

Interpretive Memorandum No. 2024-1

DATE: February 27, 2024

TOPIC: GROUP II CERTIFICATION STATUS

I. PURPOSE:

The purpose of this memorandum is to discuss the consequences of a Group II Permanent Policeman or Permanent Fireman¹ having his or her certification revoked or suspended, or placed on probationary or lapsed status. More specifically, how will a change in a Member's certification status affect his or her membership classification and eligibility for benefits in the NHRS.

Disclaimer: It is not the purpose of this memorandum to define when a Member's certification status may change, or interpret the laws and rules applicable in that regard. It is the prerogative of the certifying authority, working together with employers, to determine if a particular individual has a valid, active certification and is permitted to work as a certified police officer, firefighter or other Group II position. Any references below to applicable certification laws and rules are illustrative only and not determinative as it relates to a Member's specific certification status. Any questions in that regard should be directed to the applicable certifying authority.

II. SUMMARY:

A. Certification. The definition of the terms Permanent Policeman² and Permanent Fireman³ each provide that, in order to be a Group II Member, the Member must be fully certified by the applicable certifying authority for the position he or she holds and must meet all the physical, mental, educational and other qualifications for continuing certification that may be established by the certifying authority.

B. Revocation, Suspension. If a Group II Member's certification is revoked or suspended such that he or she is not legally permitted to perform the normal duties of a certified Permanent Policeman or Permanent Firefighter, he or she can no longer be a Group II Member.

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Glossary of Terms for Interpretive Memoranda located at <https://www.nhrs.org/employers/employer-resources/laws-administrative-rules/statutory-interpretive-guidance>

² RSA 100-A:1, VII

³ RSA 100-A:1, VIII

C. Probationary Status. If a Member is put on probationary certification status, he or she will remain as a Group II Member until, and if, his or her certification is revoked or suspended.

D. Certification Lapse. If a Permanent Policeman's or Permanent Fireman's certification lapses due to a break in employment, he or she will not be restored to Group II classification upon reemployment until his or her certification is reinstated.

E. Continued Employment in a Group I Position. If the Member continues to work full-time after decertification in an administrative or "reduced duty" position, he or she would become a Group I Member and be eligible for "split benefits" under RSA 100-A:19-a, *et. seq.* as described below.

III. ANALYSIS:

A. Certification Requirements

1. Permanent Policemen

RSA 100-A:1, VII defines the term Permanent Policeman to include a variety of law enforcement officers. By statute, this includes any full-time state trooper; conservation officer; liquor investigator; State and County correction officer; probation-parole officer; marine patrol officer⁴; State office complex police officer; county sheriff⁵ and deputy sheriff; city or municipal police officer; as well as certain State and County correctional line personnel. The Police Standards and Training Council (Police Standards) is the certifying authority for all of these positions except for county correction officers and line personnel, for which the certifying authority is the New Hampshire Association of Counties under a course of training approved by the Police Standards.

2. Permanent Fireman

RSA 100-A:1, VIII defines the term Permanent Fireman to include State and local firefighters as well State forest rangers. The Division of Fire Standards and Training and Emergency Medical Services (Fire Standards) is the certifying agency for all firefighters other than forest rangers.⁶

3. Bureau Chief for Emergency Preparedness and Response and Recovery

The definitions of "Permanent Policeman" and "Permanent Fireman" both include the Bureau Chief of Emergency Preparedness and Response at the Department of Health

⁴ It is the understanding of NHRS that, currently, all marine patrol officers are in seasonal part-time or full-time nonpermanent positions and, as such, are not eligible for membership in NHRS.

⁵ County Sheriffs have optional membership because they are elected officials, as provided in RSA 100-A:3, I(a), [4th sentence, 1st clause]

⁶ Forest Rangers are required by the Department of Forestry to be certified as police officers by the Police Standards and as wildfire firefighters under standards developed by the federal government.

and Human Services (DHHS).⁷ The position requires certification as an emergency preparedness official under standards established by DHHS.

4. Interpretation.

The participating Employer has the primary responsibility to certify that a position meets the definition for Group II membership when it submits an enrollment form. However, notwithstanding such discretion, NHRS is the governmental entity granted the responsibility to interpret RSA 100-A and, to the extent that an Employer's characterization is deemed to be contrary to RSA 100-A, VII and VIII, the NHRS Board of Trustees reserves the right to make the final determination as to what constitutes a Group II position subject to a final determination by the NH Supreme Court. In particular, attention is given to whether a position requires more than "indirect, occasional or short-term, or no exposure to the hazards" of Group II work⁸.

B. Revocation, Suspension, Lapse, and Probation of Certification Status

1. Permanent Policemen.

A certified Group II Permanent Policeman can have his or her certification revoked, suspended, lapsed, or placed in probationary status, for a variety of reasons. Examples include:

- a. Failure to meet the annual firearms certification;⁹
- b. Failure to obtain triennial medical clearance to take the physical fitness test;¹⁰
- c. Failure to successfully complete the triennial physical fitness test;¹¹
- d. Failure to satisfy the ongoing educational and training requirements.¹²
- e. For reasons relating to fraudulent, criminal, or immoral actions.¹³
- f. A lapse in employment for more than 30 days.¹⁴

In addition, if a Permanent Policeman is unable to obtain medical clearance to complete the physical fitness test, his or her certification may be placed on probationary status for as long as two years.¹⁵

If a Group II Member's certification is suspended or revoked, the Member is not allowed to work in a capacity that would allow him or her to exercise the same authority as a certified officer.¹⁶

⁷ See RSA 100-A:1, VII(h) and VIII(c).

⁸ See RSA 100-A:1, VII-a(c) and VIII-a(b). It is not the intent of this memorandum to give guidance on what meets this statutory standard. Employers are encouraged to consult NHRS on questions of whether a position meets Group II qualifications in this regard.

⁹ See NH Administrative Rule Pol 403.04.

¹⁰ See NH Administrative Rule Pol 404.06.

¹¹ See NH Administrative Rule Pol 404.07.

¹² See NH Administrative Rule Pol 403.

¹³ See NH Administrative Rule Pol 402.02(g).

¹⁴ See NH Administrative Rule Pol 401.01.

¹⁵ See NH Administrative Rule Pol 404.06(d).

¹⁶ See NH Administrative Rule Pol 402.02(m).

2. Permanent Firemen.

It is NHRS' understanding that once a Permanent Firefighter has obtained full certification, there are no continuing certification requirements imposed by Fire Standards. However, a Member's firefighter certification may be suspended for 90 days for a violation of operational rules established by Fire Standards.¹⁷ A Member's certification may also be revoked if the certification was obtained by fraud or through accident or if the person holding the certification commits a felony.¹⁸ Finally, certification will lapse if the Member is not employed as a firefighter for more than 30 days.

C. Consequences.

If a Group II Member's certification is suspended or revoked, or if it lapses, the following consequences will result:

1. **Group II Status.** The Member would no longer be eligible to be a Group II Member. If the Member's employment is terminated, the Employer should report that to NHRS promptly.
2. **Vested Deferred Retirement.** If a Group II Member ceases active full-time service upon decertification and has at least 10 years of service, he or she would be eligible to apply for a vested deferred retirement under RSA 100-A:10 at the time at which he or she would have reached the applicable age and service requirements if he or she had continued Group II service.¹⁹ Group II vested deferred Members are not eligible for the spousal annuity under RSA 100-A:12 or the medical subsidy benefit.²⁰
3. **Split-Benefits.** If the Member continues to work full-time in an administrative position on "modified duty", his or her membership would convert to Group I classification. Employers should submit a new enrollment form in this case. This would make the Member a "split-benefit" Member under RSA 100-A:19-a thru 19-g and the following rules will apply.
 - a. When the Member retires, NHRS will calculate a separate benefit for the years of service in each Group and add them together. For this purpose, the same high years of compensation, whether in Group I or in Group II, is used for determining the average final compensation for each part of the benefit.
 - b. For a Tier A or Tier B Member, the minimum age²¹ for full retirement might be increased if the sum of his or her Group II service plus his or her normal retirement age under RSA 100-A:5, II(a) is less than 60 (i.e., Age 60 minus

¹⁷ See NH Administrative Rule Fire 501.02

¹⁸ See NH Administrative Rule Fire 501.03

¹⁹ Vested deferred Group II members may also be eligible for early retirement pursuant to RSA 100-A:10, II.

²⁰ In general, to be eligible for the medical subsidy benefit, a Member must have been employed in a Group II position on June 30, 2000.

²¹ See RSA 100-A:19-b, II.

years of Group II service equals minimum age for retirement but no earlier than if the Member had not become a split benefit). For Tier C Members, the minimum retirement age for full benefits is 50 (but benefits do not commence until age 52.5); however, if a Tier C Member does not have 25 years of combined service, the minimum age is 60.

- c. Split-benefit members may also be eligible for a reduced early retirement.²²
- d. The minimum benefit amounts for a disability pension will be the amounts applicable to the Group of the position which the Member holds at the time of retirement.²³
- e. If the Member is still in Group I at the time he or she retires, he or she would not be considered a Group II retiree and, consequently, would not be entitled to the no-cost 50% spousal survivor annuity under RSA 100-A:12.²⁴ Instead, upon retirement, the Member would be able to purchase a survivor option annuity under RSA 100-A:13. Members can request an estimate of the cost of the survivor annuity.
- f. The Member would also not be eligible for the medical subsidy benefit under RSA 100-A:52, *et. seq.*²⁵

4. Probationary Status. A Permanent Policeman whose certificate is placed in probationary status, will remain in Group II as long as he or she is allowed to work in a capacity that would allow him or her to exercise the full authority as a police officer.



February 2, 2024

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

Approval Date

²² See RSA 100-A:19-d.

²³ See Ret 305.05(f), which provides that “[a] split-benefit retiree’s retirement status as a group I or group II retiree shall be determined by the group of the position last held.”

²⁴ *Id.*

²⁵ Group II members are eligible for the medical subsidy only if they were in active service on June 30, 2000 and retire as a Group II member.