

Interpretive Memorandum No. 2013-8

DATE: REVISED AUGUST 17, 2015 (Originally Issued December 9, 2013)

POLICY TOPIC: WHAT IS THE MEANING OF THE TERM “REGULARLY SCHEDULED BASIS” AS USED IN ADMINISTRATIVE RULE RET. 302.05(B)?

QUESTIONS/SCENARIO:

During the course of an employer audit of a town, it was determined that, for many weeks over a two-year period, a Member did not work the minimum number of hours required to qualify for Membership under Ret 302.05(b)(1) for employees of political subdivisions (i.e., 35 hours per week). The town’s personnel policy provided that full-time work at that Member’s position was considered to be 32 hours per week which was the number of hours the library was open. However, there was sufficient documentation to prove that the Member actually had worked in excess of 35 hours per week for most weeks during the course of her employment because she worked additional hours when the library was closed and that she had been enrolled on the basis of meeting the 35 hours per week standard. Nevertheless, during each of two particular years, (1) her average hours worked per week were less than 35 hours and (2) she worked less than 35 hours in more than 50% of the weeks in each year.

The question arose whether this Member met the 35 hours per week standard “on a regularly scheduled basis” during the two years in question.

CONCLUSION:

The Member was not employed “on a regularly scheduled basis” during the two years in question.

Although she had regularly worked in excess of 35 hours per week for many years, the facts indicate that her work schedule had been subsequently reduced to less than 35 hours per week during the two years in question. Generally, a Group I Member is not considered to be employed for the required minimum hours “on a regularly scheduled basis” if both of the following are true: (1) his or her average hours worked per week in a calendar year are less than the required minimum hours per week and (2) he or she works fewer than the minimum required number of hours in less than 50% of the weeks in a calendar year. By contrast, if a Group I Member meets either of these standards; he or she will be considered to be employed “on a regularly scheduled basis” for purposes of complying with Ret. 302.05(b).

ANALYSIS

Under Ret. 302.05(b), the minimum required number of hours for employees of political subdivisions is 35 hours per week, and for teachers is 30 hours per week. Note that teachers may still meet the minimum participation requirements if they work 30 hours per week for a cumulative minimum of 18 weeks during a school year, even if they are not regularly scheduled to work 30 hours per week. For State employees the minimum is typically 37.5 hours per week.

These rules do not apply to Group II policemen or firefighters.

RSA 100-A:3, I(a) provides that “[a]ny person who becomes an employee, teacher, permanent policeman or permanent fireman . . . working in a position for an employer under this chapter . . . shall become a Member of the retirement system as a condition of employment.” RSA 100-A:1, V - VIII variably use the terms “regular” and “full-time” to define who is an “employee”, “teacher”, “permanent policeman” or “permanent fireman”, respectively. Thus, the general rule is that NHRS membership is compulsory for regular, full-time employees. The corollary to this general rule is that persons who work part-time¹ are not eligible for Membership.

Ret 302.05(c) provides that “[a]ny Group I Member whose hourly work status is subsequently reduced to a level below the minimum participation standards established in (b) shall be ineligible to make contributions.”

The term “regularly scheduled basis” is not defined in the administrative rule. Thus, the following guidelines should be followed in making a determination as to whether a Member is employed on a regularly scheduled basis for purposes of complying with Ret. 302.05.

First, the use of the terms “employed on a regularly scheduled basis” and “hourly work status” indicates that the determination should not be made based solely on a week-to-week analysis of the number of hours worked; but, rather, the relevant inquiry is whether the Member is regularly required to work the minimum number of hours over an extended period of time. Preliminary evidence of meeting this criterion may be found in written documentation that specifies the regular schedule for the particular Member in question such as a personnel policy or an employment contract. In situations where such documentation provides that “full-time” is defined as working a number of hours that is less than the required minimum hours, the Member may still meet the Ret. 302.05(b) requirements if the facts indicate that the Member actually worked at least the required minimum hours notwithstanding a personnel policy or contract that required fewer hours.

Second, occasional weeks with fewer than the required minimum hours do not mean that a person is not “regularly scheduled”. In the normal course of employment, there may be some weeks when a person’s hours fall short of the required minimum hours.

¹ It is beyond the scope of this memorandum to discuss the application RSA 100-A:1, XXXIV which defines the term “Part-time” as it applies to retired Members. For a discussion of that provision, see Interpretive Memorandum 2013-7.

Third, a Member's hourly work status is not "subsequently reduced" unless there are prolonged or repeated periods of time during which the Member has not worked the required minimum hours. In this regard, a Member's work hours should be reviewed on a preliminary basis by calendar year except for the work hours of elected officials which should be reviewed based on the term of office (i.e., if the term begins on May 1st, then measure from May 1st to April 30th). If either (1) the Member's average hours worked per week in the calendar year are at least the required minimum hours per week, or (2) the Member works more than the minimum required number of hours in at least 50% of the weeks during the calendar year, the Member will be deemed to be regularly scheduled to work the required minimum hours. If a Member does not meet these two requirements, a preliminary determination that the Member is not regularly scheduled to work the required minimum hours will be made.

Fourth, the calendar year counting guideline does not apply to teachers. Under Ret 302.05(b)(2)a., Membership is also mandatory for a teacher who works the required minimum 30 hours per week for a cumulative total of 18 weeks in a school year. A teacher's hourly work status should not be considered to be "subsequently reduced" to less than 30 hours per week unless the teacher does not work 30 hours per week for at least 18 cumulative weeks in a school year.

Fifth, sick days, vacation days, and holidays should be counted as work days since a Member would generally be "regularly scheduled" to work those days but has used sick days, vacation days, or holidays.

Once a preliminary determination has been made, the employer should be notified and given ample opportunity to present evidence to the contrary. Evidence may include documentation that shows hours worked were less than the required minimum due to unique circumstances. For example, a Member may have taken weeks off under FMLA leave and this was not apparent on the preliminary review. The objective is to view the facts in a light that favors mandatory NHRS Membership. If any additional evidence does not alter the preliminary determination, the appropriate service credit adjustment and compensation and contribution adjustments should be processed.

STATUTORY REFERENCES: RSA 100-A:1, V-VIII; RSA 100-A:3; Ret 302.05.



8/17/15

Approved by Mark F. Cavanaugh, Esq.
Associate Counsel and Compliance Officer

Approval Date