

**IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 97B.4 and 97B.15, the Iowa Public Employees' Retirement System (IPERS) hereby amends Chapter 4, "Employers," Chapter 6, "Covered Wages," and Chapter 15, "Dividends," Iowa Administrative Code.

IPERS adopts the following amendments as a result of 2009 Iowa Acts, House File 414, section 51, which authorizes an IPERS program for restoring a member's three-year average covered wages when that amount has been decreased by an employer-mandated reduction in hours. The amendments also remove citations to 2008 Iowa Acts now codified in the 2009 Code of Iowa.

In compliance with legislative action pursuant to 2009 Iowa Acts, House File 414, section 51, IPERS adopts these rules as a double-barreled action with an Adopted and Filed Emergency filing at the same time as the Notice of Intended Action. IPERS finds that, pursuant to Iowa Code section 17A.4(3), because these amendments are beneficial to members and necessary to the current and ongoing administration of the system, additional notice and public participation prior to implementation are impracticable, unnecessary, and contrary to the public interest.

IPERS also finds, pursuant to Iowa Code section 17A.5(2)"b"(1) and (2), that the normal effective date of these amendments should be waived and these amendments should be made effective upon filing with the Administrative Rules Coordinator on April 17, 2009, because these amendments confer benefits and are required to implement the system's governing statutes.

Notice of Intended Action regarding these amendments is also published herein as **ARC 7760B** to give interested persons adequate notice of the changes and an opportunity to respond.

None of these amendments are subject to requests for waivers; however, the amendments are subject to IPERS' normal appeal process.

These amendments are intended to implement 2009 Iowa Acts, House File 414, section 51, and Iowa Code sections 97B.4 and 97B.15.

IPERS adopted these amendments on April 17, 2009.

These amendments became effective April 17, 2009.

The following amendments are adopted.

ITEM 1. Amend paragraphs **4.6(4)"j"** to **"m"** as follows:

*j.* Effective July 1, 2008, county jailers and detention officers working as jailers ~~as provided by 2008 Iowa Acts, Senate File 2424, section 31.~~

*k.* Effective July 1, 2008, National Guard installation security officers ~~as provided by 2008 Iowa Acts, Senate File 2424, section 31.~~

*l.* Effective July 1, 2008, emergency medical care providers ~~as provided by 2008 Iowa Acts, Senate File 2424, section 31.~~

*m.* Effective July 1, 2008, special investigators who are employed by county attorneys ~~as provided by 2008 Iowa Acts, Senate File 2424, section 31.~~

ITEM 2. Adopt the following **new** rule 495—4.8(97B):

**495—4.8(97B) Additional employer contributions from employer-mandated reduction in hours.** This rule applies only to the restoration of covered wages reduced by an employer-mandated reduction in hours (EMRH). It does not apply to reductions in base wages, reduced overtime wages, reduced wages due to position changes, permanent layoffs or other termination of employment situations.

**4.8(1)** A member may restore the member's three-year average covered wage to the amount that it would have been but for an EMRH by completing the IPERS EMRH application form and related payroll deduction authorization and by filing the application and payroll deduction authorization forms

with the employer. By so doing, the member agrees to pay the employee and employer contributions for all EMRH wages retroactive to January 1, 2009, and all future EMRH wages through June 30, 2010.

**4.8(2)** A member cannot pay the EMRH contributions described under this rule in any manner except through payroll deductions.

**4.8(3)** The payroll deduction authorization described under this rule shall be irrevocable, except upon death, retirement or termination of employment. If revoked by the member's death, retirement, or termination of employment, all amounts held by an employer in the member's name shall be forwarded to the member along with the member's final wages.

**4.8(4)** A member may obtain a refund of EMRH contributions collected under this rule as part of a refund of the member's entire account balance or an actuarial equivalent (AE) payment, but a member who commences a monthly retirement allowance shall not receive a refund of any amounts contributed, even if the covered wages being restored are not used in the member's three-year average covered wage.

**4.8(5)** A covered employer must cooperate with an eligible member's request for payroll deductions using the applicable IPERS forms. Employers shall be required to complete and submit wage certifications showing the covered wages that would have been reported but for the EMRH.

**4.8(6)** After IPERS has received and processed wage certification forms, the employer will be billed for the applicable EMRH contributions on the next employer monthly statement. If contributions are not paid by the employer statement's due date, the employer will be assessed late fees and interest in accordance with rule 495—4.3(97B).

**4.8(7)** In completing the federal and state wage reporting forms to be filed with the federal and state tax authorities, an employer shall treat the EMRH contributions collected and forwarded to IPERS the same as pretax IPERS employee contributions.

**4.8(8)** Upon receipt of the contributions pursuant to this rule, IPERS shall apply them to the member's account as pretax employee contributions.

**4.8(9)** This rule applies to reductions in wages caused by an EMRH through June 30, 2010. An employer's collection of contributions from such wages shall terminate as of midnight, July 31, 2010. All completed EMRH forms and contributions collected under this rule must be forwarded to IPERS by a covered employer no later than August 15, 2010.

ITEM 3. Amend **495—Chapter 4**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 97B.4, 97B.9, 97B.14, 97B.14A, 97B.38, 97B.49A to 97B.49I, 97B.65 and 97B.70 and 2009 Iowa Acts, House File 414, section 51.

ITEM 4. Renumber subrules **6.3(11)** to **6.3(14)** as **6.3(12)** to **6.3(15)**.

ITEM 5. Adopt the following **new** subrule 6.3(11):

**6.3(11)** *Wages restored following an employer-mandated reduction in hours.* Notwithstanding rule 495—6.4(97B), wages restored following the receipt of contributions forwarded pursuant to 495—4.8(97B) shall be credited to quarters in which the wages would have been received but for the employer-mandated reduction in hours (EMRH).

ITEM 6. Amend rule 495—6.4(97B), introductory paragraph, as follows:

**495—6.4(97B) Month for which wages are to be reported.** Wages are reportable for the month in which they are actually paid to the employee, except when employees are awarded lump sum payments of back wages, whether as a result of litigation or otherwise, receive lump sum payments of extra duty pay, or request wage restorations following EMRH, and similar situations involving regular and periodic lump sum payments which IPERS in its sole discretion determines should be treated as covered wages. The employer shall file wage adjustment reporting forms with IPERS allocating the wages to the periods of service for which such payments are awarded. Employers shall forward the required employer and employee contributions and interest to IPERS.

ITEM 7. Amend subrule 15.1(1) as follows:

**15.1(1) November dividend adjustment.** Effective July 1, 2008, in order to determine whether the adjustment to dividend payments is payable under Iowa Code section 97B.49F(1) "b<sub>1</sub>" ~~as amended by~~

~~2008 Iowa Acts, Senate File 2424, section 34,~~ an IPERS actuary shall compare the actuarially required contribution rate for the fiscal year of the dividend adjustment to the statutory contribution rate for that same fiscal year and certify the results to IPERS. If the actuarially required contribution rate exceeds the statutory contribution rate for that same fiscal year, the applicable percentage used to calculate dividend adjustments shall be zero.

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