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## MEMO 2025-5

To: County Employers participating in NDPERS Retirement  
From: NDPERS  
Date: May 16, 2025  
Subject: New Policies Regarding Elected County Officials Participation in the NDPERS Retirement Plan

The NDPERS Board adopted two new policies during its May 13 meeting to address participation by elected county officials in the NDPERS retirement plan. The first policy addresses *existing* elected county officials, whereas the second policy provides guidance for *newly* elected county officials after May 13, 2025.

These policies were designed to create the least amount of disruption for members and employers while maintaining compliance with federal law related to Cash or Deferred Arrangement (CODA) and their administration.

### EXISTING ELECTED COUNTY OFFICIALS

The first policy allows in-service distributions to **existing** elected county officials who are eligible for normal retirement. This policy will allow impacted elected county officials to return to employment with their previous employer after retirement while continuing to collect their NDPERS pension. Therefore, retirement benefits will not be suspended and NDPERS will not request the return of retirement and retiree health insurance credit funds.

Note: Retirees who are eligible for normal retirement but are under the age of 59 ½ who are reemployed by the same employer without a bona fide break in service will be subject to a 10% early distribution penalty. The applicable 1099-R form will also be coded as an early distribution for payments received prior to turning age 59 ½.

#### *Effective dates*

- This policy is retroactive to January 1, 2007.
- This policy sunsets on August 1, 2027.

## NEWLY ELECTED COUNTY OFFICIALS

The second policy resolves the conflict between federal and state law related to Cash or Deferred Arrangements (CODA) and their administration as it relates to **newly** elected county officials on or after May 13, 2025.

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### MANDATORY PARTICIPATION

Effective May 13, 2025, NDPERS will require participation in the NDPERS retirement plan when a **newly** elected county official meets mandatory participation requirements.

*To be eligible to participate, an employee must work a minimum of 20 hours per week for 20 or more weeks of the year, be at least eighteen years of age, and filling a permanent position that is regularly funded and not of limited duration.*

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### OPTIONAL PARTICIPATION

When the minimum participation requirements are not met, the elected county official will be considered an *optional* participant.

*Optional participants may elect to participate in NDPERS within the first 180 days of employment, or within 180 days of changing from permanent to temporary/part-time employment.*

*Retirement participation is at the employee's own expense and is an after-tax contribution. The law expressly prohibits the employer from paying any portion of an optional participant's contribution.*

*The employee may not participate as an optional participant in the NDPERS retirement plan if actively contributing to another employer sponsored plan. This applies to both private and public retirement plans.*

## NEXT STEPS FOR NDPERS

NDPERS will be promulgating administrative rules relating to these policies and proposing future legislation to address the discrepancy between federal and state law that was previously communicated in [Employer Memo 2025-2](#).