

## **NHRS Frequently Asked Questions: Part-time Employment of NHRS Retirees – For Employers**

*Updated: March 10, 2021*

Below are answers to some frequently asked questions (FAQ) from employers concerning House Bill 561 (*Chapter 293, laws of 2018*), which changed 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, please contact NHRS for further guidance. Please send inquiries to [info@nhrs.org](mailto:info@nhrs.org).

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

### **INDEX**

- I. General Information
- II. Annual Reporting
- III. “Grandfathering”
- IV. Additional Questions

#### **Related Information:**

- Part-time Employment of NHRS Retirees – For Retirees, see: <https://www.nhrs.org/faqs>
- Part-time Employment of NHRS Retirees – For Members, see: <https://www.nhrs.org/faqs>

### **I. GENERAL INFORMATION**

#### **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:

- **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.
- **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.
- **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 IV, Question 1 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. **Note:** Since charter schools can only elect to participate for teachers, they are not considered to be a participating employer for any other employee and, therefore, are not required to report work hours or compensation for retirees that are not serving in a teacher position.

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

## **NEW** 4. Is an employer that has not elected to participate in NHRS for its Group I Employees subject to the working after retirement statutes?

No. If an employer has not elected to participate in NHRS for its Group I Employees, the employer does not have to report data on NHRS retirees working as employees – although it does have to report data on retirees working in police, fire, or teacher positions.

Further, retirees working in employee positions for these employers are not subject to the statutory limits on annual hours worked.

## 5. 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.

**6. 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.

**7. 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.

**8. Can a retiree work full-time hours for a short-term basis 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.

**9. 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.

**10. 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.

**NEW 11. Is there a way for an employer to check whether or not someone is an NHRS retiree?**

Yes. Employers can use the retiree reporting module of the Data Reporting System (DRS) to look up whether someone is a retiree by inputting a Social Security number. Instructions for using this feature are available at: <https://www.nhrs.org/employers/employer-resources>

## II. ANNUAL REPORTING

### 1. When is annual retiree reporting due?

Annual reporting of retiree hours worked and compensation paid in the prior calendar year is due to NHRS no later than February 15.

**Note:** Employers are also required to annually review the list of retirees initially reported as “grandfathered” and, if needed, remove any retirees who terminated employment or changed positions in the prior calendar year (for more information, see Section III.)

### 2. Are there any exceptions to retiree reporting?

Employers should not report the hours worked and compensation paid to 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. The compensation and work hours for all other retirees must be reported even if the position is exempt from the annual hourly limits.

### 3. What information needs to be reported?

For each retiree, employers must report:

- Plan ID (i.e. the membership classification the position corresponds to, such as Group I Teacher, Group II Police – Political Subdivision, *Group II Police – State*, etc.)
- Social Security number
- Last name
- First name
- Calendar year being reported
- Total hours worked in the calendar year
- Total Compensation paid in the calendar year

Instructions for annual reporting of hours worked and compensation paid to retirees are available at: <https://www.nhrs.org/employers/employer-resources>

**Note:** Employers may report via web entry or file upload. A fixed-length file schema for employers who choose to report data via file upload is available for download at:

[https://www.nhrs.org/docs/default-source/hb-561/nhrs-retiree-data-import-file-layout\\_hb561.pdf](https://www.nhrs.org/docs/default-source/hb-561/nhrs-retiree-data-import-file-layout_hb561.pdf)

**4. Does a participating employer that did not employ any retirees in the calendar year need to submit an annual report?**

Yes. The employer would need to annually certify, no later than February 15, that it did not employ any retirees in the prior calendar year. The employer should also update its list of grandfathered retirees, if any were previously reported.

Instructions for certifying that an employer did not employ any retirees in the previous calendar year are available at: <https://www.nhrs.org/employers/employer-resources>

**5. Does an employer with no full-time employees have to report if it has any NHRS retirees working on a part-time basis?**

- A. If the political subdivision employer once had full-time employees who participated in NHRS – Yes. Employers in this scenario are “inactive” participating employers and are subject to the reporting requirement.
- B. If the political subdivision employer never had full-time employees who participated in NHRS and never elected for its employee members to participate – No. Employers in this scenario have never been a participating employer and are not subject to the reporting requirement. (However, minimum participation standards would still apply to anyone – retiree or otherwise – working in a mandatory membership position as a teacher, police officer, or firefighter.)

If you are unsure of the status of your political subdivision, please contact NHRS.

**6. 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 VI, Question 2 for information on “volunteer” hours.)

**7. 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.

**8. If a retiree has a part-time position with an NHRS participating employer and also serves as an 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.

**9. If a retiree worked full-time for any period in the previous calendar year and subsequently retired, should the full-time hours worked prior to retirement be included in the annual retiree reporting?**

No. Employers should only report hours worked post-retirement.

**10. If a retiree worked full-time for any period in the previous calendar year and subsequently retired, should any compensation related to termination of full-time employment (i.e. payment of unused time, retirement incentive payments, etc.) be reported as compensation in the annual retiree reporting?**

No. Employers should only report compensation paid for post-retirement employment, even if the termination-related compensation was paid after the effective date of retirement.

**11. If a retiree terminated part-time employment at the end of the year and received his or her final pay in the following calendar year, should the compensation be reported?**

No. If a retiree did not work any hours in a calendar year, compensation does not have to be reported.

**12. Is an employer responsible for tracking all hours a retiree is working if the retiree works for more than one participating employer?**

No. An employer is not responsible for documenting and reporting retiree hours worked for other participating employers. If a retiree works for multiple employers, it is the retiree's responsibility to monitor his or her total hours worked.

### **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.

Employers, no later than February 15, 2019, were required to provide the names and position titles of any retired members employed on the effective date of the law. This data is used as the basis for administering the grandfathering provision.

**2. Do employers have to review the list of grandfathered retirees and report any changes to NHRS?**

Yes. Beginning in 2020 and every year thereafter, employers are required to verify, no later than February 15, that any grandfathered retirees remained in the same position for which they were grandfathered as of January 1 of each calendar year.

Instructions for employers to review the list of grandfathered retirees and remove retirees no longer in the same position are available at: <https://www.nhrs.org/employers/employer-resources>

**3. If a retiree is working in a part-time position on the effective date of the law and later terminates employment, is the position grandfathered if another retiree is hired to fill it?**

No. The grandfathering applies to the specific retiree in the specific position.

**4. What happens if a retiree working for a participating employer on the effective date of the law later 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 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.

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

If a retiree is formally terminated or formally resigns from a position held on January 1, 2019, he or she will lose grandfathered status. If the retiree later returns to the same position, grandfathered status is not restored. If a retiree takes a leave of absence due to vacation, sickness, or similar reasons, without a formal termination or resignation, and later returns to the same position, grandfathered status is retained.

## **IV. ADDITIONAL QUESTIONS**

**1. 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.*

## **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. 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.

## **4. 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.”

Any hours worked during such an emergency shall be reported to NHRS in a separate format, which will be provided to employers by the retirement system if such an emergency occurs.

**5. Is there a penalty to the employer if a retiree exceeds the maximum allowable hours in a calendar year?**

No. There is no penalty assessed to an employer if a retiree exceeds the annual limit on hours worked.

**6. What is the penalty to the retiree 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.

**7. 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.

**8. 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.

**9. 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.

## **10. 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.

*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.