

Title 71 Retirement Board

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ARTICLE 71-02 PUBLIC EMPLOYEES RETIREMENT SYSTEM

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CHAPTER 71-02-02 MEMBERSHIP

71-02-02-01. Membership - General rule.

When an eligible employee becomes a member of the public employees retirement system, the following requirements apply:

1. A temporary employee must submit a completed participation agreement within six months of the date of hire as a temporary employee or within six months of a change in status from a permanent to temporary position. If no application is made and filed with the office, an irrevocable waiver of participation will occur for as long as the employee is in temporary status.
2. Delinquent payments of over thirty days, for reasons other than leave of absence or seasonal employment, will result in termination of eligibility to participate as a temporary member.

3. Upon taking a refund, future participation as a temporary member is waived.
4. A member may not contribute concurrently to the plan within any given month as both a permanent and a temporary member. Permanent employment has precedence.
5. ~~Elected officials of participating counties and elected state officials, at their individual option, must enroll or waive participation in writing within six months of taking office or beginning a new term. If no application is made and filed with the office, an irrevocable waiver of participation will occur until the official makes application within six months from the start of a new term.~~

History: Amended effective September 1, 1982; November 1, 1990; September 1, 1992; June 1, 1996; July 1, 1998; May 1, 2004; July 1, 2006; April 1, 2016; July 1, 2018; April 1, 2022; _____, 2025.

General Authority: NDCC 54-52-04, 54-52-23

Law Implemented: NDCC 54-52-01, 54-52-02.9, 54-52-05, 54-52-23

71-02-02-02. Nonstate Elected Officials – Membership and Return to Service

1. **Purpose.** North Dakota Century Code sections 54-52-02.11 and 54-52.6-02.1(3) conflict with Internal Revenue Code sections 401(a)(36) and 401(k)(4)(B)(ii) and related regulations and relevant guidance.

Pursuant to the authority granted to the board under North Dakota Century Code section 54-52-23, the purpose of this section is to ensure compliance with federal statutes and rules until the conflict between North Dakota Century Code section 54-52-02.11 and federal law is addressed by the legislative assembly.

2. Membership.

- a. As used in this subsection, “eligible elected official” means a county elected official who is a permanent employee, peace officer, firefighter, dispatcher, emergency medical services personnel, or correctional officer and who is eighteen years or more of age.
- b. Effective May 13, 2025, an eligible elected official of a participating county, from and after the date that individual takes office, must participate in the defined contribution retirement plan established under North Dakota Century Code chapter 54-52.6, unless at the time of taking office the individual is:
 - 1) eligible to participate in the law enforcement plan, in which case the eligible elected official must participate in the law enforcement plan under North Dakota Century Code chapter 54-52; or

2) a participating or deferred member under North Dakota Century Code chapter 54-52, in which case the eligible elected official must participate in the defined benefit plan under North Dakota Century Code chapter 54-52.

c. Effective May 13, 2025, a county elected official who is not an eligible elected official shall have the same participation options as a temporary employee.

3. Return to Service.

a. As used in this subsection, "impacted member" means a participating member who has reached their normal retirement date, returned to service or continued employment as an elected official of the same participating county with which the member was employed at the time the member retired, and is not contributing to the law enforcement plan, the defined benefit plan, or the defined contribution retirement plan.

b. Before August 1, 2027, a request by an impacted member to receive in-service benefit distributions while the impacted member is an elected official of the county of prior employment shall be approved.

c. Retroactive Effective Date. This subsection is retroactive to July 1, 2007.

4. Sunset provision. This section shall terminate on the effective date of any measure enacted by the legislative assembly providing the necessary amendments to the North Dakota Century Code to ensure compliance with the federal statutes or rules.

History: Effective XXX, 2025.

General Authority: NDCC 54-52-04, 54-52-23

Law Implemented: NDCC 54-52-02.15, 54-52-05

**CHAPTER 71-02-07
RETURN TO SERVICE**

71-02-07-02. Return to service - Retired member.

The benefits of a retired member who returns to permanent employment shall be suspended without interest accruing on the suspended account, except as provided in subsection 1 of North Dakota Century Code section 54-52-05 and section 71-02-02-02. Upon subsequent termination and retirement, the member is required to select the same benefit option as the option selected at initial retirement. The member's total benefit upon subsequent retirement must equal the original benefit plus the calculated benefit for the return to work period. The member's benefit attributable to any return to work period shall

be based upon service and earnings attributable to the return to work period only and be calculated as follows:

1. The member's calculated benefit shall be based on the benefit provisions in effect at subsequent retirement and shall include the member's and spouse's ages, salary earned during the period of reemployment, total service credits earned after reemployment, and actuarial factors in effect at subsequent retirement.
2. If a member dies during subsequent employment, the member's initial retirement benefit option election will apply and the date of death will be considered the subsequent retirement date.
3. If a member's spouse dies during the subsequent employment of the member, section 71-02-04-04 applies to the member's initial and subsequent retirement benefit calculation.

History: Amended effective November 1, 1990; July 1, 1998; May 1, 2004; July 1, 2006; July 1, 2010; July 1, 2018; _____, 2025.

General Authority: NDCC 54-52-04, 54-52-17, 54-52-23

Law Implemented: NDCC 54-52-17, 54-52-02.15, 54-52-05

ARTICLE 71-08 DEFINED CONTRIBUTION RETIREMENT PLAN

Chapter	
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CHAPTER 71-08-02 MEMBERSHIP IN DEFINED CONTRIBUTION RETIREMENT PLAN

71-08-02-03. Nonstate Elected Officials – Membership and Return to Service

1. **Purpose.** North Dakota Century Code sections 54-52-02.11 and 54-52.6-02.1(3) conflict with Internal Revenue Code sections 401(a)(36) and 401(k)(4)(B)(ii) and related regulations and relevant guidance.

Pursuant to the authority granted to the board under North Dakota Century

Code sections 54-52-23 and 54-52.6-23, the purpose of this section is to ensure compliance with federal statutes and rules until the conflict between North Dakota Century Code sections 54-52-02.11 and 54-52.6-02.1(3) and federal law is addressed by the legislative assembly.

2. **Membership.** A county elected official shall participate in the defined contribution retirement plan as provided under section 71-02-02-02.

3. **Return to Service.**

a. Before August 1, 2027, a request by a county elected official to receive in-service benefit distributions shall be approved as provided under section 71-02-02-02.

b. Retroactive Effective Date. This subsection is retroactive to July 1, 2007.

4. **Sunset provision.** This section shall terminate on the effective date of any measure enacted by the legislative assembly providing the necessary amendments to the North Dakota Century Code to ensure compliance with the federal statutes or rules.

History: Effective XXX, 2025.

General Authority: NDCC 54-52-04, 54-52.6-23

Law Implemented: NDCC 54-52-02.15, 54-52.6-02

CHAPTER 71-08-09 RETURN TO SERVICE – RETIRED MEMBER

71-08-09-01. Return to service - Retired member.

The benefits of a retired member of the defined contribution plan who returns to permanent employment shall be suspended except as provided in North Dakota Century Code section 54-52.6-02 and section 71-08-02-03.

History: Amended ~~E~~Effective July 1, 2006, XXX, 2025.

General Authority: NDCC 54-52-04, 54-52.6, 54-52.6-23

Law Implemented: NDCC 54-52.6-01-~~(7)~~, 54-52.6-02-~~(7)~~, 54-52-02.15, 54-52.6-02

CHAPTER 71-08-10 PERMANENT EMPLOYEE PARTICIPATION

71-08-10-01. Permanent employee participation.

1. Under this chapter "eligible employee" means a permanent employee who:
 - a. Meets all the eligibility requirements set by North Dakota Century Code chapter 54-52;

- b. Is at least eighteen years of age;
 - c. Becomes a participating member after December 31, 2024; and
 - d. Is not eligible to participate in the law enforcement plan, judges' plan, highway patrol plan, teachers' fund for retirement plan, or alternative retirement program established under subsection 6 of North Dakota Century Code chapter 15-10-17 for employees of the board of higher education or state institutions under the jurisdiction of the board of higher education.
- 2. Effective January 1, 2025, the public employees retirement system defined benefit main plan maintained for employees is closed to new eligible employees. However, an employee who first becomes a participating or deferred member under North Dakota Century Code chapter 54-52 before January 1, 2025, remains in the defined benefit retirement plan under North Dakota Century Code chapter 54-52, regardless of being rehired after December 31, 2024.
- 3. Except as otherwise provided under this section and section 71-08-02-03, effective January 1, 2025, an eligible employee who begins employment with an employer as defined under subsection 6 of North Dakota Century Code chapter 54-52-01 shall participate in the defined contribution retirement plan under North Dakota Century Code chapter 54-52.6 as provided under North Dakota Century Code chapter 54-52.6-02.1.
- 4. This section does not impact an employee to the extent the employee is a participating member in one or more of the following enumerated plans: law enforcement plan, judges' plan, highway patrol plan, teachers' fund for retirement plan, or alternative retirement program established under subsection 6 of North Dakota Century Code chapter 15-10-17 for employees of the board of higher education or state institutions under the jurisdiction of the board of higher education.
 - a. A participating or deferred member in the defined contribution retirement plan under North Dakota Century Code chapter 54-52.6 who becomes eligible to participate in a plan enumerated under subsection 4 shall cease participation in the defined contribution retirement plan under North Dakota Century Code chapter 54-52.6 and commence participation in the retirement plan enumerated under subsection 4.
 - b. Unless subsection 2 applies, a participating member of a retirement plan enumerated under subsection 4 who ceases participation in that plan and becomes an eligible employee under the defined contribution retirement plan under North Dakota Century Code chapter 54-52.6 shall participate in the defined contribution retirement plan under North Dakota Century Code chapter 54-52.6.
- 5. An eligible employee must be enrolled in the plan within the first thirty days of employment.

History: Amended Effective January 1, 2025, XXX, 2025.

General Authority: NDCC 54-52-04, 54-52-02.15

Law Implemented: NDCC 54-52-02.15, 54-52.6-09, 54-52-02.15, 54-52.6-02