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# ESSEX REGIONAL RETIREMENT SYSTEM



## *MEMBERSHIP REGULATION GUIDE*

**July 2018**

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# MEMBERSHIP REGULATION GUIDE

## TO ASSIST EMPLOYER UNITS IN ENROLLING MEMBERS

The Essex Regional Retirement Board has prepared this guide to implementing the membership regulation of the retirement system. To be eligible to become a member of the retirement system, employees must meet certain requirements. This guide is to assist the employer units in determining if an employee meets the membership requirements of the retirement system and should be enrolled.

Included in this guide is the current membership regulation of the retirement system. Also, a list of bullet points is included as a quick, easy to use reference for interpreting the membership regulation. Finally, a list of Frequently Asked Questions has been prepared describing some of the scenarios that often occur and provides answers for our members units to reference.

We hope you find this guide useful and helpful.

**The Essex Regional Retirement Board recognizes that this guide and the Frequently Asked Questions that are included do not cover every possible scenario. The Board also recognizes that retirement law is complex and is often changing due to new legislation, recent court decisions and updates to regulations and policies. If you have a question on membership or enrollment issues, please do not hesitate to contact the retirement system at:**

**(978) 739-9151 or via email at [info@essexrrs.org](mailto:info@essexrrs.org).**

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### **SUPPLEMENTAL REGULATION – MEMBERSHIP**

Any individual who is permanently employed twenty (20) or more hours per week by a single member unit of the Essex Regional Retirement System (“System”) and who receives at least \$5,000 in wages as defined in M.G.L. c. 32, § 1 and 840 CMR 15.03 shall become a member of the System.

For the purpose of this regulation, “permanently employed 20 hours per week” shall mean that the employee is guaranteed 20 hours of weekly compensation each and every week.

Any elected official who earns at least \$5,000 in wages may elect to become a member of the System within ninety days after the date of assuming office.

APPROVED: May 16, 2017

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## MEMBERSHIP ELIGIBILITY GUIDE

- To be eligible for membership, an individual must work twenty hours per week in one or more positions for one employer.
- An employee who does not work twenty hours per week for a single employer is not eligible for membership.
- The schedule must be permanent, which means a regular schedule which guarantees the employee twenty or more hours per week, *every week*.
- To be eligible for membership, school employees employed from on or about September 1<sup>st</sup> to on or about June 30<sup>th</sup> (ten-month school employees), must receive at least twenty-hours per week of regular compensation each and every week that school is in session.
- Individuals holding intermittent or call positions are not eligible for membership in the retirement system as they do not work a regular, guaranteed schedule of twenty or more hours per week.
- An individual who temporarily works or averages twenty hours per week does not meet the membership requirements.
- An individual who is assigned a twenty hour per week schedule but who is not guaranteed to receive regular compensation at least twenty hours per week, every week, is not eligible for membership.
- An individual assigned to a position classified as temporary, seasonal or provisional is not eligible for membership even if they are working more than twenty-hours per week.

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- Once an individual meets the requirements of membership in the retirement system, they shall remain a member as long as they are continuously employed by the same employer, even if they no longer work at least twenty hours per week.
  - A member whose employment is terminated will become a member inactive. If a member inactive subsequently returns to public employment in the retirement system, they will become an active member again only if their new position meets the membership requirements.
  - A member who is not terminated from employment but is reassigned to a position that is less than twenty hours per week will continue to be a member of the retirement system.
  - An elected official who fails to elect to become a member within ninety days of assuming office must wait until the start of a new term in order to become a member.

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## FREQUENTLY ASKED QUESTIONS MEMBERSHIP

**Question:** Is membership mandatory for eligible employees of units that comprise the Essex Regional Retirement System?

**Answer:** Yes. Any individual who is permanently employed twenty or more hours per week by a single member unit of the retirement system, and who receives at least \$5,000 in wages that qualify as regular compensation, must be enrolled in the retirement system. Permanently employed twenty hours per week means that the employee is guaranteed twenty hours of weekly compensation each and every week.

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**Question:** An employee has a permanent regular schedule of twenty hours for Town A. But the employee is assigned to work in the town hall for ten hours each week and at the DPW for ten hours each week. Is this employee eligible for membership in the retirement system?

**Answer:** Yes. The employee works twenty or more hours for a single employer. The employee is also guaranteed twenty hours of regular compensation each and every week. This employee would be eligible for membership.

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**Question:** An employee has a permanent regular schedule of twenty hours. But the employee is assigned to work in the town hall for Town A for ten hours each week and also works for Town B at the DPW for ten hours each week. Town A and Town B are both units of the Essex Regional Retirement System. Is this employee eligible for membership in the retirement system?

**Answer:** No. The employee does not have a permanent schedule of twenty hours per week for a single employer. Therefore, the employee is not eligible for membership.

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**Question:** An employee works twenty hours per week for the school system. The school system is a member unit of the Essex Regional Retirement System. The employee works throughout the school year, which is September to June each year. There are three weeks of school vacation each year and the employee is not paid for school vacation weeks. Is this employee eligible for membership in the retirement system?

**Answer:** Yes. An employee who works a permanent schedule of twenty hours per week or more and who works in a school, and who works from on or about September 1<sup>st</sup> to on or about June 30<sup>th</sup>, and who works each and every week that school is in session, is eligible for membership in the retirement system. (These employees are often referred to by the retirement system as “ten-month school employees.” This interpretation of the applicability of the membership regulation to ten-month school employees was adopted by the Essex Regional Retirement Board in March of 2018. Different policies applied to ten-month school employees prior to March of 2018.)

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**Question:** Does it matter if an employee becomes a member of the retirement system on or after April 2, 2012?

**Answer:** Yes, it does matter if you became a member of the retirement system on or after April 2, 2012. Legislation enacted in 2011 created new requirements for employees who became members of Massachusetts public retirement systems on or after April 2, 2012. These new rules also apply to individuals who were members of a public retirement system prior to April 2, 2012, but who took a refund of their contributions. These individuals are subject to the post-April 2, 2012 rules if they returned to public service and were enrolled in the retirement system on or after that date. The post-April 2, 2012 rules will apply to these individuals even if they purchased their prior refunded service after returning to membership in the retirement system.

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**Question:** An employee is hired by a unit of the Essex Regional Retirement System and starts work on July 1<sup>st</sup>. This employee meets the membership requirements of the retirement system and should be enrolled. However, through an oversight, no enrollment forms are submitted to the retirement system for this employee, and no retirement deductions are taken from this employee's regular compensation. Can this error be corrected?

**Answer:** Yes. In fact, the retirement system is obligated to provide the employee with an opportunity to purchase their service back to the date on which they originally met the membership requirements of the retirement system. In the example above, the employee can submit the contributions they should have made to the retirement system, plus interest, and upon payment the Board will vote the member into the retirement system with a corrected membership date of July 1<sup>st</sup>.

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**Question:** An employee went to work for Town A in 2005. This employee met the membership requirements in effect at that time and was properly enrolled in the retirement system. In 2018, the employee changes their work schedule and now works less than twenty hours per week. Does this employee continue to be an active member of the retirement system?

**Answer:** Yes. A decision of the Massachusetts Supreme Judicial Court (SJC) issued in December of 2016 determined that an individual who was properly enrolled in a public retirement system will continue as an active member even if, during the course of their career, circumstances change and their position no longer meets the requirements for membership. This policy is commonly known as "once a member, always a member." Therefore, once an individual meets the requirements of membership in the retirement system they shall remain a member as long as they are continuously employed by the same employer, even if they no longer work at least twenty-hours per week.



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**Question:** An employee went to work for Town A in 2005. This employee met the membership requirements in effect at that time and was properly enrolled in the retirement system. In 2017, this individual terminated their employment with Town A. After terminating employment with Town A, this individual left their funds with the retirement system. In 2018, this individual is hired by Town B in a position that works fifteen hours per week. Should Town B enroll this member in the retirement system under the “once a member, always a member” policy?

**Answer:** No. A member whose employment is terminated and who leaves their funds on deposit with the retirement system will become a member inactive. If a member inactive subsequently returns to public employment with a member unit of the retirement system, they will become an active member again only if their new position meets the requirements for membership.

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**Question:** In 2005, an individual who was a member of another Massachusetts public retirement system was hired by Town A in an intermittent or on-call position. The Essex Regional Retirement Board advised Town A in 2005 to enroll this individual in the retirement system. This advice was based on the individual being a member of another public retirement system. However, the individual’s intermittent or on-call position with Town A did not meet the membership requirements of this retirement system. Was this individual properly enrolled in the Essex Regional Retirement System?

**Answer:** No. This individual never met the requirements of the Essex Regional Retirement System and the retirement board was in error in instructing Town A to enroll this employee. This was a misapplication of the “once a member, always a member” policy. As the employee never met the requirements for membership in the Essex Regional Retirement System, their membership should be rescinded and all of their contributions returned to them. This individual will continue as an active member of the other retirement system.

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**Question:** An individual was elected to the Board of Selectmen in Town A and took office on April 1, 2017. Town A pays their selectmen a stipend of \$10,000 per year. On April 1, 2018, Town A submits an enrollment form for this individual. Can this individual be enrolled in the retirement system?

**Answer:** No. Any elected official who earns at least \$5,000 in wages in their elected position may elect to become a member of the retirement system. But the elected official must exercise this option within ninety-days of assuming office. As the elected official for Town A above did not seek enrollment until 365 days after assuming office, they are not eligible for membership.

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**Question:** An individual was elected to the Board of Selectmen in Town A and took office on April 1, 2015. Town A pays their selectmen a stipend of \$10,000 per year. In March of 2018, this individual is re-elected to the Board of Selectmen and starts their second term on April 1, 2018. On May 1, 2018, Town A submits an enrollment form for this individual. Can this individual be enrolled in the retirement system?

**Answer:** Yes. This individual may be enrolled in the retirement system as they have started a new term of office and have elected to become a member of the retirement system within ninety-days of assuming office. This individual's membership date will be April 1, 2018. The Essex Regional Retirement Board has voted to permit the purchase of prior, non-membership elected service, so this individual may purchase their service from their prior term in office. If the individual does purchase their non-membership elected service, this individual's membership date will continue to be April 1, 2018.

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**Question:** An employee is hired in a position that works thirty-two hours per week for Town A. Town A considers thirty-two hours as a full-time position. Is this employee considered full-time by the retirement board?

**Answer:** No. The retirement board has a separate, universal standard for what constitutes full-time service. The retirement board's policy is that a member shall be considered full-time if they are assigned to work thirty-five hours per week or more, or if the member is classified as a Fair Labor Standards Act (FLSA) exempt employee who is paid at least \$23,600 per year (\$455 per week), is paid on a salary basis, and performs exempt job duties. If a member has a mix of part-time and full-time service (as defined by the retirement board), that member's part-time service will be prorated against the retirement board's standard of one-hundred and fifty hours of work equaling one month of creditable service.

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**Question:** An employee is hired by Town A and begins work on July 1st and immediately has retirement deductions withheld. However, the enrollment form is not submitted to the retirement system until September 1<sup>st</sup>. The enrollment form lists the employee's membership date as July 1<sup>st</sup>. The Essex Regional Retirement Board meets on October 30<sup>th</sup> and votes to approve this employee's membership in the retirement system. When is this employee officially considered as enrolled?

**Answer:** An employee is not considered as officially enrolled in the retirement system except upon a vote of the Essex Regional Retirement Board. The Board's vote will establish the employee's retirement date. In the example above, the employee's membership date will be July 1<sup>st</sup>, as that is date on which the individual met the requirements for membership and began making retirement contributions. However, this employee's membership date is not officially set until the Board's vote.

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