusal.~~

31 ~~(3) If his or her refusal continues for one (1) year, all his or~~  
 32 ~~her rights in and to a disability annuity may be revoked by the board.~~

33 ~~(4) If the medical committee, upon the medical examination of~~  
 34 ~~the retirant, or the system staff on behalf of the medical committee, reports~~  
 35 ~~to the board with cause that the retirant is physically and mentally able and~~  
 36 ~~capable of resuming his or her duty in the position held by him or her at the~~



1 ~~time of disability retirement, then his or her disability retirement shall~~  
 2 ~~terminate.~~

3 ~~(5)(A)~~ If a disability retirant returns to covered employment  
 4 before attaining sixty (60) years of age, his or her disability retirement  
 5 shall terminate unless the retirant meets the requirements to return to  
 6 covered employment or obtains a waiver under subsection (e) of this section.

7 (B) If a disability retirant returns to covered employment  
 8 after attaining sixty (60) years of age and is otherwise eligible for  
 9 retirement under § 24-7-707, the retirant shall be treated as if he or she  
 10 retired under § 24-7-701.

11 ~~(6)(2)~~(A) If a disability retirant under sixty (60) years of age  
 12 returns to covered employment, he or she shall ~~immediately~~ again become an  
 13 active member of the system immediately, and his or her credited service at  
 14 the time of his or her disability retirement shall be restored to his or her  
 15 credit in the members' deposit account.

16 (B) The retirant's disability retirement and his or her  
 17 accumulated contributions shall be treated as if he or she ~~had~~ returned to  
 18 service on the date of the full-time employment.

19 ~~(7)(3)~~ A Except as provided under subdivision (c)(2) of this  
 20 section, a disability retirant shall not earn or be given service credit for  
 21 the period he or she was receiving a disability retirement annuity.

22  
 23 SECTION 7. Arkansas Code § 24-7-704, concerning disability retirement,  
 24 is amended to add a new subsection to read as follows:

25 (e) A disability retirant may be employed by a covered employer and  
 26 also receive a monthly disability retirement if:

27 (1) The disability retirant provides the covered employer with:

28 (A) Less than forty (40) days of actual service during a  
 29 fiscal year; or

30 (B) At least forty (40) days of actual service during the  
 31 fiscal year and the actual service:

32 (i) Is substantially different from the position,  
 33 job requirements, and work duties from which the disability retirant retired  
 34 after a determination of disability; and

35 (ii) Has a computed yearly salary that is less than  
 36 the final average salary used to compute the monthly disability benefit; and

1           (2)(A)(i) Within three (3) months of a covered employer's  
 2 employment of a disability retirant under this section, the system grants a  
 3 waiver of subdivision (a)(4)(A) of this section upon the request of the  
 4 covered employer.

5           (ii) If a covered employer's request for a waiver of  
 6 subdivision (a)(4)(A) of this section is received by the system, the system  
 7 shall grant a waiver to permit the covered employer's employment of the  
 8 disability retirant for less than forty (40) days of actual service in the  
 9 fiscal year.

10           (iii) The system is not required to grant a waiver  
 11 under subdivision (e)(2)(A)(i) of this section if the disability retirant  
 12 previously worked at least forty (40) days in the fiscal year as a disability  
 13 retirant.

14           (B) If a covered employer requests a waiver of subdivision  
 15 (a)(4)(A) in order to employ a disability retirant for forty (40) days or  
 16 more of actual service during the fiscal year, upon receiving the request and  
 17 any supporting documentation, the system shall grant the waiver if it  
 18 determines that the requirements of this subsection are met.

19           (3)(A) A disability retirant who meets the requirements of this  
 20 subsection and whose employer is granted a waiver of subdivision (a)(4)(A) of  
 21 this section shall continue to receive his or her monthly disability  
 22 retirement annuity from the system and shall not accrue additional service  
 23 credit.

24           (B) A covered employer who employs a disability retirant  
 25 under this subsection shall remit contributions on all salary paid to the  
 26 disability retirant in an amount equal to the employer contribution rate  
 27 applicable to an active member.

28  
 29           SECTION 8. Arkansas Code Title 24, Chapter 7, Subchapter 7, is amended  
 30 to add a new section to read as follows:

31           24-7-738. Return to regular covered employment for service credit  
 32 after disability retirement - Alternate option to return to disability  
 33 retirement - Incentive to work.

34           (a) If a member who has been on disability retirement with the  
 35 Arkansas Teacher Retirement System returns to regular, covered employment and  
 36 then returns to disability retirement with the system, the disability

1 retirement benefit shall be the higher of the:

2 (1) Amount that the member would have received if he or she did  
3 not return to regular, covered employment; or

4 (2) Recomputed benefit using the additional salary and  
5 additional service credit earned by the member under the covered employment.

6 (b)(1) A member who returns to covered employment under this section  
7 after disability retirement shall not receive a disability retirement benefit  
8 from the system in any month that the member is paid a salary from a covered  
9 employer for a work period that is concurrent with the receipt of the  
10 disability retirement.

11 (2) Any disability retirement benefit erroneously paid to the  
12 member or retirant for a month in which the member receives salary from a  
13 covered employer may be recovered by the system as an overpayment as allowed  
14 by law.

15  
16 SECTION 9. EMERGENCY CLAUSE. It is found and determined by the  
17 General Assembly of the State of Arkansas that the operations of the Arkansas  
18 Teacher Retirement System are complex; that the system must be able to meet  
19 the needs of its members as anticipated by the General Assembly; that certain  
20 provisions of the Arkansas Teacher Retirement System Act are imminently in  
21 need of revision and updating to bring them into conformance with sound  
22 public pension policy and actuarial requirements; that such revision and  
23 updating is of great importance to members of the system and to other  
24 citizens of the State of Arkansas; that the system needs to have the ability  
25 to make immediate changes to maintain and improve its actuarial status; and  
26 that this act is immediately necessary in order to maintain an orderly  
27 management of benefits for the members of the system. Therefore, an emergency  
28 is declared to exist and this act being necessary for the preservation of the  
29 public peace, health, and safety shall become effective on:

30 (1) The date of its approved by the Governor;

31 (2) If the bill is neither approved nor vetoed by the Governor,  
32 the expiration of the period of time during which the Governor may veto the  
33 bill; or

34 (3) If the bill is vetoed by the Governor and the veto is  
35 overridden, the date the last house overrides the veto. **APPROVED:**

36 **03/21/2017**