



# EMPLOYER SERVICES FACT SHEET

# Membership

By law, all non-teaching employees of Ohio's boards of education, school districts, vocational and technical schools, community schools, community colleges, and the University of Akron are required to contribute to SERS.

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 distinguishes three separate definitions for "employee."

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 a court of law, 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 relieve the obligation of SERS' membership, especially if the 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.

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."

"Common to the normal daily operation" has three separate definitions. It means:

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."

Ohio Adm. Code 3309- 1-11(D). This definition applies when a school contracts with a contractor for the provision of services by employees of the contractor.

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

The third definition of employee refers to 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.

## **Covered Employees**

SERS Membership includes, but is not limited to:

- Employees who provide services that help in the planning, supervision, direction, management of, assistance in, and/or responsibility of their service in the educational unit
- 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
- Substitutes for SERS-covered positions
- IT services

SERS membership is not required for individuals who:

- Are employed and paid by vending companies to service vending machines
- Service equipment under an equipment warranty or purchase/lease service agreement
- Service and/or repair equipment and/or facilities of the employer on an emergency basis
- Provide for trash pick-up and disposal for the employer
- Transport students in vehicles that are not defined by law or marked as “school buses”
- Advise and/or consult on a temporary basis

## **Contracted Services**

Hiring a contractor to provide services that are common to the normal, daily operations of a school does not relieve those individuals from SERS’ membership.

For SERS’ purposes, the contracting board or school is the employer.

According to Ohio law, contract employees are individuals who perform a “service common to the normal daily operation of an educational unit even though the person is employed and paid by one who has contracted with an employer to perform the service.”

If the overall facts of the situation indicate an employer-employee relationship between you and the worker, SERS membership is required.

## **Exemption from Membership**

Employees who may choose exemption 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 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 any possible 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 SERS Membership or Social Security within 30 days of taking office.

A board member choosing 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 the form is submitted, it is irrevocable.

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

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

The only school board membership time that can be purchased is service from Sept. 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**

The following individuals are excluded from membership in SERS:

- 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

- 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 withhold Social Security taxes beginning with their first paycheck: whose initial employment with the community school operator is on or after July 1, 2016, or; who previously worked for a community school operator and returned to work for that same operator on or after July 1, 2016, and where the period between employment was not less than 12 months before or after the date the employer began withholding Social Security taxes for their wages

## **Determinations of Membership**

Where a question exists as to whether an individual is an employee who is required to contribute to SERS, you should request a determination from SERS.

This request should include information about the employment relationship including the following:

- Completed Membership Determination Form (75.768)
- Job description and/or contract

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

Upon review of all the information, SERS will make an initial membership determination.

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

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

In a case where the employee is determined to be a SERS member and the 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 has been calculated and submitted, you have 30 days to send payment. Failure to certify the earnings will result in a charge based on estimated figures.