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## ATRS Rule 7

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

A.C.A. 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, 24-2-704

#### I. Calculation of Final Average Salary

##### I. Definitions

##### 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.~~
- 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. 2. "Full service year" means employment by with a covered employer for one hundred sixty (160) days or more in a fiscal year;
- g. 3. "Partial service year" means less than a full service year of credited service employment with a covered employer for less than one hundred sixty (160) days in a fiscal year;

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- 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.

## **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~~

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~~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.~~

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- ~~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,~~

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~~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:~~

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

~~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.~~



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~~H. A specialized support employee who is employed without a contract specifying the numbers of days of service 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 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.~~

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~~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 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~~

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~~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.~~

## 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.



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## 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:

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

## 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

# MARK UP

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,

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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.

# MARK UP

## 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).



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## 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



# MARK UP

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

# MARK UP

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

# MARK UP

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



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## 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;

# MARK UP

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



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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

# MARK UP

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

Amended:	August 11, 1998	7-1, 7-3
Amended:	June 17, 2003	7-4
Amended:	April 6, 2004	7-4
Reaffirmed:	June 15, 2004	7-4
Amended:	July 18, 2005	7-1, 7-2, 7-3, 7-4
Amended:	April 26, 2007	7-4
Amended:	February 11, 2008	7-3, 7-4
Amended:	June 16, 2009	7-1, 7-2 (Emergency)
Amended:	October 5, 2009	7-1, 7-2 (Permanent)
Amended:	December 18, 2009	7-3, 7-4
Amended:	July 1, 2011	7-1, 7-2 (Emergency)
Adopted:	August 8, 2011	7-1, 7-2
Effective:	November 11, 2011	7-1, 7-2
Board Approved:	February 6, 2012	7-2, 7-4
Amended:	April 2, 2012	7-2 (Emergency)
Amended:	April 18, 2012	7-4
Effective:	May 29, 2012	7-2, 7-4
Approved by Board:	July 26, 2013	7-1, 7-3
Amended:	October 9, 2013	7-1, 7-3
Effective:	November 8, 2013	7-1, 7-3

## MARK UP

Approved by Board:	January 8, 2014	7-1
Amended:	February 17, 2014	7-1
Effective:	March 18, 2014	7-1
Effective:	August 5, 2019	Rule 7
Effective:	May 28, 2020	

State of Arkansas  
93rd General Assembly  
Regular Session, 2021

# A Bill

HOUSE BILL 1320

By: Representative Maddox

## For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING THE COMPELLING OF  
PAYMENTS FROM A DELINQUENT EMPLOYER UNDER THE  
ARKANSAS TEACHER RETIREMENT SYSTEM; AND FOR OTHER  
PURPOSES.

## Subtitle

TO AMEND THE LAW CONCERNING THE  
COMPELLING OF PAYMENTS FROM A DELINQUENT  
EMPLOYER UNDER THE ARKANSAS TEACHER  
RETIREMENT SYSTEM.

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

SECTION 1. Arkansas Code § 24-7-411(a) and (b), concerning the  
compelling of payments from a delinquent employer under the Arkansas Teacher  
Retirement System, are amended to read as follows:

~~(a)(1) If any participating employer fails to remit to the Arkansas  
Teacher Retirement System contributions that are required by law, rule, or  
regulation by the fifteenth day of the month in which the moneys are due,  
then the system shall impose an interest penalty of eight percent (8%) per  
annum with a daily interest accrual.~~

~~(2) For purposes of this subsection, an employer's remittance is  
not delinquent if the employer's remittance is:~~

~~(A) Received by the system by the fifteenth day of the  
month in which the payment is due; or~~

~~(B) Postmarked by the fourteenth day of the month in which  
the payment is due.~~



1        (a)(1) If an employer fails to remit moneys that are required by law  
 2        or rule to the Arkansas Teacher Retirement System by the date and at the  
 3        frequency established by the Board of Trustees of the Arkansas Teacher  
 4        Retirement System, the system shall impose an interest penalty equal to the  
 5        actuarially assumed rate of return on investments of the Arkansas Teacher  
 6        Retirement System Fund in the form of interest applied on an annual basis to  
 7        the moneys due.

8                ~~(3)~~(2) The interest penalty shall be determined by the system on  
 9        the date the delinquent funds are received, and a statement of the interest  
 10       penalty shall be sent to the ~~participating~~ public employer.

11               ~~(4)~~(3) If the interest penalty or delinquent moneys are not  
 12       received by the system by the last business day of the month in which the  
 13       moneys were originally due, then the system ~~shall cause the sums of moneys,~~  
 14       ~~including the interest penalty, to be transferred~~ may transfer the sums of  
 15       moneys, including the interest penalty, from any moneys due the ~~participating~~  
 16       employer from the Treasurer of State and the Department of Education as  
 17       provided in § 19-5-106(a)(5).

18               ~~(5)~~(4) This The interest penalty shall be computed on the actual  
 19       days of delinquency and shall be paid to the system to reimburse the trust  
 20       fund for the money that would have been earned on the moneys had they been  
 21       paid when due.

22               (b)(1) If a ~~participating~~ an employer fails to file with the system a  
 23       report required by the Board of Trustees of the Arkansas Teacher Retirement  
 24       System by the ~~fifteenth day of the month in which the report is due~~ date  
 25       established by the board, then the system shall impose a penalty of one  
 26       hundred fifty dollars (\$150) for each late report.

27               ~~(2) For purposes of this subsection, a report is not late if the~~  
 28       ~~report is:~~

29                        ~~(A) Received by the system by the fifteenth day of the~~  
 30       ~~month in which the report is due; or~~

31                        ~~(B) Postmarked by the fourteenth day of the month in which~~  
 32       ~~the report is due.~~

33               ~~(3)~~(2) A statement of the penalty shall be sent to the  
 34       ~~participating~~ employer.

35               ~~(4)~~(3) If the penalty is not received by the last business day  
 36       of the month in which the report was due, then the system ~~shall cause the~~



~~penalty amount to be transferred~~ may transfer the penalty amount from any moneys due the ~~participating~~ employer from the Treasurer of State and the Department of Education as provided in § 19-5-106(a)(5).

~~(5)(4)~~ The penalty amounts collected shall be deposited to the credit of the administrative funds of the system to help defray the cost of additional expenses incurred due to the additional work required to process late reports.

~~(6)(5)~~ In addition to the late report penalty under subdivision (b)(1) of this section, the system may impose an additional penalty of five hundred dollars (\$500) for a report that is filed with the system over one (1) month late.

SECTION 2. Arkansas Code § 24-7-411, concerning the compelling of payments from a delinquent employer under the Arkansas Teacher Retirement System, is amended to add additional subsections to read as follows:

(e)(1) Beginning on July 1, 2022, the member and employer contributions made by an employer as provided in § 24-7-401 and § 24-7-406 shall be:

(A) Reported electronically by the employer through the Arkansas Teacher Retirement System portal; and

(B) Paid by the employer through electronic transfer.

(2) An employer contribution shall be:

(A) Paid to the Arkansas Teacher Retirement System at the time and at the frequency established by the board; and

(B) Paid concurrently with contributions made by the employees of the employer to the Arkansas Teacher Retirement System.

(f)(1) An employer shall submit a written request for a temporary waiver to the board by July 1, 2022, when the employer is unable to:

(A) Report contributions electronically through the Arkansas Teacher Retirement System; or

(B) Pay contributions to the Arkansas Teacher Retirement System by electronic transfer.

(2) A request for a temporary waiver submitted under subdivision (f)(1) of this section shall include a timeline for when the employer will be able to comply with the payment and reporting requirements under this section.

APPROVED: 3/2/21

State of Arkansas  
93rd General Assembly  
Regular Session, 2021

# A Bill

HOUSE BILL 1319

By: Representative Maddox

## For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING THE FINAL AVERAGE  
SALARY AND CREDITED SERVICE UNDER THE ARKANSAS  
TEACHER RETIREMENT SYSTEM; TO DECLARE AN EMERGENCY;  
AND FOR OTHER PURPOSES.

## Subtitle

TO AMEND THE LAW CONCERNING THE FINAL  
AVERAGE SALARY AND CREDITED SERVICE UNDER  
THE ARKANSAS TEACHER RETIREMENT SYSTEM;  
AND TO DECLARE AN EMERGENCY.

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

SECTION 1. Arkansas Code § 24-7-601(e)(4)-(6), concerning credited  
service and the calculation of the final average salary under the Arkansas  
Teacher Retirement System, are amended to read as follows:

(4) The final average salary used shall be that of the Arkansas  
Teacher Retirement System or any reciprocal system that in which the member  
has at least two (2) years of service credit, whichever furnishes the highest  
final average salary at the time of retirement.

~~(5) Beginning July 1, 2014, if the reciprocal system in which a  
member has service credit has fewer than the number of years of service  
credit required in the Arkansas Teacher Retirement System's formula for the  
calculation of final average salary for a member, then the Arkansas Teacher  
Retirement System shall obtain the salary and service credit information from  
the reciprocal system and use the combined salary and service credit  
information to calculate the member's final average salary as if the salary~~



1 ~~and service credit have all been earned in the Arkansas Teacher Retirement~~  
2 ~~System.~~

3           ~~(6)~~(5) When the Arkansas Teacher Retirement System provides a  
4 benefit amount that is not dependent on length of credited service, the  
5 benefit amount shall be reduced to the proportion that actual system service  
6 bears to total reciprocal system-credited service.  
7

8           SECTION 2. Arkansas Code § 24-7-601(g)(3), concerning credited service  
9 generally and concurrent credit service under the Arkansas Teacher Retirement  
10 System, is amended to read as follows:

11           (3)(A) A member may elect to waive all or part of the concurrent  
12 service credited to the member in the system and retire under a reciprocal  
13 system if:

14                   ~~(A)~~—The the member acknowledges that the waiver is a  
15 voluntary surrender of the member's concurrent service credit in the system  
16 and cancels the member's concurrent service credit in the system; ~~and.~~

17                   (B) ~~The member's employer accrued contributions and~~  
18 ~~employee accrued contributions in the system remain with the system~~ The  
19 employer-and-employee accrued contributions attributable to the concurrent  
20 service may be refunded to the employer and member.  
21

22           SECTION 3. EMERGENCY CLAUSE. It is found and determined by the  
23 General Assembly of the State of Arkansas that the operations of a state  
24 public retirement system are complex; that the Arkansas Teacher Retirement  
25 System must be able to meet the needs of its members as anticipated by the  
26 General Assembly; that certain provisions of the Arkansas Teacher Retirement  
27 System Act, § 24-7-201 et seq., are in need of immediate revision and  
28 updating to conform with sound public pension policy and actuarial  
29 requirements; that there are conflicts in the law applicable to the various  
30 retirement systems concerning concurrent service; that member benefits will  
31 be at risk if the conflicts in the law concerning concurrent service remain  
32 unresolved; that this act resolves the conflicts in the law concerning  
33 concurrent service; that such revision and updating is of great importance to  
34 members of the Arkansas Teacher Retirement System and to other citizens of  
35 the State of Arkansas; and that this act is necessary in order to maintain an  
36 orderly system of benefits for the members of the Arkansas Teacher Retirement

1 System and reciprocal systems. Therefore, an emergency is declared to exist,  
2 and this act being immediately necessary for the preservation of the public  
3 peace, health, and safety shall become effective on:

4 (1) The date of its approval by the Governor;

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

8 (3) If the bill is vetoed by the Governor and the veto is  
9 overridden, the date the last house overrides the veto.

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12 **APPROVED: 3/2/21**  
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State of Arkansas

As Engrossed: H4/6/21

93rd General Assembly

# A Bill

Regular Session, 2021

HOUSE BILL 1300

*By: Representatives Murdock, Warren*

By: Senator K. Hammer

## For An Act To Be Entitled

AN ACT TO AMEND CERTAIN PROVISIONS OF TITLE 24 OF THE  
ARKANSAS CODE CONCERNING RETIREMENT AND PENSIONS;  
CONCERNING THE MEMBERSHIP OF PARTICIPANTS IN SUMMER  
YOUTH WORK PROGRAMS IN THE ARKANSAS TEACHER  
RETIREMENT SYSTEM; TO AMEND THE DEFINITION OF  
"EMPLOYEE"; AND FOR OTHER PURPOSES.

## Subtitle

CONCERNING THE MEMBERSHIP OF PARTICIPANTS  
IN SUMMER YOUTH WORK PROGRAMS IN THE  
ARKANSAS TEACHER RETIREMENT SYSTEM; AND  
TO AMEND THE DEFINITION OF "EMPLOYEE".

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

SECTION 1. Arkansas Code § 24-7-202(16), concerning the definition of  
"employee" as applicable to the Arkansas Teacher Retirement System, is  
amended to read as follows:

(16)(A) "Employee" means any person employed by an employer  
covered by the Arkansas Teacher Retirement System;.

(B)(i) "Employee" does not include a participant in a  
summer work program whose compensation is disbursed by a covered employer  
through an agreement with an administrator of a summer work program to serve  
as a pass-through fiscal agent if the participant is:

(a) Enrolled in a secondary public school as a  
student;





1 (b) Employed for a period between the first  
2 day of June and the last day of August; and

3 (c) Participating in a program in which the  
4 covered employer is acting as a pass-through fiscal agent.

5 (ii) The board shall promulgate rules for the  
6 implementation of subdivision (16)(B)(i) of this section;  
7

8 SECTION 2. Arkansas Code Title 24, Chapter 7, Subchapter 5 is amended  
9 to add an additional section to read as follows:

10 24-7-507. Youth participants – Summer work programs.

11 (a) At the request of the Arkansas Teacher Retirement System, a  
12 covered employer shall provide the system with a memorandum of understanding,  
13 partnership agreement, or another similar document related to the covered  
14 employer's actions as a pass-through fiscal agent for participants described  
15 in § 24-7-202(16)(B).

16 (b) A covered employer who acts as a pass-through fiscal agent shall  
17 not be required to report participants described in § 24-7-202(16)(B) as  
18 "employees" for purposes of the system.

19 (c) The Board of Trustees of the Arkansas Teacher Retirement System  
20 shall promulgate rules for the implementation of this section.  
21

22 /s/Murdock  
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25 **APPROVED: 4/13/21**  
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