

## Notice

The Board of Trustees of the Employees' Retirement System hereby gives notice that it intends to adopt new Rules 513-1-1-.09, 513-1-1-.10, 513-1-1-.11, and 513-1-1-.12, all of which are attached, pursuant to O.C.G.A. § 47-2-20 at its regular bimonthly meeting to be held on April 21, 2022, at 10:00 A.M. at the address below and via teleconference (link will be provided at a later date before meeting).

In compliance with O.C.G.A. § 47-1-10, this notice is being emailed to all members who have requested to be notified regarding proposed rules, all employers, member organizations, and each member of the Standing Senate and House Retirement Committees.

This law provides that employers shall post this notice on bulletin boards for their respective employees and shall otherwise take reasonable steps to assure that members of the system are made aware of the notice.

The law further provides that data, views, or arguments relative to the proposed rule may be submitted for consideration to the Board of Trustees. The submissions should be made to the following address no later than April 1, 2022:

Employees' Retirement System Board of Trustees  
c/o James A. Potvin  
Director, Employees' Retirement System of Georgia  
Two Northside 75  
Suite 300  
Atlanta, Georgia 30318

This the 3<sup>rd</sup> day of February 2022.



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James A. Potvin, Director

## Proposed Rule #1

### Rule

#### 513-1-1-.09 Membership Eligibility – Percent Time

- (1) Any individual who becomes an ERS member by being employed in a position that qualifies the employee for membership and subsequently reduces the number of hours of actual working time within the position below the required 35 hours a week as per Rule 513-1-1-.08, then the employee is able to maintain membership in ERS. The member's employer will report the employee at percentage time, determined by dividing the actual hours worked during a month by the normal full-time hours for the month. Service will be credited at the percentage reported.

### Statutory Citation(s)

- **O.C.G.A. § 47-2-21(a)**
  - *“(a) The administration and responsibility for the proper operation of the retirement system and for effectuating this chapter are vested in the board of trustees, which shall be organized immediately after a majority of the trustees have qualified and taken the oath of office.”*

### Explanation of Rule Creation

First established by ERS Board action in 1967 and later codified into an official Rule (513-1-1.08), eligibility for first-time ERS membership requires an employee to be employed with an eligible employer and working at least 35 hours per week for a minimum of 9 months per calendar year. In a subsequent Board action in October of 1968 and later confirmed in a 2006 AG Opinion, if an employee reduces the number of hours of actual working time within the position below the required number of hours, then the employee is able to maintain ERS membership, but on a percent time basis. This information was communicated to employers via a memo to Employers in 1968 and again in a newsletter distributed in the first quarter of Fiscal Year 2011.

## Proposed Rule #2

### Rule

#### 513-1-1-.10 Membership Eligibility – Transfers to Tax Office

- (1) A “break in service,” as used in O.C.G.A. § 47-2-292, is defined as more than 31 days of separation from the last day of employment, such that any actively contributing member, whose membership date is prior to July 1, 2012 and is transferring between tax offices or from an ERS position and employer to a tax office within 31 days, is eligible to maintain their ERS membership provided such position meets general ERS membership eligibility requirements.

### Statutory Citation(s)

- **O.C.G.A. § 47-2-292(a.1)**

*“(a.1) Notwithstanding any other provision of this Code section, no person who first or again takes office or becomes employed on or after July 1, 2012, shall become a member of the retirement system pursuant to the provisions of this Code section. Any person serving in any such position on July 1, 2012, who continues in service without a break in service shall remain a member of this retirement system. The reelection of any such officer or the election of any eligible employee to such office shall not constitute a break in service.”*

### Explanation of Rule Creation

Subsequent to legislation passed in 2012, new employees of tax offices on or after July 1, 2012 were no longer eligible for ERS membership unless their individual tax office had a resolution stating otherwise. An external memo was sent to employers in June of 2012 which stated any individual employed with a tax office who continues “without a break” will remain an ERS member. After clarification from the AG in 2019, it became ERS administrative policy that a “break in service” constituted anything over 31 days, and the policy was expanded for the benefit of all ERS members from any ERS employer transferring to tax office.

## Proposed Rule #3

### Rule

#### 513-1-1-.11 Formula Salary – Use of Merged Service

- (1) When calculating Formula Salary for members who have purchased past, refunded ERS Service and/or lost membership service that has been merged with the current membership, all associated salary shall be considered.

### Statutory Citation(s)

- **O.C.G.A. § 47-2-21(a)**
  - *“(a) The administration and responsibility for the proper operation of the retirement system and for effectuating this chapter are vested in the board of trustees, which shall be organized immediately after a majority of the trustees have qualified and taken the oath of office.”*
- **O.C.G.A. § 47-2-28(a)**
  - *“(a) On and after April 1, 1964, the board of trustees is authorized to adopt simplified benefit tables which will enable a member to estimate his or her retirement allowances. Such tables shall (1) be based on an actuarial study, (2) maintain the actuarial soundness of the retirement system, (3) for those members retiring on and after April 1, 1968, be applied to the member's highest average monthly earnable compensation during a period of 24 consecutive calendar months while a member of the retirement system, and (4) be applicable to all members, provided that the application of such tables shall not reduce or impair the amount of any allowances or benefits to which any person who was a member on April 1, 1964, would have been entitled at that time or would be entitled at any time thereafter under tables or calculations which were in effect at that time or at any time prior thereto or at any time prior to the adoption of such simplified benefit tables.”*

### Explanation of Rule Creation

As part of the ERS retirement benefit formula, member's Formula Salary, or the average of the highest 24 consecutive calendar months of Earnable Compensation as an ERS member, is calculated and used in conjunction with a formula factor and creditable service in order to determine the maximum plan benefit. Occasionally, there are retirement-eligible members who do not have 24 consecutive and/or total months of service in order to evaluate their Formula Salary. For such members whose qualifying Creditable Service includes purchased, refunded service, the AG opined in 2004 that ERS was able to use the past, refunded service and associated salaries to calculate member's Formula Salary.

## Proposed Rule #4

### Rule

513-1-1-.12 Formula Salary – Members with Less Than 24 Consecutive and/or Total Months of ERS Service

- (1) When calculating a member's highest average monthly earnable compensation and they do not have 24 consecutive months of ERS service, but have accrued at least or more than 24 total months, then the highest average over 24 successive months of service will be used in the Formula Salary.
- (2) When calculating a member's highest average monthly earnable compensation and they have less than 24 total months of ERS service, then the total number of available months will be used in the Formula Salary.

### Statutory Citation(s)

- **O.C.G.A. § 47-2-21(a)**
  - *“(a) The administration and responsibility for the proper operation of the retirement system and for effectuating this chapter are vested in the board of trustees, which shall be organized immediately after a majority of the trustees have qualified and taken the oath of office.”*
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### Explanation of Rule Creation

During the April 21, 2011 meeting of the ERS Board of Trustees (Board), the Board established procedures to calculate benefits, specifically regarding Formula Salary, for members who have less than 24 consecutive months of ERS service; however, such requirement was never officially filed with the Secretary of State. This proposal codifies such administrative procedure.