



THE UNIVERSITY OF NORTH CAROLINA SYSTEM

Required minimum distribution (“RMD”) rules generally require distributions to begin at age 72, or if later, the year in which a participant retires. Neither the Code nor applicable regulation define “retirement” for purposes of the RMD rules.¹ In the absence of specific statutory or regulatory guidance, the IRS has indicated that a plan’s terms will determine whether part-time employees who have attained age 72 must begin receiving required minimum distributions.² The table below summarizes the applicable eligibility and retirement provisions of UNC’s various retirement plans and analyzes when a participant is considered retired for purposes of the plan and the RMD rules.

REQUIRED MINIMUM DISTRIBUTIONS – PART-TIME EMPLOYMENT & IMPACT ON REQUIRED BEGINNING DATE		
PLAN	IS A PARTICIPANT WORKING PART-TIME ELIGIBLE TO PARTICIPATE?	WHEN IS A PARTICIPANT CONSIDERED RETIRED FOR RMD PURPOSES?
ORP	<p><u>Provisions</u></p> <ul style="list-style-type: none"> • “Employee” (1.13) – Only includes those employed in permanent job positions at least ¾ time for no less than 9 months per calendar year on a recurring basis. • Eligibility (2.01) – Eligible Employees shall within 60 days of entering into eligible employment elect to join the Plan or the Retirement System. <p><u>Commentary</u></p> <ul style="list-style-type: none"> • Based on the definition of “Employee” it appears unlikely that a part-time employee would be eligible to continue participation in the ORP (irrespective of whether such employee receives in-service distributions 	<p><u>Provisions</u></p> <ul style="list-style-type: none"> • “Retires” or “Retired” (1.32) – Status of a Participant who has announced in writing that he/she has retired or has ceased to be employed by any Employing Institution. • “Termination of Employment” (1.35) – The date the Participant ceases to be an Employee of any of the Employing Institutions in the University. • Phased Retirement Program (4.04) – A Participant who has attained Normal Retirement Age and entered the UNC Phased Retirement Program following completion of 5 full years of Eligible Service, shall be entitled to receive his/her Individual Account in any manner permitted by the applicable Contract or Investment Fund. • Method of Payment (4.05(e)) – To the extent a Participant is otherwise eligible under N.C.G.S. § 135-45.2 <i>et seq.</i> to receive or purchase health insurance from the State of North Carolina upon being in pay status of a retirement benefit hereunder, the term “pay status” shall mean having Retired and receiving monthly retirement benefits of all or a portion of a Participant’s Individual Account. • “Required Beginning Date” (4.08(iv)(D)) – April 1 of the calendar year following later of (i) the year a Participant attains 72 or (ii) the year in which a Participant Retires. <p><u>Commentary</u></p> <ul style="list-style-type: none"> • The definition of “Retires” does not reference any specific age and appears to overlap with the definition of “Termination of Employment.” It is unclear whether a Participant must announce retirement <i>and</i> terminate

¹ Legislative history regarding Code Section 401(a)(9) suggests that a complete termination is required to trigger required minimum distributions – “[i]t is inappropriate to require all participants to commence distributions by age 72 without regard to whether the participant is still employed by the employer.” Additionally, per a 1998 ABA Joint Committee on Employee Benefits Q/A, in response to a question of what constitutes “retirement” for RMD and other Code purposes, the IRS responded that “[o]nce the status of worker changes from common law employee of employer sponsoring the plan, the employee has retired. Other situations will be addressed on a case-by-case basis. Not having enough hours to trigger a suspension of benefit service rules is not sufficient to be considered retired.”

² Information Letter 2016-0039 (April 14, 2016).

³ The Setting Every Community Up for Retirement Act (SECURE ACT) of 2019 changed the RMD age from age 70 ½ to 72. The UNC System retirement plan record keepers were informed that UNC would be operating under the new RMD age for all UNC System retirement plans effective 1/1/2020.

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	<p>pursuant to the Phased Retirement Program).</p> <ul style="list-style-type: none"> ○ Therefore, future ORP accruals may cease once employee transitions to part-time status. 	<p>employment, or whether an announcement of retirement alone is sufficient for a Participant to be considered “Retired.”</p> <ul style="list-style-type: none"> • In light of the informal IRS guidance, a reasonable interpretation is that “Retire” refers to a complete cessation of employment for purposes of RMD commencement. We note that a Participant who has entered the Phased Retirement Program may incur a Termination of Employment prior to retirement that would allow the Participant the opportunity to commence distributions. <ul style="list-style-type: none"> ○ A Participant would not be considered “Retired” until the end of their participation in the Phased Retirement Program (i.e., until they are no longer employed in a part-time position). Once a Participant is no longer employed by any Employing Institution and has reached age 72, they would begin to receive RMDs. ○ This interpretation is consistent with Section 4.04, which characterizes Phased Retirement Program distributions as “in-service distributions.” • We note that Section 4.05(e) appears to suggest that Participants in the Phased Retirement Program who are eligible for retiree health insurance are considered “Retired,” which creates ambiguity with respect to the application of RMD rules. <ul style="list-style-type: none"> ○ A holistic review of the ORP plan document and informal IRS guidance suggests that it is reasonable to conclude part-time employees participating in the Phased Retirement Program are not actually “Retired” and are not required to commence RMDs until they terminate employment with all Employing Institutions.
403(b)	<p><u>Provisions</u></p> <ul style="list-style-type: none"> • “Employee” (1.12) – Each individual who is a common law employee of an Employer and pays FICA taxes. • Eligibility (2.1) – Each Employee shall be eligible to participate in the Plan immediately upon becoming employed by the Employer. <p><u>Commentary</u></p> <ul style="list-style-type: none"> • Based on the definition of “Employee,” a part-time employee would be eligible to continue participation in the 403(b) Plan even if the employee participates in the ORP Phased Retirement Program. 	<p><u>Provisions</u></p> <ul style="list-style-type: none"> • “Employer” (1.12) – Any entity of UNC, which has Employees (may include constituent institutions and other entities, such as UNC Press). • “Severance from Employment” (1.22) – A severance from employment with all Employers. • Benefit Distributions (5.1) – Provides that distributions will commence no earlier than Severance from Employment, death, Disability, 59 ½, or hardship. • Minimum Distributions (5.3) – Provides that each individual agreement will comply with the requirements of Code Section 401(a)(9), and for purposes of applying such rules, each agreement is treated as an IRA. Distributions will be made in accordance with Treas. Reg. §1.408-8 (distribution requirements for individual retirement plans), except as provided in §1.403(b)-6(e). <ul style="list-style-type: none"> ○ Treas. Reg. §1.403(b)-6(e)(3) provides that for purposes of applying 401(a)(9) to Section 403(b) contracts, the required beginning date is April 1 of the calendar year following the later of the calendar year in which the employee attains age 70 ½ or the calendar year in which the employee <i>retires from employment</i> with the employer maintaining the plan. <p><u>Commentary</u></p> <ul style="list-style-type: none"> • A reasonable interpretation is that for RMD purposes, “retires from employment” means the Participant’s complete cessation of employment. • Therefore, a part-time employee would not be considered “retired” for RMD purposes and a part-time employee participating in the 403(b) Plan would not be required to receive RMDs from the Plan until they sever employment with all Employers.

REQUIRED MINIMUM DISTRIBUTIONS – PART-TIME EMPLOYMENT & IMPACT ON REQUIRED BEGINNING DATE

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457(b)	<p><u>Provisions</u></p> <ul style="list-style-type: none"> “Employee” (1.14) – Each individual who is a common law employee of an Employer and pays FICA taxes. Eligibility (2.01) – Each Employee shall be eligible to participate in the Plan immediately upon becoming employed by the Employer. <p><u>Commentary</u></p> <ul style="list-style-type: none"> Based on the definition of “Employee,” a part-time employee would be eligible to continue participation in the 457(b) Plan even if the employee participates in the ORP Phased Retirement Program. 	<p><u>Provisions</u></p> <ul style="list-style-type: none"> “Employer” (1.15) – Any entity of UNC, which has Employees (may include constituent institutions and other entities, such as UNC Press). “Required Beginning Date” (1.27) – April 1 of the calendar year following later of (i) the year a Participant attains 72, or (ii) the year in which a Participant’s actual retirement occurs. “Severance from Employment” (1.29) – A severance from employment with all Employers. Eligibility for Payment (6.01) – Provides that distributions will commence no earlier than Severance from Employment (including death or Disability), attaining age 72, hardship due to unforeseeable emergency, or as provided under a QDRO. Commencement of Distributions (6.06(b)) – Provides that in no event shall distribution commence later than April 1st of the year following the year in which the Participant attains 72 or, if later, has a Severance from Employment, as required by Code Section 401(a)(9). <p><u>Commentary</u></p> <ul style="list-style-type: none"> A reasonable interpretation is that RMDs commence no earlier than the Participant’s complete cessation of employment (i.e., when actual retirement occurs). Therefore, a part-time employee participating in the 457(b) Plan would not be required to receive RMDs from the Plan until they incur a complete cessation of employment.
SAORP	<p><u>Provisions</u></p> <ul style="list-style-type: none"> “Eligible Employee” (1.10) – Any employee of any University Institution who is designated for participation by the Board. Eligibility (2.01) – Each Eligible Employee shall immediately become a Participant on the date designated as an Eligible Employee by the Board. <ul style="list-style-type: none"> If a Participant’s job function changes such that the Participant no longer satisfies the requirements necessary to be considered an Eligible Employee (for example, because of a termination of the Participant’s status as a Chancellor of a University Institution), such individual shall immediately cease being eligible for future Contributions. <p><u>Commentary</u></p> <ul style="list-style-type: none"> Based on the definition of “Eligible Employee” a part-time employee would not be eligible to continue participation in the SAORP, therefore, future SAORP accruals cease once the employee transitions to part-time status. 	<p><u>Provisions</u></p> <ul style="list-style-type: none"> “Retires” or “Retired” (1.26) – Status of a Participant who has announced in writing that he/she has retired or has ceased to be employed by any University Institution. “Termination of Employment” (1.29) – The date the Participant ceases to be an employee of the University and any Employing Institution. Distributions (4.02) – Provides for the distribution of Plan benefits upon earlier of death, Disability or Termination of Employment, and for an in-service distribution upon attaining age 59 ½ with 5 years of service. “Required Beginning Date” (4.06(d)(iv)) – April 1 of the calendar year following later of (i) the year a Participant attains 72, or (ii) the year in which a Participant Retires. <p><u>Commentary</u></p> <ul style="list-style-type: none"> Section 4.02 does not contain a specific reference to “Retire,” which suggests that a Termination of Employment includes a retirement. A reasonable interpretation is that “Retire” refers to a complete cessation of employment for Plan distribution purposes, including the commencement of RMDs. Therefore, a part-time employee who previously accrued an SAORP benefit would not be required to receive RMDs from the Plan until they incur a complete cessation of employment.

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SAERP	<p><u>Provisions</u></p> <ul style="list-style-type: none"> • “Eligible Employee” (1.10) – Any employee of any University Institution who is designated for participation by the Board. • Eligibility (2.01) – Each Eligible Employee shall immediately become a Participant on the date designated as an Eligible Employee by the Board. <ul style="list-style-type: none"> ○ If a Participant’s job function changes such that the Participant no longer satisfies the requirements necessary to be considered an Eligible Employee or is no longer employed in the same Eligible Position (for example, because of a termination of the Participant’s status as a senior athletic employee), such individual shall immediately cease being eligible for future Contributions. <p><u>Commentary</u></p> <ul style="list-style-type: none"> • Based on the definition of “Eligible Employee” a part-time employee would not be eligible to continue participation in the SAERP, therefore, future SAERP accruals cease once the employee transitions to part-time status. 	<p><u>Provisions</u></p> <ul style="list-style-type: none"> • “Retires” or “Retired” (1.27) – Status of a Participant who has announced in writing that he/she has retired or has ceased to be employed by any University Institution. • “Termination of Employment” (1.29) – The date the Participant ceases to be an employee of the University and any Employing Institution. • Distributions (4.02) – Provides for the distribution of Plan benefits upon earlier of death, Disability or Termination of Employment, and for an in-service distribution upon attaining age 59 ½ with 5 years of service. • “Required Beginning Date” (4.06(d)(iv)) – April 1 of the calendar year following later of (i) the year a Participant attains 72, or (ii) the year in which a Participant Retires. <p><u>Commentary</u></p> <ul style="list-style-type: none"> • Section 4.02 does not contain a specific reference to “Retire,” which suggests that a Termination of Employment includes a retirement. A reasonable interpretation is that “Retire” refers to a complete cessation of employment for Plan distribution purposes, including the commencement of RMDs. • Therefore, a part-time employee who previously accrued an SAERP benefit would not be required to receive RMDs from the Plan until they incur a complete cessation of employment.
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