

# Colorado

# PERA

# Rules

Effective ~~January~~ July 1, 2009

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## **Rule 2: Administration**

### **2.95 Funds Not Subject to Legal Process**

- A. For purposes of 24-51-212, C.R.S. a party asserting that any of the moneys, trust funds, reserves, accounts, contributions, pursuant to parts 4, ~~5, and 14~~, 15, ~~and 16~~ of the Association Statutes or benefits referred to in the Association Statutes should be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, bankruptcy proceedings, or other legal process, because there is a judgment for a willful and intentional violation of fiduciary duties pursuant to 24-51-207, C.R.S., has the burden to prove that such a violation of fiduciary duty resulted in a direct financial gain for the offender or related party unless such a determination is set forth in the underlying judgment.

## **Rule 3: Membership**

### **3.25 Member Records**

- (4) An employer shall provide information regarding all employees, regardless of whether or not they are PERA members, such that PERA may determine eligibility for, and properly administer, the defined benefit plan, the defined contribution plan, the voluntary investment plan, and the deferred compensation plan. Information that must be provided to PERA includes, but is not limited to, the names of all employees, social security numbers, dates of hire, and dates of termination. It shall be the employer's responsibility to notify PERA within 10 days of the date of termination of any employee.

## **Rule 14: Voluntary Investment Program**

### **14.10 Enrollment in the 401(k) Plan**

A. Any ~~member or retiree~~ employee of ~~employed by~~ an affiliated employer may enroll in the 401(k) Plan. Enrollment shall be effective upon receipt by the Plan of contributions or a rollover for the member.

B. A person whose assets are transferred from the state defined contribution match plan to the 401(k) Plan pursuant to 24-51-1402(5)(a), C.R.S., shall be automatically enrolled in the 401(k) Plan.

### **14.20 Suspension of Participation**

- A. A ~~member or retiree~~ participant may stop contributions to the 401(k) Plan upon request. Changes are effective the first day of the next following payroll period.

- B. A ~~member or retiree~~ participant may resume contributions as soon as administratively practicable, except that contributions may not be resumed within six months after receipt of a hardship withdrawal. Changes are effective the first day of the next following payroll period.

#### **14.40 Withdrawal**

- A. Upon Termination of Employment

A ~~member or retiree~~ participant may withdraw the balance in the 401(k) account upon termination of employment.

- B. Upon Attaining Age 59 1/2

A ~~member or retiree~~ participant who has attained 59 1/2 years of age may withdraw monies from the 401(k) account prior to termination of employment.

#### **14.70 Beneficiary Designations**

##### (A) General Provisions

Designation of a Beneficiary shall be made in the manner prescribed by the Plan Administrator. Such designation shall take effect upon receipt by the Service Provider. Designation of a Beneficiary may be changed by the Participant at any time prior to death. If no such designation is in effect at the time of the death of the Participant, or if no person, persons, or entity so designated shall survive the Participant, the Beneficiary shall be deemed to be the estate of the Participant.

##### (B) Beneficiary Designation for Participants Whose Assets are Transferred to the Plan Pursuant to Section 24-51-1402(5)(a), C.R.S.

Effective July 1, 2009, a Participant whose assets are transferred to the Plan pursuant to Section 24-51-1402(5)(a), C.R.S., shall have the following beneficiary designation:

- (i) If the Participant has an existing Account balance with the Plan as of July 1, 2009, the beneficiary for all assets in the Account, including those assets transferred pursuant to Section 24-51-1402(5)(a), C.R.S., shall be the beneficiary designation in effect for the Plan, regardless of whether there was a different beneficiary designated for the assets transferred pursuant to Section 24-51-1402(5)(a), C.R.S. If no such designation for the Plan is in effect at the time of the death of the Participant, or if no person, persons, or entity so designated shall survive the Participant, the beneficiary shall be deemed to be the estate of the Participant.
- (ii) If the Participant does not have an existing Account balance with the Plan as of July 1, 2009, but has an account balance after July

1, 2009 as a result of the transfer of assets pursuant to Section 24-51-1402(5)(a), C.R.S., the beneficiary of the Account shall be the beneficiary, if any, designated with the service provider that held the assets prior to their transfer on July 1, 2009, as reported to PERA. This beneficiary can be changed in accordance with Rule 14.70 A. In the absence of such a designation, the beneficiary shall be determined in accordance with Rule 14.70 A.

## **Rule 15: Domestic Relations Orders (DROs)**

### **15.05 Definitions**

A DRO for the PERA defined benefit plan, the PERA defined contribution plan, and/or the PERA 401(k) Plan, or the PERA 457(b) Plan shall consist of: (1) The written agreement for a DRO pursuant to C.R.S. §14-10-113(6) (hereinafter “agreement”) and (2) The domestic relations order (hereinafter “order”).

### **15.20 Type of Plan**

PERA’s required plan is a “defined benefit plan” as defined in 14-10-113(6)(b)(II), C.R.S., and all payments from the Plan shall be considered payments from a defined benefit plan. PERA’s defined contribution plan, PERA’s voluntary plan, the 401(k) Plan, and PERA’s deferred compensation plan, the 457(b) Plan, is- are each a “defined contribution plan” as defined in 14-10-113(6)(b)(III), C.R.S.

### **15.25 DRO Submission Requirements**

- A. The parties shall submit the agreement to PERA within 90 days after entry of the decree and the permanent orders regarding property distribution in a proceeding for dissolution of marriage, legal separation or declaration of invalidity of marriage. For the agreement to be valid with respect to PERA, the agreement and order shall be entered by the court upon or before entry of any decree of dissolution of marriage, decree of legal separation, or declaration of invalidity of marriage or within 90 days after entry of the decree and the permanent orders regarding property distribution in a proceeding for dissolution of marriage, legal separation or declaration of invalidity of marriage. Certified copies of the agreement and order shall be received by PERA within 90 days after entry of the order and agreement, but must be received by PERA at least 30 days before PERA shall make its first payment pursuant to the DRO. Notwithstanding the foregoing, a person who was divorced prior to July 1, 2009 and who was a member of: (1) the state defined contribution match plan and whose assets were transferred to the 401(k) Plan pursuant to 24-51-1402(5)(a), C.R.S.; (2) the state defined contribution plan and whose assets were transferred to the PERA Defined Contribution Plan pursuant to Section 24-51-1501(2)(a); or (3) the state deferred compensation plan previously administered under Part 1 of Article 52 of Title 24, as said part existed prior to its repeal in 2009 and whose assets were transferred to the PERA 457(b) Plan pursuant to Section 24-51-1601, C.R.S.,

shall have 90 days from July 1, 2009 to submit certified copies of the agreement and the order to PERA with respect to the assets so transferred.

#### **15.40 Participant's Account**

The member contribution account for the defined benefit plan, the defined contribution account for the defined contribution plan and the member's account for the 401(k) Plan or the 457(b) Plan shall be reduced by payments made to the alternate payee.

#### **Rule 16: Defined Contribution Plan**

- C. Commence Employment means the date the employee began actual performance of services for ~~a Community College or~~ an employer as defined in 24-52-202(5)24-51-1501(4), C.R.S. and earned salary for such services regardless of when the payment occurs.
- E. Member of the Defined Contribution Plan means an employee who elected to participate in the Defined Contribution Plan pursuant to 24-51-1503(1) or 24-51-1506(4), C.R.S., or who became a member pursuant to 24-51-1501(2) or 24-51-1503(3), C.R.S., and is presently performing services for that PERA-affiliated employer for salary resulting in contributions to the Defined Contribution Plan. Member of the Defined Contribution Plan also means, to the extent required, a member who is inactive but who has a Defined Contribution Account.
- F. ~~Active Participant in a state defined contribution plan established pursuant to part 2 of article 52 of title 24 means an employee who elected to participate in the state defined contribution plan pursuant to 24-51-1502(1), C.R.S. and is presently performing services for that PERA-affiliated employer for compensation resulting in contributions to the state defined contribution plan.~~
- GF. For purposes of 24-51-1502(2)(a) ~~and 1502.5~~, C.R.S. reference to member of the Association includes a member of the Defined Contribution Plan.
- HG. Except as expressly provided herein, for purposes of Part 15 of the PERA Statutes and this Rule 16, all time periods shall be determined in accordance with 2-4-108, C.R.S.
- IH. Year of Membership in the Defined Contribution Plan means 12 months, not necessarily consecutive, during which contributions are made on the member's behalf pursuant to 24-51-1505(1), C.R.S. to the Defined Contribution Plan. A Defined Contribution Plan member's total years of membership in the Defined Contribution Plan shall be calculated by dividing the total number of months during which contributions were made on the member's behalf to the Defined Contribution Plan by 12. Credit shall not be provided for member contributions transferred pursuant to Rule 16.30 D after an employee elects to participate pursuant to 24-51-1506(4), C.R.S. Years of membership before a 12-month break in service shall not be includable for purposes of determining a Defined Contribution Plan member's years of membership after such 12-month break in

service. Each time an election is made to participate in the Defined Contribution Plan after a 12-month break in service, the employee shall have a new Defined Contribution Account with a new vesting schedule.

J. For purposes of 24-51-1506(4), C.R.S., year of membership in the plan means 12 months of contributions, not necessarily consecutive, with an employer as defined in ~~24-52-202(5)~~24-51-1501(4), C.R.S., ~~or a Community College~~. A member's total years of membership in the Defined Benefit Plan shall be calculated by dividing the total number of months of contributions by 12. Years of membership before a 12-month break in membership shall not be includable for purposes of determining a member's years of membership after such 12-month break in membership. Each time an election is made pursuant to 24-51-1502(1) or 1503(1), C.R.S. after a 12-month break in membership, the employee shall have a new calculation for years of membership for the purposes of 24-51-1506(4), C.R.S. Years of membership with an employer other than an employer defined in ~~24-52-202(5)~~24-51-1501(4), C.R.S. ~~or a Community College~~ shall not count towards the calculation of years of membership pursuant to 24-51-1506(4), C.R.S.

K. For purposes of Rule 16.10 J, reference to 12-month break in membership means 12 consecutive months for which no contributions are made on the member's behalf to the Defined Benefit Plan with an employer defined in ~~24-52-202(5)~~24-51-1501(4), C.R.S. ~~or a Community College~~.

L. 12-Month Break in Service means, except as otherwise required by federal law, 12 consecutive months for which no contributions are made on the member's behalf to the Defined Contribution Plan.

M. Transfer Account means an account within the PERA 401(k) account containing the vested portion of the Defined Contribution Account together with any earnings thereon, less any distributions, losses and the member's allocable portion of the costs and expenses of administering the Plan that is established if there is a 12-Month Break in Service from the Defined Contribution Plan or an election is made to become a member of the Association pursuant to 24-51-1506(1), C.R.S. and Rule 16.30 A. The Transfer Account will be an account within the PERA 401(k) account but will be subject to the same distribution and investment election rules as the Defined Contribution Account.

## 16.20 Initial Election Period

- A. Election to participate in the Defined Contribution Plan by an eligible employee pursuant to 24-51-1503(1), C.R.S. must be made in a manner approved by the Association. Such election must be received by the Association within 60 days from the date the employee commences employment. Such election becomes effective on the first valuation date following the receipt of the election form by the Association. If no such election is received by the Association within 60 days from the date the employee commences employment, the employee will automatically become a member of the Association's defined benefit plan. For an employee of an employer as defined in section 24-52-202(5), C.R.S., if no such election is received by the Association within 60 days from the date the employee commences employment, the employee will automatically become a member of the Association unless the employee has elected to participate in a defined contribution plan established pursuant to part 2 of article 52 of title 24 within 60 days from the date the employee commences employment. For an employee of a Community College, if no such election is received by the Association within 60 days from the date the employee commences employment, the employee will automatically become a member of the Association.
- ~~B.~~ An eligible employee pursuant to 24-51-1502(2), C.R.S., cannot become a participant in the PERA 401(k) Plan until the employee's election to become a member of the Defined Contribution Plan or a member of the Association is effective or the employee is determined to be a member of the Association at the conclusion of the election period specified in Rule 16.20 A.
- ~~C.~~ An employee pursuant to 24-51-1502.5, C.R.S., may become a participant in the PERA 401(k) Plan upon commencement of employment.
- ~~B.~~ An eligible employee shall make only a single election pursuant to 24-51-1502(1) and 24-51-1503(1), C.R.S. Such an election, once made, may not be withdrawn.
- ~~E.~~ If member and employer contributions are made to the Association during the initial election period on behalf of an eligible employee who elects to be covered by either the state defined contribution plan pursuant to 24-51-1502(1), C.R.S. or the Defined Contribution Plan pursuant to 24-51-1503(1), C.R.S., such contributions (without interest) shall be transferred to the plan within 90 days after the eligible employee's election becomes effective.
- ~~F.~~ An employee of an employer as defined in 24-52-202(5)24-51-1501(4), C.R.S., who is hired on or after January 1, 2006, or an employee of a Community College hired on or after January 1, 2008, who terminates his or her employment for any reason prior to the expiration of the 60 days pursuant to 24-51-1502(1) or 1503(1), C.R.S., and who has not made a choice to become a participant in a retirement plan, shall be deemed to have been a member of the Association from

the date of employment to the date of termination and thereafter an inactive member of the Association.

### **16.30 Additional Choice Within Years Two Through Five**

- A. Election to become a member of the Association pursuant to 24-51-1506(1), C.R.S. must be made in writing in a manner designated by the Association. Membership in the Association is effective on the first date of the pay period following the date the Association receives the form. Such election must be received within the second to fifth year of the employee's current period of membership in the Defined Contribution Plan. Years of membership in the Defined Contribution Plan shall be determined in accordance with Rule 16.10 H.
- B. Election to become a member of the Defined Contribution Plan pursuant to 24-51-1506(4), C.R.S. must be made in writing in a manner designated by the Association. Such election becomes effective on the first date of the pay period following the date the Association receives the election form. Such election form must be received within the second to fifth year of the employee's membership in the Association in accordance with Rule 16.10 J.
- G. Individuals who became members of the Defined Contribution Plan pursuant to section 24-51-1501(2) or 24-51-1503(3), C.R.S., are not eligible to make an additional choice within years two through five and this Rule 16.30 is not applicable to them.

### **16.50 Beneficiary(ies)**

- A. A member of the Defined Contribution Plan who is also a participant in the PERA 401(k) Plan may designate different beneficiaries for each account. In the event no beneficiary is designated for the DC Plan Account, the beneficiary shall be determined in accordance with Rule 14.70 A.
- B. If a Participant had a DC Plan account balance as of July 1, 2009, and that Participant had assets transferred to the plan on July 1, 2009 pursuant to Section 24-51-1501(2), C.R.S., the beneficiary of the DC Plan Account shall be determined in accordance with Rule 16.50 A. In the event no beneficiary is designated for the DC Plan Account, the beneficiary shall be determined in accordance with Rule 14.70 A.
- C. If a Participant became Participant in the DC Plan pursuant to Section 24-51-1501(2), C.R.S., and that Participant did not have a DC Plan Account balance as of July 1, 2009, but has an account balance after July 1, 2009 as a result of the transfer of assets pursuant to Section 24-51-1501(2), C.R.S., the beneficiary of the DC Plan Account shall be the beneficiary, if any, designated with the service provider that held the assets prior to their transfer on July 1, 2009, as reported to PERA. This beneficiary can be changed in accordance with this Rule 16.50 or Rule 14.70 A. In the event that multiple service providers held assets prior to



their transfer on July 1, 2009, and such service providers have different beneficiary designations on file for the Participant, all such designations will be null and void and a new designation will be required to be made in accordance with this Rule 16.50. In the absence of such a designation, the beneficiary shall be determined in accordance with Rule 14.70 A.

#### **16.60 Contributions**

- C. Members of the Defined Contribution Plan shall be eligible to make tax-deferred contributions and rollover contributions to the 401(k) Plan. Members of the Defined Contribution Plan shall also be eligible to make tax-deferred contributions and rollover contributions to the 457(b) Plan if they are employed by an Employer that is affiliated with the Plan.

#### **16.70 Return to Employment**

- B. A Participant in the state defined contribution plan established pursuant to Part 2 of Article 52 of Title 24, as said part existed prior to its repeal in 2009, who has elected a lifetime annuity distribution option on or after an age that distributions are exempt from penalty under Internal Revenue Code Section 72(t) shall be subject to the provisions of Rule 11 and 24-51-1101, et seq., C.R.S.

#### **16.95 Miscellaneous**

- A. The Domestic Relations Order requirements in PERA Rule 15 shall be the same for the Defined Contribution Plan as they are for the remainder of the PERA 401(k) Plan.
- B. A person may retire from the Association or receive a distribution from his or her Defined Contribution Account only if he or she has terminated PERA covered employment and is no longer actively contributing to either the Defined Contribution Plan or the Association's Defined Benefit Plan. Notwithstanding the foregoing, a person who retired from the Association prior to July 1, 2009, and became a member of the Defined Contribution Plan pursuant to Section 24-51-1501(2), C.R.S., and who is actively contributing to the Defined Contribution Plan as of July 1, 2009, may continue to be a retiree even though he or she is actively contributing to the Defined Contribution Plan. If such person has terminated employment with the employer that he or she was employed with as of July 1, 2009, and subsequently returns to work, he or she shall be treated as a PERA retiree and may not continue to contribute to the Defined Contribution Plan.
- E. Subject to Rule 16.95 B, an employee of an employer as defined in 24-51-1501(4), C.R.S. who is hired on or after July 1, 2009, and who was an employee of an employer as defined in 24-51-1501(4), C.R.S. during the 12 months prior to the date that the employee commences employment shall participate in the Plan that he or she was in based on the prior employment with an employer as defined in 24-51-1501(4), C.R.S. during the last 12 months. Notwithstanding the

above, and subject to Rule 16.95 F and G, if the employee has been an active participant in the state defined contribution plan established pursuant to part 2 of article 52 of title 24, as said part existed prior to its repeal in 2009, during the 12 months prior to the date the employee commences employment with an employer, the employee shall be a member of the Association's Defined Contribution Plan upon commencing employment with the employer, and the employee shall not be considered an eligible employee for purposes of section 24-51-1506(1) and (2), C.R.S. An employee of an employer as defined in 24-52-202(5), C.R.S. who is hired on or after January 1, 2006, and who has been an active participant in a state defined contribution plan established pursuant to part 2 of article 52 of title 24 during the 12 months prior to the date that the employee commences employment shall not be eligible to become a member of the Association or a member of the Defined Contribution Plan unless the employee becomes an employee of a Community College on or after January 1, 2008.

G. ~~An employee of an employer as defined in 24-52-202(5), C.R.S. who is hired on or after January 1, 2006, and who was an employee of an employer as defined in 24-52-202(5), C.R.S. during the 12 months prior to the date that the employee commences employment shall participate in the Plan that he or she was in based on the prior employment with an employer as defined in 24-52-202(5), C.R.S. during the last 12 months.~~

H. ~~An employee who commences employment with an employer as defined in 24-52-202(5), C.R.S. who has not been employed by an employer as defined in 24-52-202(5), C.R.S. in the last 12 months, but who has been a Member of the Defined Contribution Plan in the last 12 months, shall continue to be a Member of the Defined Contribution Plan upon commencement of employment with the employer as defined in 24-52-202(5).~~

G. An employee who commences employment with a Community College on or after January 1, 2008, who has not been employed by a Community College in the last 12 months, but who has been a Member of the Defined Contribution Plan in the last 12 months, shall continue to be a Member of the Defined Contribution Plan upon commencement of employment with the Community College.

J.H. Any person who becomes a candidate for Board election in the State Division pursuant to Part 2 of the Association's Statutes and these Rules must disclose whether he or she is a member of the Defined Contribution Plan or a member in the Defined Benefit Plan.

K.I Except as required by 24-51-212, C.R.S., none of the moneys, accounts, benefits, or contributions associated with a Defined Contribution Account shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, bankruptcy proceedings, or other legal process.

- JL. A person who no longer has a Defined Contribution Account and has not elected a lifetime annuity distribution option shall not have any rights associated with the Defined Contribution Plan and cannot be a retiree of the Association.
- KM. A person who has a Transfer Account may only rollover the Transfer Account to another Plan not administered by the Association if that person is no longer a member of the Association. The person shall not have the ability to rollover the Transfer Account to the PERA 401(k) Plan or the PERA 457(b) Plan.
- LN. In the event there is a conflict between these Rules and the Plan Document, these Rules shall govern.

### **Rule 17: Deferred Compensation Plan**

Rule 17 establishes requirements for enrollment, changes to participation, suspension and resumption of contributions, submission of monthly contribution report and withdrawal. The Deferred Compensation Plan is a 457(b) plan, known as PERA's 457(b) Plan, established pursuant to Section 457(b) of the "Internal Revenue Code of 1986," as amended.

#### **17.10 Enrollment in the 457(b) Plan**

Any employee of an employer who has affiliated with the deferred compensation plan pursuant to section 24-51-1602, C.R.S. may enroll in the 457(b) Plan. Enrollment shall be effective upon receipt by the Plan of contributions or a rollover for the member.

#### **17.20 Changes in 457(b) Plan Participation**

Requests for changes in the percent of contributions assigned to each fund or the total amount in each fund must be submitted to the service provider designated by the Plan Administrator in accordance with the timeline as determined by the Administrator. Changes to contributions are effective as soon as administratively practicable, but in no event before the later of the first day of the next payroll period or the first day of the month after the day the service provider receives a properly executed Voluntary Salary Deferral Agreement for the participant

#### **17.30 Suspension of Participation**

- A. A participant may stop contributions to the 457(b) Plan upon request. Changes are effective the first day of the next following payroll period.
- B. A participant may resume contributions as soon as administratively practicable, except that contributions may not be resumed within six months after receipt of an unforeseeable emergency withdrawal. Changes are effective as soon as administratively practicable, but in no event before the later of the first day of the next payroll period or the first day of the month after the day the service provider receives the change.

#### **17.40 Contribution Report**

- A. The employer shall deliver all 457(b) Plan contributions, along with the required report, to the service provider designated by the Plan Administrator within five days of the date contributions were deducted from the employee's salary. If either the report or contributions are delinquent, interest shall be assessed and paid as specified in Rule 4.10 B.
- B. The Plan Administrator shall prescribe the form in which 457(b) Plan contributions shall be reported.

#### **17.50 Withdrawal**

##### A. Upon Termination of Employment

A participant may withdraw the balance in the 457(b) account upon termination of employment from all employers that are affiliated with the 457(b) Plan.

##### B. Upon Attaining Age 70½

A participant who has attained 70½ years of age may withdraw monies from the 457(b) account prior to termination of employment.

##### C. Due to Unforeseeable Emergency

- (1) A participant who has not attained 70½ years of age may apply for an unforeseeable emergency withdrawal after contributions to the 457(b) account have been suspended and after all other available withdrawals and loans have been made. A participant who has commenced receiving installment payments under the 457(b) Plan may request acceleration of such payments in the event of severe financial hardship due to an unforeseeable emergency.
- (2) A participant applying for unforeseeable emergency withdrawal must show a severe financial hardship resulting from: a) an illness or accident of the participant, the participant's spouse, or the participant's dependent; b) loss of the participant's property due to casualty not otherwise covered by homeowner's insurance; or c) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.
- (3) Distributions due to an unforeseeable emergency must be limited to the amount reasonably necessary to satisfy the emergency need.
- (4) An unforeseeable emergency withdrawal may not be obtained more than once in a six month period.

- (5) If a distribution due to unforeseeable emergency is approved, the participant must cease deferrals into the 457(b) Plan for a period of six months beginning after receipt of the distribution.

#### **17.60 Loans**

All eligible 457(b) participants may borrow monies from the 457(b) account subject to loan provisions established by the Board and specified in the Plan document.

#### **17.70 Compliance with Internal Revenue Service Code**

A member or retiree may only contribute to the plan up to the maximum contribution limits established by the Internal Revenue Service each year. If a person contributes to another 457 plan in the same year as they contribute to the PERA plan, the person is responsible for compliance with the Internal Revenue Service Code regarding maximum allowable contributions.