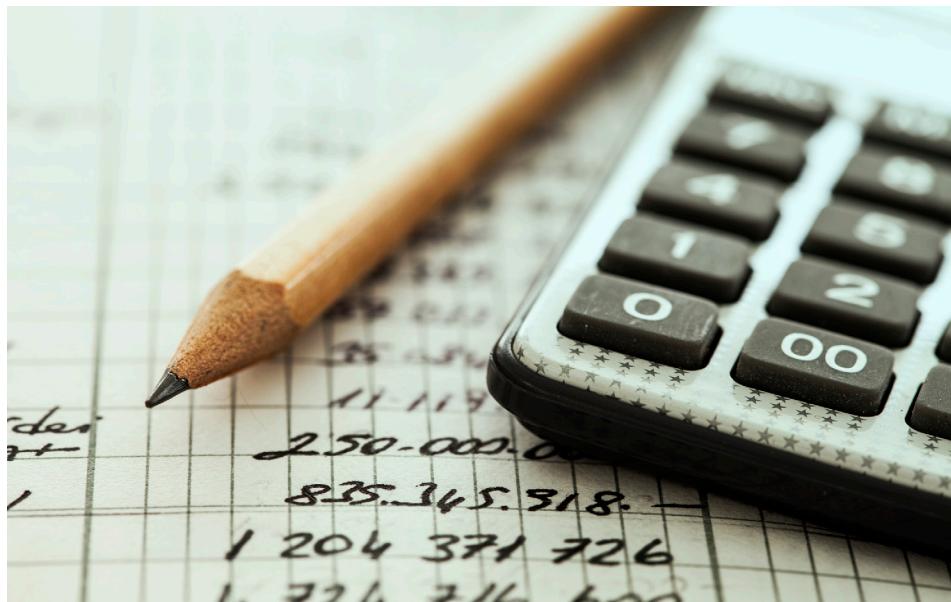




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## Chapter 3– Defined Benefit Plans



The PERA Defined Benefit Plans are governed by Minnesota Statutes and were established to help Minnesota public employers attract and retain qualified employees by providing retirement, disability, and survivor benefits to their participating employees. The PERA Defined Benefit Plans satisfy the requirements of [section 401\(a\)](#) of the Internal Revenue Code (IRC) and are governmental plans within IRC section 414(d).

When combined with other income, the PERA retirement annuity is designed to provide members with the basis for financial security during their retirement years. In a Defined Benefit (DBP), such as the PERA plans, the benefit provided to a vested member

at retirement is fixed based on a formula set by law. The formula includes factors such as the member's compensation over a set period of time, years of creditable service, age at retirement, and the benefit payment option selected at retirement.

A Defined Benefit Plan member's retirement benefit is not based on the accumulated contributions in his or her account, as it is with a Defined Contribution Plan (DCP). In addition, a Defined Benefit Plan member does not manage his or her contributions as is done with a DCP – the funds of the Defined Benefit Plan are managed by professional investment managers.

#### Last chapter 3 revision:

July 9, 2018  
Chapter Revisions Log

## PERA Employer Manual Chapter 3 - Defined Benefit Plans

This chapter provides information about the membership provisions of Defined Benefit Plans listed in Table 1 and includes guidelines for Social Security participation by employees holding positions that qualify for membership in these plans. This chapter also provides instructions relating to the [Annual Exclusion Report](#) that must be filed by every governmental unit that is eligible to participate in PERA.

The Employer Manual is intended to provide general information. The rights and obligations of public employers and members are governed by state and federal laws, rules and regulations. The Minnesota Legislature or the federal government may change the statutes, rules and regulations governing PERA at any time. The statutes and regulations shall govern if there is any discrepancy between them and the information in this document.

## Public Employee Defined

**Table 1—  
PERA's Main Statewide Defined Benefit Plan (DBPs)<sup>1</sup>**

| Plan                                                                                              | Employees Covered                                                                                                                                                                                                                                                                                                                                                     |
|---------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| General Employees Retirement Plan (The plan has 2 sub-plans: the Basic and the Coordinated plans) | General employees and certain elected officials of school districts and local units of government who meet the membership requirements in Minn. Stat. §353.01, subd. 2a or 2d and who are not members of another retirement plan covering public employees for the same service.                                                                                      |
| Correctional Plan                                                                                 | Correctional guards or officers, joint jailer-dispatchers, and supervisors of these positions, all of whom must work in a county or regional adult or juvenile correctional facility, be directly responsible for the direct security, custody and control of the facility and its inmates, and meet the additional eligibility criteria in Minn. Stat. Chapter 353E. |
| Police and Fire Plan                                                                              | Licensed police officers and firefighters who meet the membership criteria in Minn. Stat. §353.64 and who are not earning credit in any other PERA retirement plan or in a local relief association for the same services.                                                                                                                                            |

<sup>1</sup>PERA also administers the Statewide Volunteer Firefighter (SVF) Retirement Plan, which is a Defined Benefit Plan for volunteer firefighters who serve municipal fire departments or independent nonprofit firefighting corporations. Unlike the plans discussed in this chapter, the SVF plan provides a lump-sum benefit to a retiring member (not a lifetime annuity). Full details about the SVF plan are in Chapter 2.

An employee's eligibility for membership in a PERA DBP is based on the person's employment with a single governmental employer. At a minimum, the person must be an employee who performs personal services for a Minnesota governmental subdivision for which he or she receives periodic salary or wages that are paid in whole or in part from revenue derived from taxation, fees, assessments, or other sources.

For PERA purposes "public employee" includes individuals who are appointed to positions that are defined in Minnesota law or local ordinance as public officers. Public employee also includes individuals

who are elected by the public at large to local government positions.

Questions about whether a person holding a specific position is a public employee can usually be answered by reviewing the facts of the position and the relevant laws. Employers may also contact the PERA office to discuss the position with PERA staff.



## Mandatory Coverage

Beginning January 1, 2015, a public employee who fills a non-elected position must be enrolled in a PERA Defined Benefit Plan (DBP) when annual income from one or more positions with a single governmental unit is projected to exceed \$5,100, or \$3,800 for a 9-month school district employee in a 12 month period, and no other exclusions apply.

When applying the annual salary threshold, you are to use the employee's eligible earnings from the paid date. Not all compensation paid to employees qualifies as eligible earnings for PERA purposes. For detailed information, refer to Chapter 5 Eligible Earnings.

Under the mandatory coverage provisions, you will generally provide DBP membership to the following classes of public employees if they are stipulated to earn more than \$5,100 annually (or \$3,800 for 9 month school district employees):

- Employees hired to fill positions that are permanent or for an unspecified period. PERA membership is required as a condition of employment, even if the employee serves a probationary period.
- Employees whose sole employment with your agency is in a short-term position that is expected to be for more than six months.
- Employees whose sole employment with you is in a single seasonal position that provides employment of more than 185 consecutive days in a 12-month period.
- Persons appointed, employed or contracted to perform governmental functions that by law or local ordinance are required of a public officer including, but not limited to town and city clerks or treasurers; county auditors, treasurers, or recorders; and emergency management directors.
- City managers, which includes chief administrative officers under Minn. Stat. §353.028, must become DBP members on the first day of employment unless the individual chooses within the first six months of employment to instead join PERA's Defined Contribution Plan or to not participate in any PERA retirement plan. Refer to [Optional Coverage](#) in this chapter for more information about the election for DBP exclusion.
- Physicians who do not exercise their option within the first 90 days of employment to be excluded from DBP coverage and instead join the Defined Contribution Plan. Refer to [Optional Coverage](#) in this chapter for more information.
- Elected county sheriffs unless the person is drawing a retirement benefit from PERA's Defined Benefit Plan. (Effective July 1, 2010, county sheriffs who are drawing retirement benefits from the PERA Police and Fire Plan have the option to participate in the Defined Contribution Plan. Refer to Chapter 4 for more details.) and
- Volunteer or on-call firefighters who do not receive credit in any of the following plans based on the service rendered as emer-

Membership is mandatory for many full-time and part-time permanent employees



### Fast Fact

## PERA Employer Manual

### Chapter 3 - Defined Benefit Plans

- Agency firefighters: 1) a local relief association operating under Minnesota Statutes Chapter 424(a), 2) PERA's Statewide Volunteer Fire-fighter Retirement Plan, or 3) PERA's Defined Contribution Plan under Minnesota Statutes Chapter 353D.
- Non-elected employees holding more than one position when the combined salaries of those positions exceed the salary threshold.

Individuals who are non-governing body elected officials with annual earnings in excess of the annual salary threshold have the option to join the Defined Benefit Plan. Please refer to the information under [Optional Coverage](#) in this chapter.

If an employee meets the mandatory membership requirements for the DBP, you must determine the specific pension plan to which the person will contribute. Please refer to [Determining Plan Coverage](#) later in this chapter for details. Then, you must submit enrollment data on the new member as described in Chapter 6 Maintain Member and Employer Records.

Once enrolled in a PERA Defined Benefit Plan, an employee's membership continues while in a covered position until termination of service, even if monthly earnings fall below the annual earning threshold while the individual holds the position

that provided the PERA coverage.

Finally, an employee who was a member of the association on Dec. 31, 2014, based on em-

ployment that had qualified for coverage under a PERA Defined Benefit Plan retains that membership for the duration of the person's employment in that position or incumbency.

### Provisional Coverage

There may, on occasion, be instances when you are not able to accurately predict whether an employee's salary will exceed the minimum annual salary threshold for PERA participation, such as when an employee is hired for intermittent, on-call or casual work and is not eligible for another exclusion such as Temporary for school district substitutes (see Temporary Positions section).

In this situation, you may choose to enroll the employee immediately rather than wait until the threshold is met and risk the possibility of an omitted deduction billing. This enrollment is Provisional, in that it will not be validated until the employee has had a full year of employment and it can be determined if the annual earnings threshold was actually met.

To enroll a new employee on a provisional basis, process the enrollment as usual and provide the employee with a Notice of Non-Covered Employment or Provisional Coverage form within two weeks of hire. Keep a copy

of this form in the employee's personnel record for future reference – do not send it to PERA.

PERA will monitor the earnings of all employees and will generate a report annually to identify members who have not met the annual salary threshold. At that time, we will contact employers to determine whether the enrollment was invalid and if a refund is appropriate.





## Provisional Coverage Scenario

**Situation #1:** A school hires Jim as a substitute bus driver at \$10 an hour. Based on the past records of employment by individuals who have held this position, a few have had annual earnings greater than \$3800 during a school year. At this time, the employer cannot accurately forecast what Jim will be paid in a year and, therefore, chooses to enroll Jim into PERA on a provisional basis to avoid possibly having to pay omitted deductions in the future.

PERA Eligibility #1: Since the facts establish that the position sometimes has exceeded \$3800 in a school year, the employer may choose to enroll the employee into PERA at the time of hire. In this situation, the employer would give the Notice of Non-Covered Employment or Provisional Coverage to Jim at the time of hire and would indicate that his PERA membership is provisional, and subject to a final determination, once he has been employed at least one school year.

PERA will monitor Jim's annual earnings. If his earnings during the first full school year do not exceed \$3800, his membership is invalid and PERA will ask the employer if it agrees that a deduction-in-error refund is due to the employee and the employer. However, if his earnings do exceed \$3800, his membership will be validated and will continue until his employment terminates, even if his earnings do not exceed \$3800 in subsequent years.



## Optional Coverage

For the position classes listed below, the law allows elected and appointed public employees options with respect to participating in the PERA Defined Benefit Plan. The employer is responsible for informing the individuals of their options. Please note that except for persons elected to local non-governing body positions, the optional membership right exists for only a specified number of days of employment.

### Non-Governing Body Elected Officials

With the exception of county

sheriffs, individuals who are either elected to a local non-governing body position, or appointed to a vacant non-governing body position for the remainder of the term of office, have the option to choose coverage under the Defined Benefit Plan if they are expected to earn more than the annual threshold. This includes but may not be limited to city or township clerks and county attorneys or treasurers. For those with sufficient earnings, membership in the Defined Benefit Plan is an alternative to the Defined Contribution Plan. (See Chapter

4 Defined Contribution Plan for additional details.)

By law, a person who is elected to the county sheriff position must contribute to the Police and Fire Plan if the position provides earnings in excess of the annual threshold. However, if such person is excluded from paying into the Police and Fire Plan because he or she is drawing a retirement benefit from the PERA Police and Fire Plan, the elected sheriff has the option to participate in the Defined Contribution Plan. Refer to Chapter 4 for more details.

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### Chapter 3 - Defined Benefit Plans

We suggest that you give the following PERA documents to newly elected non-governing body officials who have the option to join a PERA retirement plan: (At your request, PERA will mail these documents to your unit.)

1. The handbook, Retirement Plan Alternatives – DCP/Coordinated for Elected Officials, which explains the PERA membership options available to the official.
2. The Membership Election by Public Officials form, which is used to document the individual's retirement plan choice. Part A of the form includes a check box for you (the employer) to indicate the individual's pension plan eligibility. Part B is then completed by the official, who must indicate a membership choice and sign. Part B also explains Social Security coverage that may be required.



If the elected official is eligible for and chooses to have coverage under the Defined Benefit Plan, the official may not discontinue such membership until he or she vacates office. Furthermore, the membership continues into a subsequent term in the same office if there is no break in service.

On the other hand, if an eligible public official chooses to not enroll in the DBP (or the DCP) you must retain the signed Membership Election by Public Officials form in your records. Do not send it to PERA since the person did not choose to have PERA coverage. In these situations, we recommend that you remind the individual at least annually of the right to PERA membership. This is best done by completing the membership election form each year to get signed confirmation of the person's decision.

#### **City Managers**

For PERA purposes, a city manager means (1) a person who is duly appointed to and is holding the position of city manager in a Plan B statutory city or in a home rule city operating under the "council-manager" form of government, or (2) a person who is appointed to and is holding the position of chief administrative officer of a home rule charter city or a statutory city under a charter provision, ordinance, or resolution establishing such a position and prescribing its duties and responsibilities.

A city manager whose annual compensation is stipulated to be more than \$5,100 automatically becomes a member of the Defined Benefit Plan (Coordinated Plan); however, the individual may within the first six months of employment elect in writing to be excluded from such cover-

age with city council approval. A sample resolution for this purpose is in Figure 1.

New city managers make their PERA membership choice by completing the Membership Election by a City Manager form within their first six months of employment. If the city manager opts to be excluded from the Defined Benefit Plan, the person has the following two choices with respect to PERA membership. City representatives are responsible for informing their city managers of these options.

1. Choose to have Defined Contribution Plan (DCP) coverage. If Defined Benefit Plan deductions had been submitted to PERA before the individual chooses to join the DCP, the deductions will remain in the city manager's PERA account until he or she terminates



public service. (Note: An election to join the DCP is revocable; therefore, a city manager may subsequently discontinue the DCP membership. Please refer to Chapter 4 Defined Contribution Plan for details about the DCP).

2. Choose to have no PERA participation. A city manager may choose to not have coverage in either the Defined Benefit Plan (with city council approval) or the Defined Contribution Plan. If Defined Benefit Plan deductions had

been submitted to PERA before the person chooses to have no PERA coverage, a refund will be processed to return the invalid contributions to the city manager and the employer.

**Figure 1 - A RESOLUTION APPROVING A CITY MANAGER'S CHOICE TO BE EXCLUDED FROM PARTICIPATING IN THE PERA COORDINATED PLAN**

**WHEREAS:** (Name of city manager) is the City Manager of the (name of city) having been duly appointed effective (date), and

**WHEREAS:** Acting under Minnesota Statutes §353.028, (name of city manager) has chosen to be excluded from membership in the Coordinated Plan of the Public Employees Retirement Association (PERA) effective upon filing such election with the PERA office, and

**WHEREAS:** (Name of city manager) has provided this Council with a copy of such written election, and

**WHEREAS:** In making this election, (name of city manager) has agreed that s/he will not at any time in the future seek any authorization to purchase service credit for any period of excluded service.

**NOW THEREFORE, BE IT RESOLVED** BY THE CITY COUNCIL OF \_\_\_\_\_, MINNESOTA that said election to be excluded from membership in the Coordinated Plan of the Public Employees Retirement Association is hereby approved.

Whereupon said resolution was declared duly passed and adopted by the City Council of the City of \_\_\_\_\_, on \_\_\_\_\_, 20\_\_\_\_.

BY:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk or Administrator

It is also important to point out that Minn. Stat. §353.028 allows a city manager, who initially had chosen to be excluded from the Defined Benefit Plan, to later revoke that decision and obtain prospective coverage under that plan. This one-time irrevocable option must be exercised in writing by completing the Election for Inclusion in the Coordinated Plan form. The employer must then send the signed election form to PERA.

### Physicians

Physicians who are employed by a governmental unit may—with-in their first 90 days of employ-ment—join either the Defined Benefit Plan or the Defined Contribution Plan, but not both for the same position.

Employers are to use the Retirement Plan Election by a Physician form to document the membership choice of the physician. If a physician does not complete this form prior to his or her 91st day of employment, enrollment in the DBP Coordinat-ed Plan is mandatory if annual

earnings are projected to be in excess of \$5,100.

### Employees of Labor Organizations

Members of the DBP Coordinated Plan who are on an authorized leave of absence from their employers and who become employed by a labor organization representing public employees may continue paying Coordinated Plan contributions from their earnings as a labor organization employee. To continue PERA participation:

1. The employer must report a leave of absence to PERA and
2. The employee must sign the form, Election by a Labor Orga-nization Employee, and submit it to PERA within six months of employment by the labor organization.

Employees who elect to continue their DBP participation are obliged to pay both the employee and em-ployer contributions, unless the labor organization chooses to pay the employer portion.

## Employees Excluded

Effective January 1, 2015, the membership eligibility requirements for the PERA Defined Benefit Plans changed from \$425 in a month to an annual expected wage threshold of \$5,100, or \$3,800 for school year employees. The transition from the monthly salary threshold to the annual threshold requires employers to review the eligibility of all employees who had been excluded under the \$425 monthly threshold prior to 2015 and who will remain employed after December 31, 2014.

The legislation that brought about the change in the membership earnings threshold also requires employers to provide a written notice to any employee who is excluded from PERA membership because the annual compensation is not expected to exceed the minimum threshold amount. The notice must be given to the exclud-ed employee within two weeks of the date in which the employer makes the membership eligibility determination. The employer must keep a copy of the notice in the employee's personnel file to docu-ment the decision. Do not send a copy to PERA.

To comply with the notification requirement, employers must provide the Notice of Non-Covered Employment or Provisional Coverage form to any employees who are excluded from PERA membership because their projected earnings are below the applicable annual threshold. The form documents the eligibility decision and provides

information to the employees about the steps to take if they disagree with the exclusion. As an alternative to using the PERA form, an employer may create its own disclosure notice as long as the document provides infor-mation about the employee's right to appeal the determina-tion to PERA.

Although not required by law, employers are encouraged to use the Notice of Non-Cov-ered Employment or Provisional Coverage form to provide writ-ten disclosure to ALL excluded employees at the start of em-ployment so that the affected employees are informed about the eligibility determination.



Table 2 lists the classes of employees or positions that are specifically excluded from membership in a PERA Defined Benefit Plan by law.

**Table 2**

| Excluded Employees or Positions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Related Section of Law                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|
| Persons whose annual salary from one governmental subdivision does not exceed \$5,100, or \$3,800 for 9-month school district employees. Annual salary is calculated from the first day of employment and projected for 12 months. The employer must give a written notice of exclusion to the employee explaining the right to appeal the membership determination to PERA.                                                                                                                                        | M.S §353.01, subd. 2b(a)(1)                |
| Effective Jan. 1, 2015, employees whose sole employment is a temporary position that is predetermined by the employer to not provide employment that exceeds six consecutive months and employees who resign from a non-temporary position and accept a temporary position (same employer) within 30 days. Also refer to <a href="#">Temporary Positions</a> later in this chapter for more details about this exclusion.                                                                                           | M.S §353.01, subd. 2b(a)(5) and subd. 12a  |
| Effective Jan. 1, 2015, employees whose sole employment is a seasonal position if the employment duration is limited by the employer to 185 consecutive calendar days or less in each year. (Note: Employees who were PERA members on June 30, 2002, based on seasonal employment that had qualified for membership under the laws then in effect, retain membership until they terminate public service.) Refer to <a href="#">Seasonal Positions</a> later in this chapter for more details about this exclusion. | M.S §353.01, subd. 2b(a)(19) and subd. 12b |
| Independent contractors and their employees. A person who is appointed as a public officer cannot be excluded as an independent contractor if first contracted by a governmental unit after June 30, 2010. Also refer to <a href="#">Independent Contractors</a> later in this chapter. Note: Effective July 1, 2014, PERA no longer requires independent contractors to be reported on the Annual Exclusion Report.                                                                                                | M.S §353.01, subd. 2b (21) and subd. 2b(b) |
| Reemployed retirees of the association during the course of the post-retirement employment. Refer to <a href="#">Hiring a PERA Retiree</a> later in this chapter for additional details.                                                                                                                                                                                                                                                                                                                            | M.S §353.01, subd. 2b(a)(22)               |
| City mayors and public officers elected to governing-body positions (i.e. boards of a county, city, school, township or special district) after June 30, 2002, or appointed after June 30, 2002 to a vacant governing-body position. (Officials elected after June 30, 2002 to governing-body positions may join the DCP. Refer to Chapter 4 Defined Contribution Plan.)                                                                                                                                            | M.S §353.01, subd. 2b(a)(2)                |

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| Excluded Employees or Positions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Related Section of Law                                           |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|
| <p>PERA members receiving a disability benefit under the General Employees Retirement Plan (whether a Basic or Coordinated Plan member) who are employed full-time. There are also situations in which a member of the Police and Fire Plan or the Correctional Plan who is disabled according to the law and who becomes employed in a position that is normally covered by the Correctional or Police and Fire Plan (as applicable) is excluded from contributing again into the plan. For more details, refer to <a href="#">When a Disabilitant Returns to Work</a> later in this chapter.</p> | M.S §353.33, subd. 2b(a)(8) and 7(a)                             |
| <p>Persons appointed to a board or commission of a governmental subdivision on or after July 1, 2010. These positions qualify for coverage in the Defined Contribution Plan if they are stipulated to receive in excess of \$5,100 a year as compensation for their services. Members of boards or commissions who receive only per diems to cover expenses are excluded from any PERA plan.</p>                                                                                                                                                                                                   | M.S §353.01, subd. 2b(a)(23)                                     |
| <p>City managers or chief city administrative officers who, within six months of commencing employment, filed a written notice with PERA that rejects the DBP coverage.</p>                                                                                                                                                                                                                                                                                                                                                                                                                        | <p>M.S §353.028, subd. 2;</p> <p>M.S §353.01, subd. 2d(a)(4)</p> |
| <p>Students under age 23 who are enrolled in and regularly attending classes at a high school or accredited college or university. The employer must obtain certification of the full-time student status and monitor the continuing student status. Related documentation is to be kept by the employer and provided to PERA only if requested by PERA. Students (under age 23) working during the summer and who had attended classes full-time in the previous spring semester and expect to resume classes full-time in the fall are excluded for the summer employment.</p>                   | M.S §353.01, subd. 2b(a)(9)(i)                                   |
| <p>Resident physicians, medical interns, pharmacist residents, and pharmacist interns serving in a degree or residency program in public hospitals.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                            | M.S §353.01, subd. 2b(a)(9)(ii)                                  |
| <p>Students who are serving for up to five years in a paid internship or residency program that is sponsored by an accredited educational institution or by the governmental subdivision for which the student works.</p>                                                                                                                                                                                                                                                                                                                                                                          | M.S §353.01, subd. 2b(a)(9)(iii)                                 |
| <p>With the exception of Hennepin County or the Hennepin Healthcare System, Inc, foreign citizens working for a governmental unit under one or more work permits or work visas are excluded for up to three years of employment with the employer.</p>                                                                                                                                                                                                                                                                                                                                             | M.S §353.01, subd. 2b(a)(11)                                     |
| <p>Employees solely employed as election judges or officers.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | M.S §353.01, subd. 2b(a)(3)                                      |
| <p>Emergency employees who are employed due to work caused by fire, flood, storm, or similar disaster.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | M.S §353.01, subd. 2b(a)(6)                                      |



## Excluded Employees or Positions

## Related Section of Law

Persons who are provided supported employment or work-study positions by a governmental employer and who participate in an employment or industries program maintained for the benefit of these persons where the employer limits the position's duration to up to five years. This includes persons participating in a federal or state subsidized on-the-job training, work experience, senior citizen, youth, or unemployment relief program where the training or work experience is not provided as a part of, or for, future permanent public employment.

M.S. §353.01, subd. 2b(a)(20)

Employees in positions for which the earnings are covered by Teachers Retirement Association (TRA), Minnesota State Retirement System (MSRS), Duluth Teachers Retirement Fund Association, St. Paul Teachers Retirement Fund Association, Minneapolis Employees Retirement Fund, or any police or firefighters relief association governed by section 69.77. This does not, however, exclude an employee, who also holds a second position from becoming a member of PERA on that position.

M.S. §353.01, subd. 2b(a)(7)

Volunteer firefighters who receive credit in a local relief association operating under Minn. Stat. Chapter 424(a), or the Statewide Volunteer Firefighter Retirement Plan administered by PERA, for the services rendered as a volunteer. (Note: A volunteer firefighter who was reported for participation in a PERA DBP before July 1, 1989, retains that coverage, even if the person also receives credit in a local relief association for the volunteer firefighting services.)

M.S. §353.01, subd. 2b(a)(14) and subd. 36;

M.S. §353.87

Volunteer ambulance personnel who provide basic and advanced life-support emergency medical services are excluded from membership in the DBP beginning in 1989; however, they may join PERA's DCP if the employing public ambulance service chooses to participate in it.

M.S. §353.01, subd. 2b(a)(13) and subd. 35;

M.S. §353.86

Patients or inmates performing services for a governmental unit.

M.S. §353.01, subd. 2b(a)(4)

Persons who are members of a religious order and are excluded from coverage under the federal old age, survivors, disability, and health insurance program for the performance of service as specified in United States Code, title 42, section 410 (a)(8)(A), as amended. This means any public employee who belongs to a religious order that has elected to not participate in Social Security is exempt from participating in PERA. Conversely, if the order has elected to make Social Security contributions and the individual meets PERA eligibility requirements, the employee should be enrolled in a PERA plan and deductions should be taken. This law applies although the individual has taken a vow of poverty.

M.S. §353.01, subd. 2b(a)(8)

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| Excluded Employees or Positions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Related Section of Law        |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| Persons who hold a part-time adult supplementary technical institute license who render part-time teaching service in a technical institute.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | M.S. §353.01, subd. 2b(a)(10) |
| Public hospital employees who elected not to participate before 1972 and who did not participate from 7/1/1988 to 10/1/1988                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | M.S. §353.01, subd. 2b(a)(12) |
| Employees holding positions as county extension educators who perform their duties in the county and are employees or independent contractors of the University of Minnesota. However, if counties directly employ staff members in the extension office the employees are eligible for PERA coverage if they meet the eligibility requirements.                                                                                                                                                                                                                                                                                                                                                                              | M.S. §353.01;<br>M.S. §38.37  |
| Pipe fitters and associated trade personnel employed by independent school district No. 625, St. Paul, with coverage by the pipe fitters local 455 pension plan under a collective bargaining agreement who were either first employed after May 1, 1997, or, if first employed before May 2, 1997, elected to be excluded under Laws 1997, chapter 241, article 2, section 12.                                                                                                                                                                                                                                                                                                                                               | M.S. §353.01, subd. 2b(a)(15) |
| Electrical workers, plumbers, carpenters, and associated trades personnel employed by Independent School District No. 625, St. Paul, or the city of St. Paul, who have retirement coverage under a collective bargaining agreement by the Electrical Workers Local 110 pension plan, the United Association Plumbers Local 34 plan, or the pension plan applicable to Carpenters Local 87 who were either first employed after May 1, 2000, or, if first employed before May 2, 2000, elected to be excluded under Laws 2000, chapter 461, article 7, section 5.                                                                                                                                                              | M.S. §353.01, subd. 2b(a)(16) |
| Bricklayers, allied craft workers, cement masons, glaziers, glassworkers, painters, allied trades workers, and plasterers who are employed by the city of St Paul or Independent School District No. 625, St. Paul, with coverage under a collective bargaining agreement by the Bricklayers and Allied Craft workers Local 1 pension plan, the Cement Masons Local 633 pension plan, the Glaziers and Glassworkers Local L-1324 plan, the Painters and Allied Trades Local 61 plan, or the Twin Cities Plasterers Local 265 plan who were either first employed after May 1, 2001, or if first employed before May 2, 2001, elected to be excluded under Laws 2001, First Special Session chapter 10, article 10, section 6. | M.S. §353.01, subd. 2b(a)(17) |
| Plumbers employed by the Metropolitan airports commission with coverage under a collective bargaining agreement by the Plumbers Local 34 pension plan, who either were first employed after May 1, 2001, or, if first employed before May 2, 2001, elected to be excluded under Laws 2001, First Special Section chapter 10, article 10, section 6.                                                                                                                                                                                                                                                                                                                                                                           | M.S. §353.01, subd. 2b(a)(18) |



| Excluded Employees or Positions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Related Section of Law                |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|
| <p>Skilled trade and craft workers and apprentices employed by Special School District No. 1 Minneapolis, the City of Minneapolis Municipal Building Commission, or Hennepin County with coverage under a collective bargaining agreement with a local labor organization representing skilled building and construction trades, electrical workers and apprentices, and stagehands or production technicians and apprentices. Unless agreed to by the employee, this exclusion does not apply to persons employed by: the city of Minneapolis on April 6, 1988, as skilled trade and craft workers and electrical workers and apprentices; Special School District No. 1, Minneapolis and the City of Minneapolis Municipal Building Commission on April 15, 1994, as skilled trade and craft workers and electrical workers and apprentices; or the City of Minneapolis as stagehands or production technicians on February 22, 1996, or such other date as agreed to by the parties.</p> | Session Law                           |
| <p>Employees hired or rehired on or after January 1, 2009 into a supervisor or above position with the Hennepin Healthcare System Inc., or as an independent practitioner with the Hennepin Healthcare System, and who are provided coverage under an alternative retirement plan established by the corporate board.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | M.S §353.01, subd. 2d(b)(3) and 2d(c) |
| <p>Persons employed as full-time fixed route bus drivers by the St. Cloud Metropolitan Transit Commission who are members of the International Brotherhood of Teamsters Local 638 and who are, by virtue of that employment, members of the International Brotherhood of Teamsters Central States pension plan.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | M.S §353.01, subd. 2(b)(a)24          |
| <p>Electricians or pipefitters employed by the Minneapolis Park and Recreation Board, with coverage under a collective bargaining agreement by the IBEW local 292, or pipefitters local 539 pension plan, who were first employed before May 2, 2015, and who elected to be excluded under Laws 2015, chapter 68, article 11, section 5.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | M.S § 353.01 subd. 2b(a)(25)          |
| <p>Laborers and associated trades personnel employed by the city of St. Paul or Independent School District No. 625, St. Paul, who are designated as temporary employees under a collective bargaining agreement and have retirement coverage by the Minnesota Laborers Pension Fund who were either first employed on or after June 1, 2018, or, if first employed before June 1, 2018, who elected to be excluded under section 13.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | M.S § 353.01 subd. 2b(a)(26)          |

## PERA Employer Manual Chapter 3 - Defined Benefit Plans

Minnesota law requires all governmental subdivisions to submit an annual Exclusion Report to PERA at the end of each school or calendar year. This report must list all employees and non-governing body public officials who do not have coverage in a PERA Defined Benefit Plan or another statewide system such as the Teachers Retirement Association or the Minnesota State Retirement System. Instructions for this process are under [Annual Exclusion Reports](#) later in this chapter.

### Employees Not Eligible on Date of Hire

A newly hired public employee of your unit, who holds a position that initially excludes the person from coverage under a Defined Benefit Plan, may later become eligible for membership. This could result from changes such as a salary increase for the employee, a full-time student turning age 23 or no longer attending high school or an accredited college or university, an extension of the duration of a temporary or seasonal employee, or because the employee accepts a second position with your employer unit. In addition, an elected official who had not chosen to join PERA when he or she took office in a non-governing body position may later choose to join the plan.

As the employing unit, you have a responsibility to monitor these situations in order to determine if membership should occur at a later date. If you subsequent-

ly determine that an employee qualifies for PERA membership, you must enroll the person in PERA. Please refer to the information on member enrollment in Chapter 6 Maintain Member and Employment Records. When completing an enrollment for an employee who had previously been excluded, list the exclusion code that was applied during the period of exclusion to explain the discrepancy between the hire date and eligibility date.

As of January 1, 2015, if an excluded employee who was not expected to meet the annual threshold subsequently has earnings which meet the threshold,

enrollment should be completed immediately. PERA will collect and review the earnings history and may establish eligibility retroactive to the first month in which \$425 was earned and calculate the amount of omitted deductions owed.

If you have questions about applying the membership rules of the Defined Benefit Plans, please contact PERA. There can be substantial charges to employers that fail to enroll an eligible public employee within 60 days of having qualified for DBP coverage. Please refer to the information on Omitted Deductions in Chapter 7 Contribution Reporting for details.

### Closer Look at Some Common Exclusions

PERA has received a number of questions regarding the annual salary threshold and the eligibility of employees hired to temporary or seasonal positions, independent contractors, and employees who are drawing either a retirement or disability benefit from PERA. This section will focus on these employment situations.





## Annual Salary Threshold

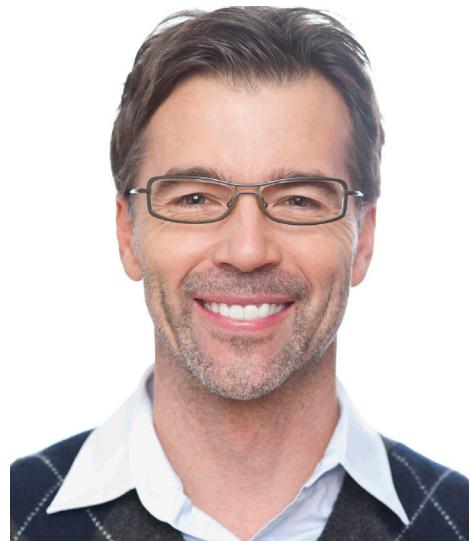
Laws effective in 2015 mean that the previous earnings threshold of \$425 in a single month is obsolete. Effective Jan. 1, 2015, persons whose annual salary does not exceed \$5,100, or \$3,800 for 9-month school district employees, are excluded from PERA DBP membership. This is calculated from the first day of employment and projected for 12 months.

### **Annual Salary Threshold Employment Scenarios**

**Situation #1:** Dwight is hired by a county in November 2015 to a full-time unlimited appointment with a work schedule of 32 hours a week at \$16 an hour.

PERA Eligibility #1: Based on the employment factors (hours and wages), this position will provide an annual salary in excess of \$5100; therefore, the employer must enroll Dwight into PERA immediately at the start of employment. Although he will only earn \$4608 in the 2015 calendar year (due to the November start date), the PERA enrollment must start immediately and cannot be delayed until 1/1/2016.

The same is true for individuals hired at any time after the start of the fiscal year for a school employer.



**Situation #2:** Pam is hired in September 2015 as a part-time educational paraprofessional at \$17 an hour to work 5 hours a week, in each week that school is in session (34 weeks). Anticipated pay for a school year is \$2890.

PERA Eligibility #2: Since Pam is being hired to a position that is stipulated to provide an annual salary that will not exceed \$3800 (9 month school year employee), she is excluded from the DBP.

The employer must complete the Notice of Non-Covered Employment or Provisional Coverage and give it to Pam within 2 weeks of making this membership determination.

The employer must also monitor her earnings each school year for PERA membership eligibility purposes. As a best practice, the employer may choose to give her the Notice of Non-Covered Employment or Provisional Coverage at the start of each school year when the employer determines that the annual earnings are anticipated to remain under \$3800, but this recurring annual notice is not legally required.

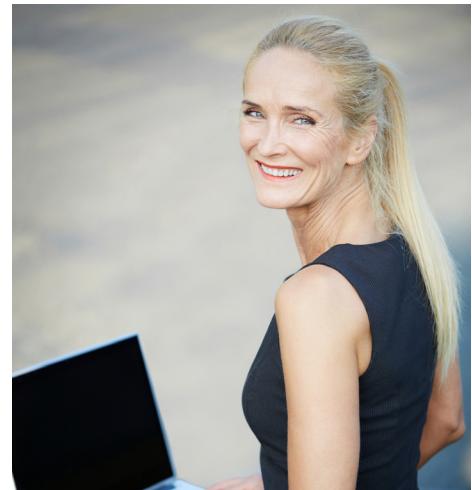


**Situation #3:** Toby was hired in March 2015 to work full-time for a city and he is enrolled into the PERA Coordinated Plan. Within two months of the starting date of employment, Toby resigns. At the time of termination, he had not earned more than \$5,100.

PERA Eligibility #3: The PERA membership is valid because Toby had been hired to a position that was stipulated to provide an annual salary in excess of \$5100. He may apply for a refund, but the employer contributions remain with PERA.

**Situation #4:** Angela has been excluded from PERA because she earns approximately \$4000 per year from her part time job with a city. In May 2015, she is promoted to a full time position with the same employer and is expected to have annual earnings of \$23,500.

PERA Eligibility #4: The city must enroll Angela in PERA as of the first day of work in the full time job. As part of the enrollment, the employer must provide to PERA her original date of hire and the date of enrollment, along with the exclusion code that was applied during the period of exclusion to explain the discrepancy between the hire date and eligibility date. Because Angela's earnings increased due to a new position with the employer, no retroactive eligibility or omitted deductions apply.



**Situation #5:** Oscar, who was hired in February 2015, has been excluded from PERA because the county he works for projected that his earnings would not exceed the annual threshold. During the summer, however, he works extra hours to cover for a co-worker who is on medical leave. On September 1, 2015, his year-to-date pay is \$5200.

PERA Eligibility #5: The County must enroll Oscar in PERA immediately. As part of the enrollment, the employer must provide to PERA his original date of hire and the date of enrollment, along with the exclusion code that was applied during the period of exclusion to explain the discrepancy between the hire date and eligibility date.

The county must also provide to PERA a record of Oscar's earnings history in 2015 so that PERA can calculate omitted contributions retroactive to the first month in which he earned \$425.



## Temporary Positions

As of Jan. 1, 2015, employees who are employed solely in a temporary position are excluded from membership in a PERA DBP regardless of their level of earnings in a six-month period.

PERA law defines a temporary position as an employment position pre-determined by the employer at the time of hiring to be a period of six months or less. Your entity may have a definition for a temporary position that is different from how PERA defines the term. When you determine membership eligibility you must use the definition in PERA law.

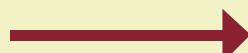
It is important to not apply the temporary position exclusion in such a way as to exclude employees who are hired to fill positions that are permanent or unlimited but who serve a probationary period at the start of employment. Similarly, a temporary position does not mean an employment position established for an unlimited period in which the employee works an irregular schedule.

The PERA law provides a definition of a temporary position.



### Fast Fact

Rules for school district substitutes



### Fast Fact

School district employees who substitute in a position otherwise eligible for membership are excluded as temporary employees if all of these three conditions are met:

1. the individuals are called to work for pre-determined periods (such as one day, two days, one week, less than two months, etc.),
2. the employment relationship with the school ends when the substitute work assignment is completed, and
3. the person does not report for substitute work in more than 6 consecutive calendar months without a 30-day separation in employment with the school.

If the substitute's work for a single school district exceeds 6 months and there was no 30-day separation in employment, the substitute worker must be enrolled the next time he or she works for that district and earnings have or are expected to exceed the annual threshold.

Please note that PERA's temporary provision cannot be used to exclude individuals who have an unlimited on-call appointment to do substitute work with a particular school. When employees are excluded under the temporary provision, PERA seeks documentation from employers that will substantiate when an individual was hired for a specific period of 6 months or less.

## PERA Employer Manual

### Chapter 3 - Defined Benefit Plans

Sometimes employment conditions will change after an individual has been hired and may affect the employee's eligibility for coverage in a PERA DBP as follows:

- If an employee is hired to a temporary position (less than six months) but the employment duration is subsequently extended to a length that will exceed six months, the employee must be enrolled in PERA if earnings have or are projected to exceed the annual earnings threshold. In this situation, the months of temporary employment are without PERA coverage.
- If an employee moves from one temporary position to another temporary position (same employer) and there is a termination of employment and a break of at least 30 days between the two positions, each temporary position is excluded from PERA membership. On the other hand, if an employee moves from one temporary position to another (same employer) without a bona fide termination of service as defined by PERA law and 30-day break, the employee is excluded ONLY if the duration of both positions combined is predetermined to be less than six consecutive months.
- If an employee resigns from a permanent position and accepts a temporary position within 30 days in the same governmental subdivision, the employee may not contribute to PERA on the temporary position.

#### Temporary Employment Scenarios

Following are some employment scenarios relating to the temporary exclusion.

**Situation #1:** You hire Sally to begin employment on March 12 for a specific project that is projected to end on August 30 of the same year.

PERA Eligibility #1: Since you have established Sally's employment period to be under six months, she is considered to hold a temporary position that is excluded from membership.



**Situation #2:** You hire Joseph to fill in for a full-time worker (Stan) who has been approved for a four-month medical leave of absence from September 20, 2015 through January 22, 2016. You pay a monthly salary of \$1,200 to Joseph. On January 1st, Stan's leave is extended and Joseph agrees to work through May 31, 2016.

PERA Eligibility #2: You must enroll Joseph into PERA as of January 1, 2016 because the position is now expected to exceed six months and his annual earnings will exceed \$5100.

**Situation #3:** You hire Melony to a permanent part-time position on November 1, 2015. She is expected to earn \$900 a month (\$10,800 annually). Under your personnel policies, Melony will be on probation for the first six months of employment.



PERA Eligibility #3: Melony must be enrolled into PERA at the start of her employment and cannot be excluded under the temporary provision since her position is not limited to six months or less. Her probationary status for the first six months of employment does not alter the fact that this position is permanent.



**Situation #4:** Your County hires Donna to work on an intermittent and unpredictable basis and stipulates that such employment will not exceed ten months in any calendar year.

PERA Eligibility #4: You must enroll Donna into PERA if you project that her annual earnings will be over \$5100. Her position does not meet the definition of a temporary position because it provides for employment in excess of six months.

If you are unable to accurately predict her annual earnings, you have the option to exclude her and monitor her earnings, or to provisionally enroll her into PERA. In either of these situations, you must give the Notice of Non-Covered Employment or Provisional Coverage to Donna within two weeks of making the PERA eligibility decision. Refer to the sections on Provisional Enrollment and Employees Excluded for more information.

**Situation #5:** One of your part-time custodians is unable to report to work due to illness. He anticipates returning in a day or two. You contact Roger to see if he can substitute. This is the first time that Roger will work as a daily substitute. Your school district does not consider daily substitutes as permanent employees and instead considers the employees to be appointed to a temporary position for the day.



PERA Eligibility #5: Roger is excluded from PERA membership on the substitute position because it meets the definition of a temporary position. In this scenario:

1. The full period of employment is expected to end within a few days when the regular employee returns.
2. The employment relationship you have with Roger will end when the substitute work has been completed. Roger is not a permanent on-call employee.
3. Roger has not performed other temporary work for your school. If he had other prior temporary employment, you would need to determine if the total of all temporary positions extends beyond six consecutive months without a 30-day break between them.



**Situation #6:** Tom is a full-time employee with PERA coverage. He decides to resign effective Nov. 30, 2015 and retire. In December, you hire David to the vacant position and call Tom to ask if he would help train David. You extend a position to Tom for the period from Dec. 15, 2015 through March 19, 2016. Tom accepts the temporary position.

**PERA Eligibility #6:** Although the break in employment for Tom is less than 30 days, his PERA membership ends on Nov. 30, 2015, and he may not contribute on the earnings of the temporary job. Under Minn. Stat. 353.01, subd. 2B(5), Tom began to work in the temporary position within 30 days after having resigned from the permanent position in the same governmental subdivision. Under these facts, the temporary position is excluded. (Note: If Tom applies for a retirement benefit or a lump-sum refund from PERA, he will not be able to draw the payment(s) until he ends all public service and has a 30-day break, which, in this situation, will not happen until March 19, 2016.)

**Situation #7:** Your administrative staff has not been able to keep up with their work demands and you are not sure when the work volumes will lessen. To resolve the situation, you hire Ursula to help your administrative staff from 8:30 a.m. to 4:30 p.m. three days each week. You did not set an ending date of employment for Ursula and will monitor the workload each month.



**PERA Eligibility #7:** Ursula is not a temporary employee. She was hired for an undefined period and qualifies for membership. Unless a different exclusion applies, you must withhold PERA deductions if you determine that her projected annual salary will exceed the annual earnings threshold and continue membership until she terminates employment.



**Situation #8:** Sally has worked for your agency as a part-time receptionist for several years and is currently enrolled in PERA. During the year, one of the part-time library staff members goes on a 90-day maternity leave. Because you must ensure that the library duties are covered for that period, you post a part-time temporary opening. Sally applies for and is hired effective June 15, 2015 to that position. (For the 90-day period, Sally will hold two part-time positions in your agency.)

**PERA Eligibility #8:** Sally pays into PERA on the earnings from both positions. The limited part-time position is not excluded as a temporary position because it is not her sole employment position.

## Seasonal Positions

Many employers have seasonal work that is not continuous throughout the year but recurs year after year. Often times, the same individual will return to the position in each successive year without having a formal termination at the end of each season or reapplying at the start of each season.

Effective Jan. 1, 2015, employees whose sole employment is a seasonal position are excluded from PERA membership if the duration of the employment is limited by the employer to 185 consecutive calendar days or less in each year of employment. The exclusion applies regardless of whether or not the employing unit anticipates that the same employee will return to the position each season in which it becomes available. (Note: Employees who were PERA members on June 30, 2002, or Dec. 31, 2014, based on seasonal employment that had qualified for membership under the laws previously in effect will retain membership until they terminate public service.)

For PERA purposes, a "seasonal position" means a position where the nature of the work or its duration is related to a specific season or seasons of the year. Among some of Minnesota's traditional seasonal jobs are plowing snow, maintaining parks or roads, and operating outdoor skating rinks, ski lodges, golf



courses, or outdoor swimming pools. In addition, the PERA law specifies that coaches of athletic activities are also considered to be seasonal positions.

If an employee holds two positions with a single employer, one permanent and the other seasonal (less than 186 consecutive calendar days in a year), the compensation from both must be added together to determine whether the employee will exceed the earnings threshold since the employment is not solely in a seasonal position.

Also, if an employer hires an employee to a second seasonal position within 30 days of the person having ended a previous seasonal position, the individual remains excluded from PERA membership only if the duration of both seasonal positions will be 185 days or less in the year.

On occasion, an employer might decide to extend an employee's seasonal appointment beyond the original dates pro-

jected. This might be the result of weather changes that allow a golf course or pool to be open longer than its usual dates of operation, or because availability of funds allows for more road maintenance than originally budgeted, or various other reasons. If a person's employment in a seasonal position is later extended beyond 185 days within a 12-month period, the employee must be reported for membership immediately if no other exclusion applies.

A seasonal employee who qualifies for membership remains a member until there is a formal termination of employment or retirement under the Post Retirement Option authorized under Minn. Stat. §353.371. This is true for those hired before or after July 1, 2002, or Dec. 31, 2014. Once a seasonal employee becomes a PERA member the coverage automatically resumes at the start of each season unless the employer substantiates that the employer-employee relationship has terminated.

## Seasonal Employment Scenarios

Below are a few employment situations that relate to PERA's seasonal exclusion and how to apply the law in each situation.

**Situation #1:** Suzanne is hired as the gymnastics coach under a two-year contract with your school district. At the start of the employment you stipulated that you did not expect the coach position to extend beyond 185 consecutive days.

PERA Eligibility #1: Suzanne holds a seasonal position that is excluded from membership. As the employing school district you must monitor the coach position to ensure that it remains under 186 days.



**Situation #2:** Bruce has been working for your school district as the basketball coach under a five-year contract. In the first two school years, Bruce was excluded from PERA coverage because the basketball season was not expected to extend beyond 185 days and never did exceed that number of consecutive days.

At the start of the third year, you again exclude Bruce from PERA coverage under the seasonal exclusion. However during this year, the basketball team makes the state championship playoffs. This means that Bruce's coaching position for the third season will exceed 185 days.

PERA Eligibility #2: Since the basketball coaching position will provide employment in the third school year for a period longer than 186 days, you must enroll Bruce into PERA if you anticipate that he will exceed the \$5100 annual earnings threshold. Once enrolled in a PERA Defined Benefit Plan, Bruce will retain his PERA coverage when he returns to the coaching position in each of his final contracted school years.

**Situation #3:** In April of each year, Mitch returns to seasonal employment with your city to mow lawns and maintain the building grounds during the summer. He generally earns \$6,000 per season. Each year, you establish that Mitch will not be employed for more than 185 consecutive days. His schedule generally runs from April 15 through Oct. 15 each year.



In October of 2015, you determine that you will have a snow plowing job beginning Nov. 12, 2015. You offer Mitch the snow plowing job for the winter season. He accepts and his employment does not end on Oct. 15 as initially established.

PERA Eligibility #3: Since the two seasonal positions held by Mitch will provide employment for a period longer than 186 days between the 12 months beginning in April 2015 and his annual earnings exceed \$5100, Mitch must be enrolled in the PERA Coordinated Plan beginning with the wages he earns in October 2015. Once enrolled, Mitch retains his PERA membership each year unless he terminates public service and has a break in service of at least 30 days.



## Independent Contractors

Independent contractors and their employees are excluded from participating in PERA because they are not public employees.

PERA uses the common-law standard and the factors identified by the Internal Revenue Service (IRS) to evaluate the degree of control or autonomy that exists. Under the common-law standard, there are three categories of factors (Behavioral Control, Financial Control and Relationship of the Parties) that should be considered to determine whether the worker is an employee or independent contractor. The three categories are as follows:

1. Behavioral Control. This area covers degree of control and degree of independence and facts that demonstrate whether the governmental unit controls — or has the right to control — what the worker does and how the worker does his or her job. Control refers not only to the results to be accomplished by the work, but also the means and details by which the results are achieved. Examples of key facts which illustrate whether there is a right to direct or control how the worker performs the specific task for which he or she is engaged are instructions and training.
2. Financial Control. This area looks at the business aspects of the workers' such as how the worker is paid, whether expenses are reimbursed, who provides the work location, equipment, supplies, etc., the degree to which the worker will be "at risk" with respect to his or her capital when performing the work, and whether the person has the qualifications to perform the job without help. Facts which illustrate whether there is a right to direct or control how the business aspects of the worker's activities are conducted are: significant investment, unreimbursed expenses, services available to the relevant market, method of payment, and opportunity for profit or loss.
3. Relationship of the Parties. This category relates to facts about the relationship of the parties including how they perceive their relationship and how they represent their relationship to others. In this area, facts which illustrate relationship include: intent of the parties through written contracts, employee benefits, duration of the relationship, discharge or termination, and whether the work to be performed is a regular business activity and key aspect of the operations of the employer.

When examining a situation, it is not uncommon for some factors to indicate that the worker is an employee and others to indicate independent contractor. There is no set number of factors that classify the

PERA uses the common-law standard to determine the status of a worker.



### Fast Fact

worker an employee or an independent contractor and no one factor stands alone in making this determination. A determination can only be made after reviewing all of the facts of the situation and taking into account the importance of the factors by considering the nature of the service involved and the occupation.

As part of the process to determine a worker's status, we recommend that you review the following IRS documents:

- Chapter 4 of [IRS Publication 963](#), the "Federal-State Reference Guide", discusses determining worker
- IRS [Publication 15a](#) discusses the employer-employee relationship and has examples of employees and contractors
- The Brochure "Independent Contractor or Employee" ([IRS Publication 1779](#)) discusses the facts that provide evidence of the degree of control in three categories: behavioral control, financial control, and the type of relationship of the parties

## PERA Employer Manual Chapter 3 - Defined Benefit Plans

An employer that seeks to rehire a former employee as an independent contractor should carefully consider whether the proposed work arrangement will meet the common-law standard. Similarly, if considering changing the status of an individual from that of an employee to an independent contractor or vice versa, PERA will need to review the reasons that brought about the change in status, including a copy of any applicable contracts. When reviewing independent contractor arrangements, PERA may use its Independent Contractor or Employee Worksheet or a more detailed questionnaire to facilitate the collection of information.

It is important to point out that current laws state that a person who is appointed as a public officer is a "public employee" for PERA purposes and cannot be excluded as an independent contractor if first contracted by a governmental unit after June 30, 2010. Public officers include, but are not limited to, city or township clerks and treasurers, city managers who do not elect to be excluded, emergency management directors, and county auditors, treasurers, or recorders. For persons who have been contracted to a public officer position prior to July 1, 2010, an exclusion from PERA coverage is valid if it is substantiated that the person is an independent contractor.

There can be financial consequences at both a state and fed-

eral level if an employer incorrectly designates an employee to be an independent contractor. For PERA, these consequences include paying omitted employee and employer contributions.



### Hiring a PERA Retiree

An individual who is collecting monthly retirement payments based on prior coverage in the PERA General Employees Plan, the Correctional Plan, or the Police and Fire Plan may return to governmental employment, but is exempt from again contributing to any of these Defined Benefit Plans.

The membership exemption applies to employees who retired after they had terminated public employment and remained out of service for at least 30 days. It also applies to members of the General Employees Retirement Plan who begin drawing PERA retirement benefits at age 62 or older under the provisions of PERA's Phased Retirement Program without formally resigning.

While no employee deductions or employer contributions for DBP coverage are due on the earnings of re-employed PERA retirees, the employing unit must report the gross earnings of any PERA retiree who holds

a non-elected position and who is under Full Retirement Age (up to age 67). These reemployed retirees are subject to an annual earnings limit that matches the amount set by Social Security; therefore, PERA must monitor their post-retirement earnings. The wages must be reported under PERA's Exempt Plan (99) after the employer enrolls the individual in that plan. For more information, please refer to Chapters 6 and 7.

If an individual who is drawing a monthly retirement benefit from a PERA Defined Benefit Plan is elected to a local government position, the earnings for the elected position are not subject to the annual earnings limit. In addition, under laws effective July 1, 2010, an elected county sheriff who is receiving a pension from the PERA Police and Fire Plan has the option to contribute to the Defined Contribution Plan on the elective salary. For more details, refer to Chapter 4.



When employers hire a person, they must determine if the individual is a PERA retiree. Employers that have access to PERA's web Employer and Information System (ERIS) can use its 'Benefit Recipient Search' tool to find out if an employee is receiving a PERA benefit. Instructions are provided in the system's online help manual or by contacting the PERA office.

### **Local Police or Fire Relief Plans**

PERA is the administrator of several relief association pension plans. In many instances, we are issuing monthly payments to individuals whose retirement benefits are based on the provisions of the local police or fire relief association to which they paid. While these individuals may refer to themselves as "PERA retirees," they cannot be excluded from future membership in one of PERA's Defined Benefit Plans based only on their retired status.

Individuals who are collecting local relief association benefits at the time the relief association plan came under PERA's administration must have DBP deductions withheld from their earnings if they are re-employed in public service and meet the membership requirements.

In contrast, employees working and participating in a local police or fire relief association plan at the time PERA took over administration of the plan, who

later begin to receive a benefit based on the PERA Police and Fire Plan benefit provisions and formula, are excluded from making PERA contributions if re-employed. Moreover, a person in this latter group is treated as any other reemployed PERA retiree and must have the earnings re-

ported under PERA's Exempt Plan (99) if the person is under his or her Full Retirement Age.

Contact PERA if you need assistance determining whether a newly hired employee is collecting retirement benefits from a PERA retirement plan.



## **When a Disabilitant Returns to Work**

An individual who is receiving a disability payment (disabilitant) from PERA may, in certain instances, return to governmental employment while drawing the monthly benefit.

When a PERA member becomes injured or disabled, he or she can apply to receive a monthly disability benefit from PERA. A member receiving a monthly disability benefit may return to governmental service. However, whether the benefit recipient must pay PERA contributions depends on the type of disability benefit received.

### **General Employees Retirement Plan (Coordinated or Basic Plan) -**

A member who is drawing a disability benefit under the General Employees Plan may return to governmental service on a part-time basis at a reduced salary without paying PERA contributions or possibly losing the disability benefit. An individual who is disabled and unable to engage in substantial gainful activity may have combined earnings from partial reemployment and PERA benefits that do not exceed the salary that would have been earned if the person had not become disabled. In this case, PERA will reduce the monthly benefit to return the total to that level.

On the other hand, if the disabilitant returns to governmental service on a full-time basis, the individual no longer qualifies to receive the disability benefit under the General Employees Plan and PERA

## PERA Employer Manual Chapter 3 - Defined Benefit Plans

contributions are required on the salary. When the disabilitant is employed on a full-time basis, PERA must be notified so that the monthly benefit can be stopped.

### **Correctional Plan or Police and Fire Plan -**

PERA members receiving a disability benefit under the Correctional Plan or the Police and Fire Plan may return to governmental service on a full- or part-time basis in a position that is normally covered under the General Employees Retirement Plan (Coordinated or Basic Plan) without making contributions. If a Police and Fire Plan disabilitant is employed in a position normally covered by the Police and Fire Plan on full- or part-time basis, the individual no longer qualifies to receive the disability benefit. PERA contributions would then be required on the salary if the employee meets the eligibility requirements.

When a member receiving a disability benefit under the Correctional Plan is employed in a position covered by the Correctional Plan, whether on a full- or part-time basis, the individual no longer qualifies to receive the disability benefit and PERA contributions are required if the employee meets the eligibility requirements.

Employers must report the gross earnings of disability recipients to PERA through the regular contribution reporting process even if PERA deductions are not taken. In this case, the employer should report the earnings under the Exempt Plan (99). Refer to Chapter 7 Contribution Reporting for more information.

If in doubt about whether an employee should be a member, please send the following information to PERA: a description of the job duties, the expected duration of the position, and any additional information that will be helpful in making a determination.



## Employees Holding Multiple Positions

An employee's eligibility for Defined Benefit Plan membership is based on earnings with a single public employer — earnings an individual may receive from more than one public employer may not be combined to determine membership eligibility.

However, if you employ a person in more than one non-elected position, you must consider the employee's total salary from all of the positions, even positions that are considered temporary or seasonal, when determining PERA membership eligibility. This

means that you would combine the salary amounts paid to a single employee who holds two (non-elected) positions as represented in the following examples.

**Situation #1 (Two Part-Time Jobs):** Stephanie has worked for you for two years on a permanent part-time basis. She currently earns \$400 a month. On May 15, 2015, Stephanie accepts a second part-time position with your governmental unit that will pay \$350 per month.



PERA Eligibility 1: Stephanie qualifies under the mandatory coverage rules based on her combined earnings of \$9,000 annually beginning May 15, 2015. While neither position separately meets the minimum salary required for membership, the total salary Stephanie earns as a permanent employee exceeds the annual threshold and no other exclusion prevents the coverage. Stephanie's membership in PERA will continue throughout her employment, even if her earnings drop below the annual threshold in subsequent years.



**Situation #2 (Part-time Position and Seasonal Position):** Michael has worked part-time for your city for two years in building maintenance. He pays into the Coordinated Plan on his monthly salary of \$700. On April 15, 2015, Michael accepts a seasonal position with your governmental unit that will pay \$350 per month. The seasonal position is expected to end on Sept. 3, 2015.

PERA Eligibility 2: Beginning April 15, the city must begin reporting the wages that Michael earns in the seasonal position to PERA. The seasonal position is not Michael's sole employment with the city; therefore, the position is not excluded and the earnings from both jobs must be reported to PERA.

### **Concurrent Elected and Non-Elected Positions**

If a person holds two positions with a single employer, one of which is an elected position, the compensation for that position must not be added to the other earnings of the individual for membership eligibility purposes.

**Situation #3:** Theodore Smith has been employed by your township as a Road Supervisor for several years and is a Defined Benefit Plan member. Beginning Jan. 2, 2015, he begins serving as the elected township clerk earning \$400 a month (a non-governing body position).



PERA Eligibility 3: The township clerk earnings that you pay to Theodore cannot be combined with his non-elected earnings and reported to PERA. On its own, the salary of the elected position does not meet the \$5100 annual threshold required for membership in a Defined Benefit Plan. Theodore could, however, elect to join the Defined Contribution Plan based on the non-governing body elected position. If he did so, he would contribute to both the Coordinated Plan (road supervisor wages) and the Defined Contribution Plan (township clerk salary).

### Concurrent Public Safety and Non-Public Safety Positions

If a person is employed as a police officer, fire fighter, or correctional officer, and also works in a non-public safety position for the same employer, the compensation from both positions must be combined to determine if the PERA membership eligibility threshold has been met.



**Situation #4:** Charles has been employed for several years as a part-time police officer with City A. His annual salary is generally \$8,400 and he has Police and Fire Plan coverage due to a resolution passed by the city council. On Oct. 3 2015 Charles accepts a permanent, part-time administrative position in the same city.

PERA Eligibility #4: Charles must have PERA deductions taken from the earnings in both of these permanent, part time positions. However, Charles will have coverage in the Coordinated Plan for the earnings he receives from the administrative position that was effective Oct. 3 2015 and he will continue to pay into the Police and Fire Plan on the wages he earns as a police officer. Refer to [Determining Plan Coverage](#) later in this chapter for more information.

### School Districts and Charter Schools

There are other provisions that apply to schools that employ a person in both a certified teaching position and a non-certified position.

Under Minnesota Statutes §354.05, subdivision 2, a person who renders teaching service on a part-time basis and who works in a non-certified position for the same employer will pay into the Teacher's Retirement Association (TRA) on the earnings from both jobs if the teaching position comprises at least 50% of the employee's combined employment salary.

Similarly, if more than one-half of the combined annual earnings are generated by the non-certified position, then the employee will pay into PERA for both positions, if the combined earnings meet the PERA eligibility requirements.

In both instances, the rule is only applicable if the two (or more) positions occur at the same time. If the positions are not held concurrently, the employee would have coverage under PERA and TRA if the eligibility requirements of each system are met.





## Hiring Former Employees

Employers who hire a former employee who had previously been a PERA member (but who is not drawing monthly retirement or disability benefits) must consider the following factors when determining whether the employee is again eligible for membership in the Defined Benefit Plan:

- If a DBP member terminates employment, has a break in service of at least 30 days, and is subsequently rehired by the same employer to a non-temporary position, the employee must re-qualify for DBP coverage due to the length of the break in employment.
- If a DBP member terminates employment and is rehired by the same employer to a non-temporary position less than 30 calendar days later, PERA coverage is automatically continued.
- PERA coverage stops if a DBP member terminates employment and subsequently returns to work in a temporary position (pre-determined duration of six months or less), regardless of the length of the break in employment.

Under PERA law, termination of employment occurs when an employee resigns, or is dismissed by the employer or when a position ends and the member who held the position is not considered by the employer to be on a temporary layoff. Different factors will apply to employees who are receiving a PERA retirement benefit. Refer to [Hiring a PERA Retiree](#) in this chapter for information on employing PERA retirees.



**Example:** Jane, a PERA member who works full-time for School District #1, resigns effective May 9, 2015. On May 21, 2015, Jane is rehired by her former employer to a part-time position that may or may not provide a salary that is greater than the annual earning threshold. In this situation, the School District must withhold PERA deductions from Jane's wages in the part-time job beginning on her first day of work because Jane did not have a 30-day break in employment with the employing unit. Under Minn. Stat. 353.01, Subd. 11a, without a 30-day break in service between these two permanent positions with the same employer, termination of public service does not occur and membership continues as a condition of ongoing employment, regardless of the level of earnings that Jane will have in the second permanent, part-time position.

## Determining Plan Coverage

When an employee qualifies for mandatory or optional membership in PERA's Defined Benefit Plan, you must determine the specific plan to which the person will contribute. Similarly, if an employee changes positions within your employing unit, you must determine if a change in the employee's pension coverage is necessary. (For help enrolling new members and remitting contributions, please refer to Chapters 6 and 7.)

## PERA Employer Manual

### Chapter 3 - Defined Benefit Plans

It is important to enroll employees in the correct Defined Benefit Plan (i.e. Coordinated Plan, Correctional Plan or Police and Fire Plan) as each plan has different membership criteria, contribution rates, benefit formulas, and retirement requirements. Usually, the retirement plan under which an employee will be enrolled depends on the position(s) held, but sometimes the decision relates to the individual's circumstances. If you have any questions about which pension plan an employee should be enrolled in, please contact PERA. For detailed information about the benefits provided to members of the Coordinated, Correctional or Police and Fire Plan, please refer to the member handbooks available online.

A public employee who holds a single qualifying position will have coverage in one PERA retirement plan. However, if an employee qualifies for membership in a DBP on the compensation earned in two or more non-elected positions, you must determine if the positions are to be covered under the same PERA retirement plan or two plans (such as the Coordinated Plan and the Police and Fire Plan).

#### **General Employees Retirement Plan**

The General Employees Retirement Plan is the widest encompassing of PERA's Defined Benefit Plans. This plan covers general employees of school districts and

local units of government who meet the membership requirements in Minn. Stat. §353.01, subd. 2a or 2d and who are not included in any other PERA plan for the same service.

The General Employees Retirement Plan has two parts, the Basic Plan and the Coordinated Plan as follows.

#### **Basic Plan**

The Basic Plan is the original retirement plan established for public employees of local units of government. It has been closed to new members since January 1, 1968; however, a Basic Plan member who terminates employment and is re-employed within 30 days by the same employer or a different employer will remain in the Basic Plan unless the new position qualifies for coverage in the Police and Fire Plan or the Correctional Plan. If the break in employment is more than 30 days, the individual is considered a new employee and his or her Basic Plan coverage must terminate. The employee must then qualify for membership in the Coordinated, Correctional, or Police and Fire Plan.

Basic Plan members are not subject to mandatory Social Security coverage because of their participation in a qualified public retirement system.<sup>1</sup> They are exempt from Medicare coverage unless one of the following applies:

- The member voted in the PERA referendum held in 1989 to obtain coverage, or
- The member does not have continuous employment with a single governmental entity that began before April 1, 1986. Under PERA laws, a Basic Plan member who terminates employment with one employer and goes to work for another PERA-covered employer is able to remain in the Basic Plan if the person's break in public service does not exceed 30 calendar days. However, the member's movement from one employer to another after March 31, 1986, means that the employee is subject to Medicare withholding. The Basic Plan member continues to be exempt from Social Security however.

Current law allows the PERA Board of Trustees the option to call for a majority-vote referendum for Medicare-only coverage of Basic Plan members. Any employer that would like the PERA

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<sup>1</sup>Under federal laws, the only way Social Security coverage may be provided to employees under a public retirement system is through a voluntary Section 218 Agreement between the federal and state governments. Minnesota laws do not authorize a Section 218 Agreement to provide Social Security coverage to members of the Basic Plan.

Board to consider a Medicare referendum for Basic Plan members should call the PERA office.

### **Coordinated Plan**

Public employees who are expected to earn more than the annual threshold and who hold a position that qualifies for membership in a PERA Defined Benefit Plan are to be enrolled in the Coordinated Plan unless they hold a position that entitles them to coverage under another PERA retirement plan, or the Teachers Retirement Association or the Minnesota State Retirement System if applicable. This means that most full or part-time permanent employees, including non-certified employees of independent school districts, will be enrolled in the Coordinated Plan. As noted previously, sometimes membership is optional and the employer must get written authorization from the individual before withholding PERA deductions.

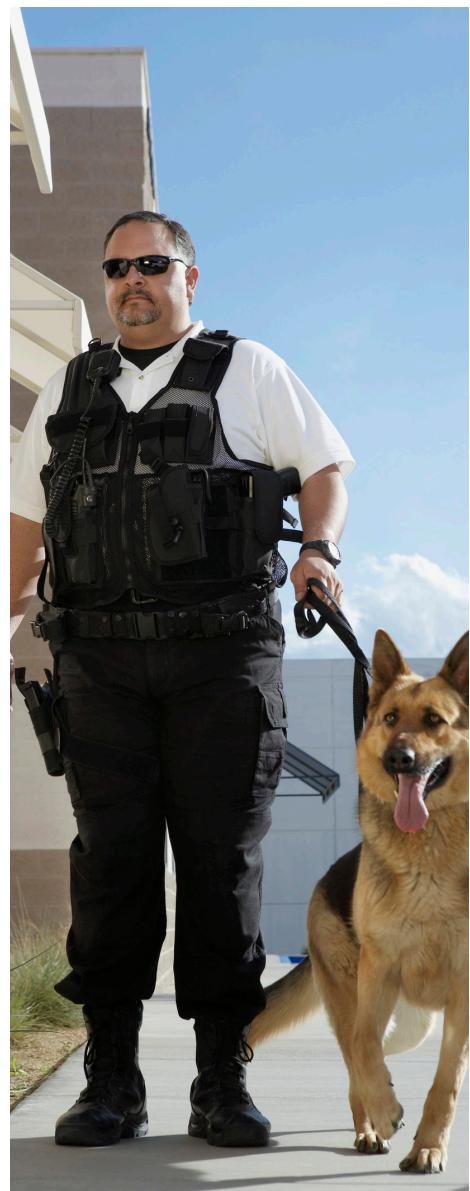
Individuals who are employed on a part-time basis as police officers or firefighters, and persons who serve as volunteer or paid-on-call firefighters who do not receive credit in a local relief association under Minnesota Statutes Chapter 424(a), or the Statewide Volunteer Firefighter Retirement Plan administered by PERA, must participate in the Coordinated Plan if their compensation exceeds, or is expected to exceed the annual earning threshold. An exception is made

only if the governing body of the employing unit adopts a resolution that provides the position with coverage under the Police and Fire Plan.<sup>2</sup> See the [Police and Fire Plan](#) later in this chapter for more information.

The Coordinated Plan also covers positions of dispatchers, fire inspectors, emergency management directors, fire marshals, and animal control officers, even if the employee performs firefighting or police officer duties as a secondary job function or on a temporary basis.

Membership in the Coordinated Plan is optional for the position classes listed below. As noted, except for those elected to local non-governing body positions, the employee has only a specified number of days of employment in which to make a choice about coverage under the Coordinated Plan.

- Persons elected to local non-governing body positions (or appointed to fill a vacant elected position for the remainder of the office's term),
- City managers or chief administrative officers (As noted earlier, the person must be enrolled in the Coordinated Plan unless the option to be excluded from such coverage is exercised within the first six months of employment and approved by the city council),
- Physicians who are employed by a governmental unit (As




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<sup>2</sup>Under Minnesota law, part-time transit police officers employed by the Metropolitan Council, part-time paramedics and emergency medical technicians of the Hennepin Healthcare System, Inc., or part-time tribal police officers must be enrolled in the Police and Fire Plan and a resolution is not required.

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### Chapter 3 - Defined Benefit Plans

noted earlier, the person must be enrolled in the Coordinated Plan unless he or she chooses within the first 90 days of employment to join PERA's Defined Contribution Plan), and

- Employees who are members of the Coordinated Plan and who later become employed by a labor organization that represents public employees while they are on an authorized leave of absence from a PERA-covered employer (Note: The member must provide a written election to continue the Coordinated plan coverage within six months of employment by the labor organization.)

When membership is optional, the employer must get written authorization from the employee before withholding PERA deductions. Please refer to [Optional Coverage](#) in this chapter for further details.

#### Social Security and Medicare

The Coordinated Plan works in conjunction with Social Security under a Section 218 Agreement that was established in 1968. Under that federal-state agreement, all employees who hold one or more positions that qualify for membership under the Coordinated Plan membership must pay Social Security and Medicare taxes on the earnings of the position(s) unless federal law prohibits coverage of the services. This includes elected

officials or other positions that are optionally included in the Coordinated Plan.

Under PERA's 218 Agreement, Social Security coverage is also required for PERA retirees who return to work in a position that otherwise would have provided coverage under the Coordinated (or the Correctional) Plan. Although the reemployed retiree may not again contribute to the PERA plan, the person must pay Social Security and Medicare on his or her earnings.

#### Correctional Plan

The Local Correctional Employees Retirement Plan was established in 1999 by the legislature in recognition of the more demanding responsibilities and potential hazards faced by correctional workers in government employment.

Membership is required under Minnesota Statutes Chapter 353E.02 for correctional guards, correctional officers, and joint jailer/dispatchers working in a county or regional adult or juvenile correctional facility who are directly responsible for inmate custody, control and security, and who respond to institutional incidents as part of their regular employment duties.

Membership is also required for supervisors of correctional guards, officers, or joint jailers/dispatchers, and for protection officers employed by the Hen-

nepin County Medical Center if they are expected, as a part of their regular employment duties, to respond to incidents within the county medical center and are trained to do so.

Chapter 353E establishes that the employer is responsible for making the initial decision about whether the duties of a job qualify the position for membership in the Correctional Plan. The employer is in the best position to know the specific duties of each job and the training of its employees.

When you enroll an employee in the Correctional Plan, you must declare the individual's eligibility for such coverage at the time of enrollment using a form established by PERA. Details about enrolling employees are in Chapter 6 Maintain Member and Employer Records.

If a correctional facility has a position other than those specifically listed in statute that the employer believes meets all of the eligibility requirements, the employer should contact PERA before certifying eligibility. In this instance, PERA will ask for a copy of the position description and a letter explaining the rationale for including the position under the Correctional Plan.

#### Medicare

Medicare participation is required for all employees who are members of the Correctional Plan unless there is a mandatory



exclusion in federal law that prohibits such coverage for a specific individual.

### Social Security

Members of the Correctional Plan are covered for Social Security purposes only if that coverage had been approved through a referendum conducted by the employing county on or after January 30, 2015. If a Social Security referendum passed for a specific correctional facility, PERA would have established a separate Section 218 modification agreement with the federal government on behalf of each employer. The purpose of the 218 agreement modification is to extend Social Security coverage to the eligible current correctional service employees of that employer and to all future employees who become members of the Correctional Plan. If you want information about the Social Security coverage for the Correctional Plan members of a specific employer, please contact the PERA office.

### Police & Fire Plan

The Police & Fire Plan was created in 1959 and gives special consideration to employees who devote their time and skills to protecting the property and personal safety of others. Since this work is hazardous, the members are eligible for substantially higher retirement, disability, and survivor benefits than is provided to members of the Coordinated Plan.

Membership in the Police & Fire Plan is governed by Minn. Stat. § 353.64 and coverage under this plan is restricted to positions that meet the criteria stated in law. An employee who performs law enforcement duties, or who fights fires, as a secondary job function or on a temporary or emergency basis does not qualify for Police & Fire Plan membership.

### Mandatory Police & Fire Membership

With limited exceptions, membership in the Police and Fire Plan is mandated for full-time police officers and full-time professional firefighters as defined in Minnesota Statutes §353.64. An employee who meets the police or fire eligibility criteria is to participate in the Police and Fire Plan on the first day of employment if the person's annual salary is expected to exceed the annual threshold.

Some employers provide PERA Police and Fire Plan membership to certain employees because such coverage is specifically required under Minnesota Statutes Section 353.01, subdivisions 6a through 10. These employers are the University of Minnesota, the Metropolitan Airports Commission, the Metropolitan Council, the Department of Military Affairs of the state of Minnesota, and the Hennepin Healthcare System, Inc.

Employers must provide Police and Fire Plan coverage to individuals who are employed as the head of a police or sheriff's department unless the individual is drawing a retirement benefit based on past

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employment covered under the Police and Fire Plan. Effective July 1, 2010, county sheriffs who are retired and drawing benefits from the PERA Police and Fire Plan have the option to participate in the Defined Contribution Plan. Refer to Chapter 4 for more details.

Membership in this plan is also required for a full-time police officer who holds a position that has the following required qualifications and duties:

- Licensed by the Minnesota peace officer standards and training (POST) board,
- Possesses full power of arrest,
- Charged with the prevention and detection of crimes, and
- Has the primary duty (over 50%) to enforce the general criminal laws of the state.

In the case of fire departments, coverage under the Police and Fire Plan must be given to individuals employed as the fire chief or as full-time firefighters employed by a fire department, provided the firefighters are not receiving credit under a local relief association for such services. Police and Fire Plan membership cannot however be extended to reemployed PERA retirees. For PERA purposes, a firefighter is someone who is required by the employing fire department to regularly engage in firefighting on a primary basis (highest priority of all duties) and hold a Firefighter I or Firefighter II state certification, or meet equivalent training standards established by the fire chief.

Under the law, Police and Fire Plan membership continues for a full-time firefighter who is periodically assigned to employment duties in the same department (even if those duties would otherwise not qualify the employee for the Police and Fire Plan coverage).

#### **Police and Fire Coverage for Part-Time Police Officers or Firefighters**

As noted previously, eligible part-time police officers or firefighters by default are to be enrolled in the Coordinated Plan if annual earnings will exceed \$5100. However, at the option of the employer, the part-time employees may be provided with membership in the Police and Fire Plan if the governing board passes a resolution declaring that the position meets the legal requirements for such coverage and requests the coverage for the named individual.

(Note: Part-time transit police officers of the Metropolitan Council, part-time paramedics and emergency medical technicians of the Hennepin Healthcare System, Inc., or part-time tribal police officers must be enrolled in the Police and Fire Plan and a resolution is not required.)

Only full-time police officers and firefighters are automatically eligible for the Police and Fire Plan.



#### **Fast Fact**





A resolution providing Police and Fire Plan coverage to a part-time police officer or firefighter is to be filed with PERA at the time the person is enrolled into the plan. If not filed at the time of the individual's PERA enrollment, the resolution must be received within the following six months to ensure continued membership for the individual and acceptance of all previous deductions. A sample resolution is available for printing on the PERA website or can be mailed upon request.

### **Dual/Combined Police or Firefighter Positions**

Occasionally to ensure that adequate police or fire protection services are afforded to a city or county, the police or fire chief of the respective department will hire a person to provide primary services as a police officer or firefighter and secondary related services for the police or fire department that would not on their own qualify for the special Police and Fire Plan coverage that is afforded to hazardous-duty positions. Two examples are a combined firefighter/fire inspector job and a joint deputy sheriff/jailer position.

In some work situations that involve combined or dual police officer or firefighter positions, membership in the Police and Fire Plan can be provided but only after PERA staff has evaluated the situation to determine the proper membership coverage to give the employee. In these instances, the employer that is planning to es-

tablish a combined or dual police officer or firefighter position must provide a copy of the job description to PERA along with any other documents that would help to determine the appropriate retirement plan coverage.

If PERA concludes that the combined position qualifies for Police and Fire membership for all of the services provided to the police or fire department, the employer will have the option to provide such membership through a resolution adopted by the governing board. From that point forward, any person hired to fill a vacancy in the approved combined or dual position may be declared by the governing board to be a police officer or firefighter (as applicable), as long as the primary duties and qualifications remain unchanged. However, if an employer modifies the duties of the combined position after it has been evaluated by PERA, the employer must send an updated copy of the job description to PERA for a new membership determination.

Sample Police and Fire membership resolutions for combined or dual police or firefighter public safety positions are available online for printing or can be mailed upon request.

### **Paid on-call Firefighters**

Paid-on-call emergency firefighters (sometimes referred to as volunteer firefighters) whose compensation exceeds the annu-

al earning threshold qualify for membership in PERA's Coordinated Plan or Police & Fire Plan only if their firefighting services are not providing credit for the individual under a local relief association operating chapter 424A or in PERA's Statewide Volunteer Retirement Plan or Defined Contribution Plan. Similar to part-time firefighters, the Police and Fire coverage may be obtained if the city council passes a resolution granting the coverage for the eligible firefighter.

If a person is employed by a single governmental unit as a full or part-time firefighter with Police and Fire Plan membership and also serves the same municipality as a paid-on-call emergency firefighter who is earning credit in a relief association operating under Minnesota Statutes Chapter 424A, he or she may not earn PERA credits for the same service and compensation that provides relief association credits. A limited number of cities have established through municipal policies or the by-laws of the relief association that unscheduled firefighting duties performed by a full- or part-time firefighter after the normal work schedule is service as a volunteer, not an employee. If the city files the related documentation with PERA, the firefighter earns credit under the PERA retirement plan for the daytime duties and also earns credit in the relief association for the after-hours fire calls.

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Between July 1, 1989, and Jan. 1, 2015, paid-on-call emergency firefighters who received compensation in excess of \$425 in a single month qualified for membership in PERA's Coordinated Plan or Police & Fire Plan only if their firefighting services were not providing credit for the individual under a local relief association operating under chapter 424A or in PERA's Statewide Volunteer Firefighter Plan or Defined Contribution Plan.

Prior to July 1, 1989, volunteer firefighters with monthly earnings over \$425 were to be reported

as members in either the Police and Fire Plan or the Coordinated Plan based on compensation for their volunteer services, even if the individuals were earning credits under a local relief association. Under the current laws, the volunteer firefighters who had PERA membership on June 30, 1989, must continue their PERA participation, even if they are also participating in a local relief association for their volunteer firefighter service.

### Social Security and Medicare

Police officers and firefighters who are members of the PERA

Police and Fire plan (except tribal police officers) do not pay the Social Security portion of FICA taxes. They are exempt because there is no Section 218 Agreement covering this retirement plan and under federal provisions, police officers or firefighters with coverage under the Police and Fire Plan are not subject to mandatory Social Security participation.

Medicare participation, however, is required unless the police officer or firefighter has continuous employment with the same employer before April 1, 1986.



## Job Promotions or Transfers Can Change Plan Coverage

If an employee changes positions within a single employer, the employee may be required to switch pension plans. For example, an employee who works for a county as a dispatcher is a member of the Coordinated Plan. However, if the employee is promoted to a full-time position as a deputy sheriff for the same county, the employee's coverage must be switched to the Police and Fire Plan. Similarly, if the county em-

ployee transfers to a jailer position, his or her coverage must be switched to the Correctional Plan.

### **Police and Fire Coverage after a Job Transfer**

A special provision in Minnesota law allows a member of the Police and Fire Plan who is transferred to a different position that has associated police or fire department functions in the same department or a related depart-

ment within the agency to retain the Police and Fire coverage after the job transfer has occurred. To retain the Police and Fire Plan coverage for the transferring employee, the governing body of the governmental unit must pass a resolution to continue the Police and Fire Plan membership.

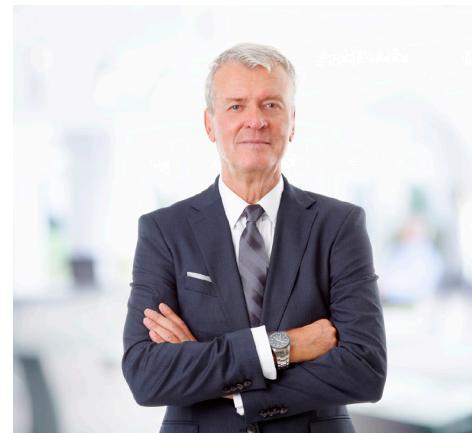
This special provision does not, however, allow an employer to continue the Police and Fire Plan



membership for a person who is subsequently elected to or assumes an appointive position, including but not limited to, the positions of city council member, city manager, or finance director, to retain membership in the Police and Fire Plan. For example, if a full-time police officer for a city is subsequently hired as the finance director for the same

city, the individual's PERA coverage must be switched to the Coordinated Plan effective on the date in which the job change occurs.

A sample resolution covering job transfers is available online for printing or can be mailed upon request.



## Plan Coverage for Employees with Multiple Positions

When an employee qualifies for defined benefit plan membership based on the total salary earned from more than one position, the employer must determine if the positions require coverage under a single retirement plan or multiple plans. Earnings from positions that qualify for coverage under different plans must be kept separate when calculating contributions since each plan has a unique contribution rate. Instructions for calculating salary deductions are in Chapter 7 Contribution Reporting.

To illustrate this more clearly,

let's say an employee holds two part-time permanent positions with total monthly earnings of \$1,200. The employee has a clerical job with a single city but works in two separate departments. Under this situation, the employee qualifies for membership in the Coordinated Plan based on total monthly earnings.

However, the rules are different for an employee who works for a single county as a maintenance worker with monthly earnings of \$400 and is also employed as a correctional officer earning \$900 a month.

Under these facts, the employee will have annual earnings of \$15,600 and must contribute to the Coordinated Plan for the \$400 earned each month as a maintenance worker and would also contribute to the Correctional Plan for the \$900 earned as a correctional officer. Similarly, if the \$900 were for services as a deputy sheriff, the employee could be approved for membership in the Police and Fire Plan (with a resolution from the governing board) for the part-time police officer position.

## Annual Exclusion Reports

Under Minnesota law, all school districts and local units of government that meet the definition of "governmental subdivision" are required to submit an Annual Exclusion Report to PERA at the end of the school or calendar year.

Employers with internet and email capabilities are required to submit their Annual Exclusion Report using PERA's Employer Reporting and Information System (ERIS). Two options are available for online reporting –

employers may create an online Exclusion Report or transmit a properly-formatted fixed length text (.txt) file or Excel file. The file format specifications are available online. Paper forms continue to be available for em-

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ployers who do not have the computer and email capabilities that are required for ERIS reporting.

The purpose of the report is to list all employees and elected/appointed non-governing body public officials<sup>3</sup> who do not have coverage in a PERA retirement plan or another statewide system such as the Teachers Retirement Association or the Minnesota State Retirement System. Upon receipt, PERA reviews these reports and may contact the employer with questions about a person's exclusion from membership in a PERA Defined Benefit Plan.

When completing the Annual Exclusion Report, include all employees and non-governing body elected officials who worked any amount during the fiscal or calendar year, but did not have pension deductions withheld from their earnings. This includes but is not limited to the following:

- Public officials who chose not to exercise their optional right for coverage, appointed township or city clerks or treasurers whose earnings are always under the annual earning threshold, temporary or seasonal employees whose employment period was less than 6 months or 185 calendar days, respectively;
- Employees who terminated service during the year and did not have coverage while employed;
- Persons who are excluded from PERA membership because they are drawing a PERA retirement or disability benefit while working for a unit of government; and

The following workers do not need to be listed on the Annual Exclusion Report:

- Independent contractors, whether they use Social Security numbers or a Minnesota Tax or federal Employer I.D. number,
- Employees who were not contributing to PERA at the start of their employment or the school or calendar year, but were subsequently enrolled in PERA before the year ended,
- Employees who had been covered by PERA during their employment but who terminated and were paid an additional salary after their separation date that was not subject to PERA withholding (such as severance pay, unused vacation, unused sick leave, etc.),
- Employees who hold positions for which earnings are covered by the PERA Defined Contribution Plan, St Paul Teachers Retirement Fund Association, or another statewide public retirement system such as the Teacher's Retirement Association (TRA) or the Minnesota State Retirement System (MSRS).



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<sup>3</sup>State law requires employers to report only those employees who hold positions which are potentially eligible for the Coordinated Plan. Elected and appointed non-governing body officials (such as city and township clerks, county auditors, treasurers and attorneys) have the option for Coordinated Plan coverage available and must be included on the report, even if they are not eligible due to insufficient annual earnings. However, governing-body elected officials (such as county commissioners, city council members, township supervisors and school board members) do not have the option to participate in the Coordinated Plan and are not required to be included on the Annual Exclusion Report.



Exclusion Reports are due by August 31 of each year for school districts and February 28 for all other employers. PERA will send a reminder to employers at least 60 days before that time.

### No Excluded Employees

For some employers, all of their employees are enrolled in PERA or another public pension plan such as the Teachers Retirement Association. Under these circumstances, no employees would be listed on the Annual Exclusion Report; however, the employer must inform PERA that there are no excluded employees.

In this situation, employers with ERIS access should log into ERIS to create an online Exclusion Report, check the box marked "No Excluded Employees/Elected Officials", and click "Save – Submit to PERA". Employers exempt from ERIS reporting should check the box on the paper form to report that they have no excluded employees or elected officials. Once your report is received, we will confirm that you are submitting contributions on behalf of one or more employees.

### Completing the Annual Exclusion Report

Whether you create a report online, transmit a data file or complete a paper form, please make sure to provide all of the following data:

- PERA Employer Number and Name — The Employer Number is the six-digit number assigned by PERA to each employer. This number can be found on the Salary Deduction Report or other correspondence from PERA.
- Name, Title and Phone Number — Employers who use the paper form must include contact information for the person who completed the report. Employers who create or submit a report via ERIS are identified by their ERIS User Name.
- Exclusion/Reporting Year — The fiscal year for which the report is applicable. For schools, this is most often July 1 through June 30. For all other employers, it is a calendar year, January 1 through December 31.
- Exclusion Code — An exclusion code is a three-digit number established by PERA to identify why an employee was not enrolled in PERA or another public pension plan. An exclusion code must appear for each individual listed on the report. When completing the report, you should list individuals by exclusion code. A complete list of codes appears in this chapter and on the back page of the paper Annual Exclusion Report. Effective July 1, 2014 some codes were changed or eliminated, so please review the list before completing your report.
- Social Security Number — Full Social Security Numbers are required for PERA retirees or disabilitants excluded under code 003. For all other excluded employees and elected officials, only the last four digits of the social security number should be reported. For PERA benefit recipients, the full number is needed for identification purposes to help cross-reference data stored in our systems. Social Security Numbers are classified as private data and PERA will protect the privacy rights of the individuals.
- Name of Employee or Elected Official — List the name of each person who was employed for any part of the year being reported on but did not contribute to a qualified public pension plan for that employment.
- Original Hire Date — Date the employee was first hired by the employer
- Last Hire Date — Date the employee was last hired by the employer (may be same as Original Hire Date if no terminations)
- Status at Year End — Indicate whether the individual was Terminated or Active (currently employed) as of the end of the fiscal year being reported.
- Total Annual Salary — List the gross salary for the fiscal year for each employee.
- Salary Amount of Last Pay Period — List the gross salary or wages the employee earned during the last full pay period of the fiscal year that the employee worked.

## PERA Employer Manual

### Chapter 3 - Defined Benefit Plans

- Pay Cycle — The pay cycle for the last pay period, such as biweekly, monthly, annually, etc.
- Job Title – provide the job title for the employee/elected official, such as "Coach", "Township Supervisor" or "Paraprofessional".

#### **Exclusion Codes**

The exclusion code is a three-digit number established by PERA to identify why an employee was not reported to PERA or another public pension plan. An exclusion code must appear for each employee or elected official listed on the Annual Exclusion Report.

When completing a paper Annual Exclusion Report, please list the individuals in numeric order by exclusion code. Within each of these codes, list the individuals alphabetically by last name.

There are numerous exclusion codes, which PERA has grouped into five categories based on the type of exclusion. The codes in each category begin with the same number.



#### **Zeros (0) – Codes beginning with 0 relate to the employee's ineligibility due to an affiliation with another entity.** Note: 000 is not a valid exclusion code.

**001** — Employees who are under age 23 and full-time students enrolled in and regularly attending classes at an accredited school, college, or university.

**002** — Retirees of the Teachers Retirement Association (TRA) who have resumed teaching service and are subject to the annual earnings limit set by TRA.

**003** — Employees who are receiving a monthly retirement or disability benefit from PERA. Note: Employers must provide the full 9-digit Social Security Number for employees excluded under this code.

**004** — Foreign citizens with one or more work permits or work visas are excluded for up to 3 years of employment by a governmental subdivision, other than Hennepin County or the Hennepin Healthcare System, Inc.

**005** — Persons who are members of a religious order and are excluded from coverage under the federal old age, survivors, disability and health insurance program for the performance of service as specified in United States Code, title 42, section 410 (a)(8)(A), as amended. These are normally members of a religious order that has not elected Social Security coverage.

**006** — Resident physicians, medical interns, pharmacist residents and pharmacist interns serving in a degree or residency program in a public hospital.

**007** — Students serving up to five years in an internship or residency program sponsored by an accredited educational institution or the employing unit.

**008** — Patient and inmate personnel who perform services for a governmental subdivision.

**010** — Employees who are paid by a federal or state grant that specifically prohibits its use for pension coverage.



**011** — Persons who are provided supported employment or work-study positions by a governmental employer and who participate in an employment or industries program maintained for the benefit of these persons where the employer limits the position's duration to five years or less. This includes persons participating in a federal or state subsidized on-the-job training, work experience, senior citizen, youth, or unemployment relief program where the training or work experience is not provided as a part of, or for, future permanent public employment.

**012** — Trade workers who have other union pension coverage and who are specifically excluded by law.

**Ones (1) – Codes that begin with 1 relate to the position held by the individual.**

**101** — Persons hired to temporary positions defined as employment for a pre-determined period of six consecutive months or less and whose employment has not exceeded six months. These cannot be employees who are hired for permanent positions but who may be serving a probationary period before they are considered permanent employees.

**102** — Emergency employees who are employed because of work caused by fire, flood, storm, or other similar disaster.

**103** — Persons holding a part-time adult supplementary technical institute license who teach part-time in a technical institute.

**104** — Paid on-call/volunteer ambulance personnel (basic or advanced life support and emergency medical staff) who are not members of the PERA Defined Contribution Plan.

**105** — Election officers (judges).

**106** — Persons hired to fill seasonal positions, which are limited in duration by the employer to 185 consecutive calendar days or less in each year.

**108** — Volunteer firefighter personnel who receive credit in a relief association.

**Twos (2) – Exclusion codes that begin with 2 relate to employees or elected officials who have the option not to participate in a PERA plan.**

**201** — Local non-governing-body elected officials, persons appointed to fill vacant non-governing body elected offices, city managers and chief city administrative officers (see M.S. §353.028) who have opted to NOT join the Defined Contribution Plan or Coordinated Plan.

**Threes (3) – Codes that begin with 3 relate to an employee's salary.**

**302** — Nine-month school year employees whose annual earnings do not exceed \$3,800.

**303** — Employees whose annual earnings do not exceed \$5,100.

## History of DBP Membership Rules

The information that follows summarizes past membership eligibility provisions for PERA's Defined Benefit Plans (DBP).

Beginning January 1, 2015, the annual earning threshold is \$5,100 for employees or \$3,800 for 9 month school district employees.

Prior to this, the following rules were in place:

### Earnings Thresholds

Employees were exempt if their earnings in all calendar months did not exceed the following amounts:

#### PERA Monthly Membership Earnings Thresholds

| Prior Years                             | Monthly Earnings |
|-----------------------------------------|------------------|
| Prior to July 1, 1961                   | \$50             |
| July 1, 1961, through March 23, 1974    | \$75             |
| March 24, 1974, through June 2, 1977    | \$150            |
| June 3, 1977, through April 30, 1981    | \$250            |
| May 1, 1981, through June 30, 1988      | \$325            |
| July 1, 1988, through December 31, 2014 | \$425            |

### Optional Stipulations for Employees

Employees were exempt if annual compensation was stipulated in advance to not exceed the earnings limit for the number of months the person would be employed during the year. The limit was determined by multiplying the monthly earnings threshold in effect by the number of months the person would be employed in the year.

The next chart shows the amounts for an employee who was expected to be employed each month in a year.

#### Annual Earnings Stipulation Limits

| Prior Years                          | Annual Earnings |
|--------------------------------------|-----------------|
| July 1, 1973, through March 23, 1974 | \$900           |
| March 24, 1974, through June 2, 1977 | \$1800          |
| June 3, 1977, through April 30, 1981 | \$3000          |
| May 1, 1981, through June 30, 1988   | \$3900          |
| July 1, 1988, through June 30, 2002  | \$5100          |

The Optional Earnings Stipulation was eliminated effective July 1, 2002, as a valid exclusion for employers to use.

### Temporary and Seasonal Positions

Persons employed in temporary, seasonal, substitute, or intermittent positions for 90 days in a year were exempt from membership prior to July 1971, when the limit was changed to 120 working days in a calendar or school year.

Effective July 1, 1988, to be exempt from PERA membership under the temporary exclusion, a person's employment must be pre-determined at the time of hire not to exceed six consecutive months.

Public employees who were enrolled in the Coordinated Plan before July 1, 2002, based on seasonal positions retain that retirement plan coverage until they terminate public service.

### Employees Participating in Other Funds

Before July 1, 1988, PERA membership was optional for part-time employees contributing to another qualified Minnesota public pension plan based upon a separate, full-time job. After July 1, 1988, membership became mandatory for the part-time employee under these same circumstances.



## **Volunteer Firefighters**

A volunteer firefighter who was reported for participation in the PERA Coordinated Plan or the Police and Fire Plan before July 1, 1989, retains that coverage, even if the person also receives credit in a local relief association for the volunteer services.

## **Volunteer Ambulance Service Personnel**

Beginning in 1989, volunteer ambulance personnel who receive compensation for their services became excluded from membership in the Coordinated or Police and Fire plans.

Between July 1, 1989 and June 30, 1990, individuals holding a separate position covered by the Coordinated or Police and Fire Plan that was in addition to a volunteer ambulance position - in the same governmental subdivision - had the option to make an irrevocable election to have their earnings from the volunteer ambulance services credited to the same Defined Benefit Plan to which they were otherwise participating.

## **Full-time Students, Part-time Employees**

Until July 1, 2002, employees who were employed on a part-time basis and who were full-time students at a high school or accredited college or university were excluded.

## **Public Officials – Governing Body Positions**

### **Elected Officials**

State laws effective July 1, 2002, separated elected official positions for PERA purposes into two distinct categories — governing body and non-governing body. (Governing body officials are elected by the public at large in a political subdivision to serve as the primary policy makers for local government.)

The amendment also changed the PERA membership provisions for new governing body elected officials. A new governing body elected official was defined as a person who first took office after June 30, 2002, or someone who returned to an elected governing body position on July 1, 2002 or later after having been out of office for at least 30 days. The term did not include a PERA member first elected to a governing-body position after July 1, 2002 who had transferred without a 30-day break in service from a position that had provided Coordinated or Basic Plan coverage on June 30, 2002.

PERA made an exception only for an individual who was an active member of the PERA General Employees Plan (Coordinated or Basic Plan) on June 30, 2002 and who had no break in service between the non-elected employment and the subsequent governing-body local elected position. In this situation only, the individual was allowed to retain and extend their General Plan membership into the elected governing-body position until incumbency in office ended.

Individuals who were first elected prior to July 1, 2002 to a governing body position had until June 30, 2002 to join the Coordinated Plan if their monthly earnings were more than \$425; but if they did not do so, their option to join the Coordinated Plan ended on July 1, 2002. These elected officials remained covered by Social Security, however, because their positions were still considered to be covered by the Section 218 Agreement covering the Coordinated Plan.

The laws governing Coordinated Plan participation by persons holding governing body positions were again modified in 2007 and those provisions remain in effect. Beginning May 27, 2007, a Coordinated (or Basic) Plan member does not have the option to extend that coverage into a governing body position when moving from a non-elected position. This essentially “closed” the Coordinated Plan for all persons elected to governing body positions after May 26, 2007.



### **Persons Appointed to a Board or Commission with Compensation in Excess of the Annual Earnings Threshold**

Persons who receive compensation in excess of the annual earnings threshold for the services they render to a board or commission of a governmental unit are excluded from joining the PERA Coordinated Plan if they were first appointed to the governmental board or commission on or after July 1, 2010. These positions qualify for coverage in PERA's Defined Contribution Plan.

### **City Managers**

Effective July 1, 2006, new city managers were given three choices relating to pension coverage under PERA: 1) the Defined

Contribution Plan; 2) the Coordinated Plan; or 3) choose not to become a member of PERA.

City managers who were employed on July 1, 2006, and who were not participating in the PERA Coordinated Plan were given the right to join the DCP with the passage of the 2006 legislation. In these instances, employers were asked to notify the city managers of the DCP coverage opportunity. Conversely, city managers who were participating in the Coordinated Plan on July 1, 2006, and had more than six months of coverage did not have the option to transfer to the DCP. Their membership in the Coordinated Plan continued and could not be revoked.