



# EMPLOYER SERVICES FACT SHEET

# Membership

## Covered Employees

By law, all non-teaching employees of Ohio's boards of education, school districts, vocational and technical schools, community schools, and community colleges are required to contribute to SERS unless their position permits exemption from membership, optional membership, or exclusion from membership.

Once an employee is covered under SERS, the employee must continue to contribute to SERS for as long as the employee is employed in a SERS-covered position. If an individual meets the definition of "employee" as stated in section 3309.01(B) of the Revised Code (R.C.), that individual must contribute to SERS. Paragraphs (B)(1), (B)(2) and (B)(3) of R.C. 3309.01 set forth three separate definitions for "employee."

## Common Law Employees

Paragraph (B)(1) defines employee as "any person employed by a public employer" in a non-teaching position.

- This refers to an employee-employer relationship as established by judicial decisions, also called a "common law" employee-employer relationship.
- This definition applies when a school contracts directly with an individual for the individual's services.
- Classifying an individual hired to perform services as an "independent contractor" does not necessarily avoid the obligation of SERS' membership, if the actual status of the worker is that of an employee. Employers should consult with their legal counsel when deciding if an individual working for the school is properly classified as an independent contractor.
- If the overall facts of the situation indicate an employer-employee relationship between you and the worker, SERS membership is required.

## Contract Employees

Paragraph (B)(2) defines a person as an employee "if the person performs a service common to the normal daily operation of a school even though the person is employed and paid by one who has contracted with an employer to perform the service."

- SERS sometimes refers to these persons as "contract employees."
- This definition applies when a school contracts with a contractor for the provision of services by employees of the contractor.
- For SERS' purposes, the contracting board or school is the employer.

There is no distinction between full-time, part-time, or substitute positions. If an employee provides a "service common to the normal, daily operation of a school" for one day, or one year, that person is a SERS member.

Admin. Rule 3309-1-11(D) defines “common to the normal daily operation” as:

1. “Any service required to be provided by an educational unit or the provision of which is governed by law, statute, or rule; or
2. Any service necessary on a regular continuous basis to the efficient operation of an educational unit; or
3. Any service which, through custom and usage, has become a service commonly provided or procured by an educational unit on a regular continuous basis.”

It is important to understand the differences between paragraphs (B)(1) and (B)(2): (B)(1) refers to a “common law” employee; (B)(2) offers a statutory definition of employee.

**Services common to the normal daily operation include, but are not limited to:**

- Fiscal services or management company services
- Food services
- Transportation services for the employer
- Custodial or maintenance services
- School security services on school property
- Health-related services
  - Including Health Aides, IEP Nurses
- Substitutes for SERS-covered positions
- IT services
- Services that help in the planning, supervision, direction, management of, assistance in, and/or responsibility of providing a service that is common to the normal daily operation of a school

**Contractors who hold these positions are also SERS members.**

**Services not common to the normal daily operation include:**

- Service to vending machines by vending machine employees
- Equipment service under an equipment warranty or purchase/lease service agreement
- Service and/or repair equipment and/or facilities of the employer on an emergency basis
- Trash pick-up and disposal for the employer
- Student transportation in vehicles that are not “school buses” as defined in section 4511.01 of the Revised Code or marked as “school buses”
- Advice and/or consulting on a temporary basis

Paragraph (B)(3) defines employees as any person employed in a non-faculty position in a school, college or other institution—wholly controlled and managed—and wholly or partly supported by the state or any political subdivision.

## **Exemption from Membership**

Employees who may choose exemption from membership include:

- A student who is not a member at the time of employment, and who is employed by the school, college, or university in which the student is enrolled and regularly attending classes
- An emergency employee serving on a temporary basis
- An individual employed in a program established under any federal job training program

To be exempt, an employee must complete and file with the employer a Request for Exemption from Membership form within the first month of employment.

As the employer, you must retain this form.

If an individual contacts SERS to establish service credit for this service, you are required to provide a copy of this form to SERS.

If you are unable to present a copy of the signed form, you may be responsible for paying the employee and employer contributions as well as interest.

This is the only document that proves an employee is exempt from membership.

Once filed, the exemption is irrevocable.

## **Optional Membership**

A school board member or a governing board member has the option of contributing to SERS. Board Members must choose membership in SERS or Social Security within 30 days of taking office.

A board member choosing a SERS membership must complete the New School or Governing Board Member Election for Membership to SERS form, and it must be submitted to SERS.

Once this form is submitted, it is irrevocable while the board member continuously holds office.

A board member who does not choose membership in SERS must contribute to Social Security.

By law, governing authorities of community schools cannot contribute to SERS.

The only school board membership time that can be purchased is service from September 1, 1937, to June 20, 1991.

If a school board member chooses not to contribute to SERS for service on or after July 1, 1991, the school board member cannot buy it.

## Exclusion from Membership

Individuals excluded from SERS membership include:

- An individual who participates in an Alternative Retirement Plan (ARP) established by a college or university
- University of Akron police officers who are covered by the Ohio Public Employees Retirement System (OPERS)
- An individual who has a license and who is employed in an educational position through programs under federal law and financed by federal funds for which no license may be required
- Employees of community school operators who were withholding Social Security taxes on or before February 1, 2016, for persons employed in their schools who were employed on or after July 1, 2016, except if the employee had previously worked for the same community school operator within the period of July 1, 2015-June 30, 2016
- Nonteaching University of Akron employees who are initially employed after September 28, 2016, or who were employed by the university as of September 28, 2016, who subsequently terminated their employment and are then reemployed by the university at least 12 months after termination

## Determinations

If there is a question as to whether an individual is an employee required to contribute to SERS, request a determination from SERS.

The request should include information about the employment relationship along with the following:

- Completed Membership Determination Form
- Job description and/or contract

SERS may request additional information in order to make the determination.

Upon review of the information, SERS makes an initial membership determination.

If the initial determination is questioned by you or the individual, you may submit any additional information for review, and SERS staff will then make a final membership determination.

Once the final membership determination is made, an appeal may be taken to the SERS Retirement Board. The Board is responsible for the determination of the individual's employee status and all decisions by the Board are final.

If the employee is determined to be a SERS member and services have already been provided, you have 30 days to certify all earnings paid to the employee on the Certification of Salary for Non-Contributing Service form.

Once the cost is calculated and submitted, you have 30 days to send payment. Failure to certify the earnings will result in a charge based on estimated figures.