

NHRS Frequently Asked Questions: Part-time Employment of NHRS Retirees

Updated: February 2020

Below are answers to some frequently asked questions (FAQ) concerning House Bill 561 (*Chapter 293, laws of 2018*), which changes several statutes governing part-time, post-retirement employment of retired members of the New Hampshire Retirement System (NHRS, the retirement system) by NHRS-participating employers. These changes took effect January 1, 2019.

NHRS recognizes that there may be unique post-retirement employment situations not addressed in this FAQ. If you have questions regarding a situation not addressed below, contact NHRS for further guidance. Please send inquiries to info@nhrs.org.

Note: *The full text of the revised statutes is included at the end of this FAQ.*

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I. GENERAL QUESTIONS

1. What does the law do?

The law limits NHRS retirees who begin working part-time for retirement system participating employers after January 1, 2019, to a maximum of 1,352 hours worked per calendar year. (A calendar year is January 1-December 31).

The law also contains a “grandfathering” provision that allows retirees already working part-time for one or more participating employers on the effective date of the law (January 1, 2019) to a maximum of 1,664 hours per calendar year for as long as they remain in at least one of the position(s) they held on that date. (see Section III for additional details).

The bill also includes the following elements:

- **Separation from service:** Members who retire on/after January 1, 2019, must wait at least 28 days from their effective date of retirement before commencing part-time employment with a participating employer. **Note:** The effective date of retirement is always the first of the month.
- **Penalty for violating statute:** A retiree who exceeds the maximum permitted hours will forfeit the state annuity portion of his or her retirement allowance, and any allocable cost of living

adjustments, with the forfeiture commencing as soon as administratively feasible in the next calendar year and continuing for 12 months.

- **Employer reporting:** Employers are required to report on an annual basis, no later than February 15, all hours worked and compensation paid to any NHRS retirees employed in the prior calendar year.
- **Other:** HB 561 also: (1) required employers, no later than February 15, 2019, to provide the names and position titles of any retired members employed on the effective date of the law; (2) clarified that restoration to service under RSA 100-A:7, I. does not apply to beneficiaries of deceased members; (3) updated RSA 100-A:7-a to specify that the annual notice to retirees concerning working after retirement includes a description of the penalty for exceeding the maximum permitted hours; and (4) updated the emergency exception in RSA 100-A:7-b.

2. Whom does the law affect?

Anyone who retired from an NHRS participating employer, receives a pension benefit from NHRS, and works part-time for an NHRS participating employer – with limited exceptions outlined in statute (see Section I, Question 7 for additional details).

3. What is an “NHRS participating employer”?

A participating employer is: (a) a public employer in New Hampshire that employs or has previously employed, full-time teachers, police officers, or firefighters, whether or not it has any current full-time workers in these classifications enrolled as active members of the retirement system; (b) an employer that has elected to participate in NHRS for its Group I Employee members, whether or not it has any current full-time employees enrolled as active members of the retirement system; (c) a charter school that has elected for its certified teachers to participate in the retirement system.

A list of active participating employers is available at: <https://www.nhrs.org/about-nhrs/participating-employers>

4. Does the law affect retirees working for non-NHRS employers?

No. The law only applies to retirees working part-time for an NHRS participating employer. There is no limit on how many hours an NHRS retiree can work for an employer that does not participate in the retirement system.

5. Does the law apply to someone who is not an NHRS retiree, but is the beneficiary of a deceased retiree?

No. The part-time definition only applies to actual retirees, not beneficiaries.

6. Does the law preclude an NHRS retiree from returning to full-time service for an NHRS employer and being re-enrolled as an active member?

No. In cases where a retiree is employed in a full-time, permanent position with an NHRS-participating employer for which membership is mandatory, the law (RSA 100-A:7) requires that the retiree's pension payments cease and the retiree is re-enrolled as an active, contributing member. This is called a “restoration to service”. In this situation, the retiree is restored to service notwithstanding the fact that he or she may work less than the number of hours permitted for “part-time” employees.

For example, if a retiree contracts to work for 35 hours for the entire 36-week school year as a teacher, he or she would work 1,260 hours. Although this is less than the permitted 1,352 hours, the retiree will be restored to service because he or she is not a “part-time” employee but, rather, has contracted to be regularly employed on a full-time basis for the entire school year.

7. Are there any exceptions that allow a retiree to work in a full-time capacity and not be subject to the limits on annual hours?

By statute, per diem bailiffs and court security officers are exempt from the limits on hours worked (although their hours and compensation must still be reported). Most other NHRS retirees should only be working on a part-time basis.

However, while NHRS enrollment is mandatory for nearly all full-time, permanent positions, RSA 100-A includes a small number of specifically defined full-time positions for which membership is optional. In these situations, a retiree can continue to receive his or her retirement benefit, in full, while working full-time. Any such retiree is not subject to restoration to service under RSA 100-A:7 or the annual limit on hours under RSA 100-A:1, XXXIV.

Examples include:

- Employees who work for the Legislature;
- Most elected officials;
- Officials appointed for a fixed term to a Group I Employee position if the position existed prior to July 1, 2011. (Fixed-term positions newly created on or after July 1, 2011, are not exempt.);
- Retirees appointed to unclassified State positions prior to July 1, 2011. (Retirees appointed to unclassified positions on or after July 1, 2011, are not exempt and will be restored to service.);
- Finally, with a vote by a board of selectmen or city council, a chief administrative officer of a municipality (i.e. town manager/town administrator) may be exempted from participation in the retirement system at the time of initial hiring.

For these positions, the retiree may work full-time without being restored to service.

Retirees and employers should contact the retirement system prior to commencing service to determine whether a position requires mandatory enrollment in NHRS.

Note: *With the sole exception of elected officials, hours worked and compensation paid must still be reported for all retirees, including those working in membership-optional positions.*

8. If a retiree works in a part-time position for an NHRS participating employer that provides vacation, holiday, sick leave or other paid leave, does the paid leave time count as hours worked? What about someone who is paid to be “on call”?

No. Only actual hours worked are counted. In “on call” situations, the only hours counted are the actual hours worked. (see Section V, Question 2 for information on “volunteer” hours.)

9. Do hours worked for which "Extra or Special Duty Pay" (RSA 100-A:1, XXXII.) is paid to an NHRS retiree by a participating employer count as hours worked under the law?

Yes.

10. How do the annual limits on hours worked apply to a retiree who works part-time for multiple participating employers?

Hours worked for multiple participating employers are combined when determining if a retiree has worked more than the permitted hours. The hourly limits are per retiree, not per employer.

II. MEMBER/RETIREE QUESTIONS

1. What is the penalty for exceeding the maximum allowable hours in a calendar year?

Under the law, a retiree who exceeds the maximum permitted annual hours – 1,352 or 1,664, depending on whether the retiree was “grandfathered” – will forfeit the state annuity portion of his or her retirement allowance, and any allocable cost of living adjustments. The forfeiture will commence as soon as administratively feasible in the next calendar year and continue for 12 months. On average, the state annuity portion provides about half of a pension benefit, although it can be more or less for specific individuals. For most retirees, this represents a significant financial penalty. It is incumbent upon the retiree to carefully monitor his or her hours worked.

Employers are responsible for maintaining a record of hours worked by NHRS retirees but are not required to notify a retiree if he or she is at or near the maximum permitted hours.

Again, as noted in Section I, above, it is important to remember that retirees will be restored to active service if they are regularly employed in a full-time, permanent position even if their annual hours are below the applicable limit. In this situation, the pension benefit would be terminated for the duration of full-time employment and the retiree would be subject to recoupment of any pension benefits paid during the period of full-time employment.

2. How does the law impact NHRS retirees in salaried positions?

All NHRS retirees working as salaried employees are subject to the annual limits on hours worked. Employers are responsible for maintaining a record of hours worked by NHRS retirees employed on a salaried basis. In the absence of records, NHRS will consider that a retiree worked the same amount of hours as a full-time employee of the employer for every day worked.

3. How does the law impact NHRS retirees working on a “per diem” or stipend basis?

With the exception of per diem court security officers and court bailiffs, who are exempt from the annual limit on hours worked contained in the law, all other NHRS retirees working as per diem employees or paid by stipend are subject to the annual limit on hours worked.

Employers are responsible for maintaining a record of hours worked by all NHRS retirees employed on a per diem, stipend, or other non-hourly basis; this includes per diem court security officers and court bailiffs, whose hours must still be reported.

As noted in the prior question, in the absence of records, NHRS will consider that a retiree worked the same amount of hours as a full-time employee of the employer for every day worked.

4. Does the law apply to a member who terminated full-time employment with a participating employer, but will not file an application to begin collecting a retirement benefit until a later date?

No. The law applies only to retirees collecting a benefit.

5. Can a retiree work full-time hours for a short-term as long as he or she does not exceed the maximum hours allowed in the calendar year?

Yes. However, in cases where a retiree returns to a full-time, permanent position with an NHRS-participating employer for which membership is mandatory, RSA 100-A:7 requires that the retiree's pension payments cease and the retiree is re-enrolled as an active, contributing member, even if the full-time position is only anticipated to be a short-term or interim assignment.

6. If an NHRS retiree returns to full-time service and becomes an active member, how will his or her future pension calculation be affected?

A retiree returning to active NHRS membership will have his or her future pension benefit re-calculated under the same formula used to calculate the original retirement benefit. **Note:** "Extra or Special Duty Pay" earned by retired Group II members who return to active service may be subject to Average Final Compensation limits in RSA 100-A:1, XVIII(a).

Retirees returning to active service in a position that is in a different member group than the position they retired from will be re-retired with a split benefit and will be entitled to the benefits provided for the last position held. Retirees considering a return to full-time service are encouraged to contact NHRS prior to accepting such employment to discuss the impact upon certain benefits to which the retiree may be in receipt, such as the Medical Subsidy and the Automatic Spousal Survivor Annuity for Group II retirees.

7. Does the law affect disability pension annuitants?

Yes. RSA 100-A, XXXIV applies to all retirees, regardless of whether they receive benefits for service retirement, vested deferred retirement, early retirement or disability retirement.

In addition, disability retirement benefits may be subject to gainful occupation income offsets regardless of where a retiree works. Disability retirees should contact NHRS before accepting any employment to learn more about gainful occupation offsets.

III. 'GRANDFATHERING' QUESTIONS

1. How does the grandfathering provision work?

Retirees already working part-time for one or more participating employers on the effective date of the law (January 1, 2019) may work a maximum of 1,664 hours per calendar year for as long as they remain in at least one of the position(s) they held on that date.

2. What constitutes being "employed on the effective date of this act"?

To meet the definition of employed on the effective date, a retiree would have had to work at least one day for the employer in calendar year 2018 and remain employed on the effective date of the law.

A retiree who terminates his or her position with a participating employer prior to the effective date of the law is not grandfathered.

3. Are grandfathered retirees subject to the penalty if they exceed 1,664 hours in a calendar year?

Yes.

4. What happens if a retiree working for a participating employer on the effective date of the law takes a different position with his or her current employer or any other participating employer?

The “grandfathering” provision only applies to the specific position for the specific employer the retiree was working in when the law took effect, as reported to NHRS by the employer. Upon changing positions, the maximum number of hours the retiree would be allowed to work in the calendar year is 1,352.

Generally speaking, a change in position title, a substantial change in job duties, or a lateral move or promotion will constitute a change in position unless the employer can provide a compelling reason otherwise.

5. What happens if the hours in my current position are increased (or decreased)?

Any retiree employed on the effective date, regardless of how many hours he or she has worked in the past, is allowed to work up to 1,664 hours per calendar year in the specific position the retiree was working in when the law took effect.

6. What happens if a grandfathered retiree leaves his or her position during the calendar year and takes a different position?

A retiree in this situation can work up to 1,664 hours in the calendar year in which the position change occurred, but will be limited to 1,352 hours in all subsequent years.

7. What happens if a retiree leaves the position he or she was grandfathered in and later returns to the same position?

Once a retiree loses grandfathered status by leaving the position(s) held on January 1, 2019, it cannot be restored, even upon returning to the same position.

8. Does the grandfathering provision apply to a retiree who was not working for a participating employer on the effective date of the law?

No. Simply being retired before the effective date of the law does not grandfather a retiree to work more part-time hours. The retiree must (1) be retired, and (2) be working part-time for a participating employer on or before January 1, 2019.

Because the retirement date is always the first of a month, a member would have to retire no later than December 1, 2018, and obtain part-time employment on or before January 1, 2019, to be grandfathered in a part-time position.

9. Can an employer add the names of retirees who did not work for the employer in 2018 to the list of grandfathered employees to pre-emptively grandfather them for future employment?

No.

IV. 28-DAY SEPARATION

1. How does the 28-day separation from service work?

A new retiree on or after January 1, 2019, cannot work in any part-time capacity, for any NHRS participating employer, until at least 28 days from his or her effective date of retirement, which is always the first of the month.

2. I am an active NHRS member and also work part-time for another participating employer. When I retire, does the 28-day separation apply to my existing part-time position?

Yes. The separation requirement commences on your effective date of retirement and the law does not provide a separation waiver for an existing part-time position. Please see the relevant section of the law in response to Question 5 below. When you retire from your full-time position, you cannot work in your part-time position for 28 days.

3. I am retiring from a school district at the end of the school year (July 1) and want to work part-time in a summer school program. Does the 28-day separation from service apply to me?

Yes.

4. I am retiring from the Community College System of New Hampshire (CCSNH) at the end of the term and plan to work as an adjunct faculty member. Classes for the next term begin within 28 days of my effective date of retirement. Does the 28-day separation from service apply to me?

Yes. (**Note:** CCSNH participates in the retirement system; the state university system does not.)

5. Does the law contain any exceptions under which I can avoid the 28-day separation and immediately begin working part-time for a participating employer in a position for which membership would be mandatory if the position was full-time?

No. Here is the relevant section of the law (emphasis added):

*RSA 100-A:1, XXXIV. "Part-time" for purposes of employment of a retired member of the New Hampshire retirement system but excepting per diem court security officers and court bailiffs, means employment by one or more participating employers of the retired member which shall not exceed 1,352 hours in a calendar year, except as provided in RSA 100-A:7-b. Notwithstanding the foregoing, **no retired member shall be employed on a part-time basis by any***

participating employer for a period of 28 days from the member's effective date of retirement.

6. I am an active NHRS member who has accepted a full-time position for which NHRS membership is optional. Does the 28-day separation from service apply to me?

No. The law applies to retirees working in a part-time position for which membership would be mandatory if the position was full-time.

7. I am an active NHRS member who is retiring and taking a position with a non-participating employer. Does the 28-day separation from service apply to me?

No. This provision only applies to a retiree who works for an NHRS participating employer.

8. I am an active NHRS member who has accepted another full-time position for which NHRS membership is mandatory. Does the 28-day separation from service apply to me?

No. The 28-day separation from service requirement only applies to members who are retiring.

V. SPECIAL SITUATIONS

1. If a retiree works part-time for multiple NHRS participating employers, how many hours are he or she allowed to work?

The annual limits on hours worked are the same whether the retiree works for one or more employers. If a retiree is not working for any participating employer on the effective date of the law, the limit is 1,352 hours combined for any/all employers.

If a retiree is working for one or more participating employers on the effective date, the annual limit is 1,664 under the grandfather provisions of the law. A grandfathered retiree working part-time for multiple employers may work up to 1,664 cumulative hours as long as he or she remains in at least one of the positions he or she held on the effective date of the law.

Note: It is incumbent on all retirees to monitor hours worked in the calendar year to avoid incurring a penalty, but this is even more crucial for retirees working for multiple employers.

2. Can a retiree provide unpaid volunteer time to an NHRS employer?

As was the case prior to HB 561, an NHRS retiree may provide volunteer service to any NHRS employer for which he or she is not employed. Examples: 1. A retiree works part-time for one community and is a volunteer firefighter in another community where he or she is not employed. 2. A retiree works part-time for a school district and is a volunteer at the town library.

However, if a retiree wishes to volunteer with an NHRS employer for which the retiree also works, the volunteer hours could count toward the maximum annual limit. Example: A retiree works part-time for a school district and volunteers additional hours at after-school events or extracurricular activities.

Because volunteering scenarios vary on a case-by-case basis, we encourage retirees and employers to contact the retirement system when these questions arise. While it is generally not an issue in

instances where the volunteer scenario is not directly connected to the retiree's employment, we must also be alert to efforts to circumvent the statutory limits on part-time employment of retirees through quid pro quo agreements between an employer and a retiree. Retirees who would like to volunteer for the same employer for which they work part-time are encouraged to contact NHRS at (603) 410-3592.

3. An NHRS retiree works full-time for an employer whose Group I "Employee" members did not participate in NHRS at the time the retiree commenced employment. The employer later enrolled its "Employee" members in NHRS and, at that point, the retiree exercised the option to not participate in the retirement system pursuant to RSA 100-A:22 (Modifications). Is the retiree subject to the part-time provisions?

No. Employees in this situation are not subject to the statutory definition of part-time for retired members but, per statute, their work hours and compensation must still be reported.

4. An NHRS retiree works as the chief municipal officer (i.e. city manager, town administrator, etc.) for an NHRS participating employer and upon hire the governing body (i.e., city council, board of selectmen, etc.) voted to exempt the position from NHRS participation pursuant to RSA 100-A:22 (Modifications). Is the retiree subject to the annual limit on hours worked?

No. Employees in this situation are not subject to the statutory definition of part-time for retired members but, per statute, their work hours and compensation must still be reported.

5. Are retired teachers working in job-share positions affected?

Any teacher who is equally sharing a full-time position with another teacher is automatically enrolled as an active contributing member per RSA 100-A:4, III-b. The "part-time" statute does not supersede this existing law.

6. If a retiree has a part-time position with an NHRS participating employer and also serves as a part-time elected official, do the hours worked as an elected official count toward the limit on hours?

No, the hours worked serving in elected positions – typically legislators and local school or select board members – do not count toward the hourly limits in RSA 100-A:1, XXXIV, because these positions are membership-optional under RSA 100-A:3.

7. Are retired Group II members appointed to work fixed terms as county sheriff's deputies allowed to "opt-out" of NHRS under RSA 100-A:3, I.?

No. The opt-out provision only applies to Group I "Employee" positions elected or appointed for a fixed term.

8. What is the "emergency exception" on hours worked contained in RSA 100-A:7-b?

The annual limitations on part-time employment exclude any hours worked during an emergency, which the statute defines as "any event declared by the governor or while working under the direction of the director of the Division of Forests and Lands during woodland fire control."

The New Hampshire Retirement System (NHRS) is governed by New Hampshire RSA 100-A, rules, regulations, and Federal laws including the Internal Revenue Code. NHRS also implements policies adopted by the Board of Trustees. These laws, rules, regulations, and policies are subject to change. Even though the goal of NHRS is to provide information that is current, correct, and complete, NHRS does not make any representation or warranty as to the current applicability, accuracy, or completeness of any information provided. The information herein is intended to provide general information only, and should not be construed as a legal opinion or as legal advice. Members are encouraged to address specific questions regarding NHRS with an NHRS representative. In the event of any conflict between the information herein and the laws, rules, and regulations which govern NHRS, the laws, rules, and regulations shall prevail.

Sections of RSA 100-A dealing with retirees working after retirement

Effective January 1, 2019

RSA 100-A:1, XXXIV. “Part-time” for purposes of employment of a retired member of the New Hampshire retirement system but excepting per diem court security officers and court bailiffs, means employment by one or more participating employers of the retired member which shall not exceed 1,352 hours in a calendar year, except as provided in RSA 100-A:7-b. Notwithstanding the foregoing, no retired member shall be employed on a part-time basis by any participating employer for a period of 28 days from the member's effective date of retirement.

RSA 100-A:7. Working After Retirement; Exceeding Part-Time Hourly Limit.

I. Any retired member returning to work for a participating employer in a position requiring mandatory membership pursuant to RSA 100-A:3 shall be restored to service and the retiree's retirement allowance shall cease, the retiree shall again become a member of the retirement system, and the retiree shall contribute at the percentage payable pursuant to RSA 100-A:16, I(a). Anything herein to the contrary notwithstanding, any credit for membership service and for any prior service on the basis of which the retired member's creditable service was computed at the time of his or her former retirement shall be restored to full force and effect; upon subsequent retirement, the retiree shall receive a retirement allowance based on his or her combined creditable service and average final compensation.

II. Any retired member who, in any calendar year, works part-time for one or more participating employers and exceeds the maximum permitted hours as provided in RSA 100-A:1, XXXIV, shall forfeit the state annuity portion of his or her retirement allowance, and any allocable cost of living adjustments, with such forfeiture commencing as soon as administratively feasible in the next calendar year and continuing for a period of 12 months.

III. The board of trustees of the retirement system shall adopt rules under RSA 541-A as necessary to administer and enforce the provisions of this section.

RSA 100-A:7-a Certain Part-Time Employment; Notice Required. The retirement system shall annually provide written notice to all retired members of the retirement system of the limitations on part-time employment as defined in RSA 100-A:1, XXXIV and the potential effect that exceeding such limitations could have on the retired member's retirement benefits, including restoration to service as required in RSA 100-A:7, I and the forfeiture of the state annuity portion of his or her retirement allowance under RSA 100-A:7, II.

RSA 100-A:7-b Certain Part-Time Employment; Emergency Exception. The annual limitations on part-time employment as defined in RSA 100-A:1, XXXIV shall be modified for retired members to exclude any hours worked during an emergency under this section. For purposes of this section, an emergency includes any event declared by the governor or while working under the direction of the director of the division of forests and lands during woodland fire control. Employers shall include hours worked during an emergency as a separate entry in the report required in RSA 100-A:16, VII(a).

RSA 100-A:16, VII(a) Every employer shall report to the retirement system annually, on or before February 15, in a format provided by the retirement system, all compensation paid by, and the total hours worked for, the employer by each retired member of the retirement system, including the name of, and the total hours worked, for each retired member of the retirement system, except that an employer shall not include in the report the compensation and hours worked by a retiree for serving

as an elected state official or as an elected official of a political subdivision in either a group I or group II position.

(Session law)

Grandfathering of Existing Part-time Positions; Penalty; Reporting.

I. The amendments to the provisions of RSA 100-A made by this act shall not apply to a retired member working in a part-time position for a participating employer for the position in which the retired member is employed on the effective date of this act.

II. Any retired member working under the provisions of paragraph I who exceeds 1,664 hours shall forfeit the state annuity portion of his or her retirement allowance, and any allocable cost of living adjustments, with such forfeiture commencing as soon as administratively feasible in the next calendar year and continuing for a period of 12 months.

III. In order to establish and maintain eligibility for the grandfathering exception provided in paragraph I, on or before February 15, 2019, and annually thereafter, every employer shall provide, in a format provided by the retirement system, the names and part-time position titles of any retired members continuing to be employed by the employer as of the effective date of this act.