Definition of ‘Employee’ for SURS Participation

The new SURS rule “Definition of ‘Employee’ for SURS Participation” (80 Ill. Adm. Code § 1600.200) applies to all new employment beginning on or after the effective date of Jan. 1, 2023. Employees who have been certified as a contributing SURS member prior to the effective date and who remain in a non-terminated status after the effective date are not subject to the provisions of the rule. Instead, eligibility for SURS participation for such employment is to be made under a reasonable and good faith interpretation of Section 15-107 of the Illinois Pension Code (40 ILCS 5/15-107).

The information provided in these FAQs assumes an employment date (originally certified in SURS or certified following a previous termination) on or after Jan 1, 2023. This document provides supplemental guidance for many participation scenarios that employers may encounter. However, if there is a specific question not covered in any of the available resources, please contact SURS Employer Services at emprep@surs.org or (800) 275-7877.

GENERAL ISSUES

1. If we have employees who are currently participating in SURS but will not meet the participation requirements of the new rule effective Jan. 1, 2023, must their SURS participation cease?

No. The rule is applicable to new employment on or after Jan. 1, 2023. An original certification in SURS or a rehire certification following a previous termination event qualify as new employment if those certifications occur on or after Jan. 1, 2023. Certifications prior to Jan. 1, 2023, should be made based on a reasonable and good faith interpretation of Section 15-107 of the Illinois Pension Code.

2. What is an academic term?

An academic term is no shorter than three months (or 12 weeks) in duration for an educational institution and four months (or 16 weeks) for a non-educational institution. It is SURS’ understanding that all SURS employers that are academic institutions operate on a semester-based academic calendar. Accordingly, an academic term is a spring semester or fall semester. Summer session is not an academic term.

3. Do accelerated courses meet the definition of academic term?

Accelerated courses that are taught over a period of time that is shorter than an academic term are treated as having been taught over the full academic term if 1) the course carries the same contact hour or credit hour loads as the full-term unaccelerated version and 2) the full-term unaccelerated version must also be offered at during the same semester. This exception is limited to employment that requires teaching duties at an academic institution.

4. Are academic professional employees considered faculty or non-faculty staff?

Academic professional employees are considered non-faculty staff.
5. **What is “temporary” employment?**

A position is temporary if the individual is hired to help meet a short-term demand. Employment that is temporary does not meet the “Continuous” requirement. For examples of temporary employment situations, refer to the fact sheet section regarding Continuous requirements for faculty and non-faculty staff positions.

The SURS eligibility determination is made upon hire, re-hire after termination or transfer to a different position that is substantially different in character or duration. If a position that was deemed temporary extends past the originally intended duration but is still considered temporary, the position remains a temporary one excluded from participation even though the needs of the employer required an extension of duration. If, however, the position becomes a permanent position, the employee should be certified as a SURS participant effective the date of the permanent change, assuming all other participation requirements are met.

6. **What would the employer do if an employee has been contributing to SURS but is a F, J, M, or Q visa holder?**

Individuals who are F, J, M or Q visa holders are not eligible for SURS participation unless they become a Lawful Permanent Resident or satisfy the Substantial Presence Test under IRS rules. If it is determined that the employee meets SURS eligibility, their SURS certification should be retroactive to the January 1st of the year eligibility was met (or the date of hire, whichever comes later), assuming all other participation requirements are met. Contributions in arrears should also be submitted. If a F, J, M, or Q visa employee was erroneously certified as a SURS participant, the employer should discontinue the employee’s participation in SURS and retroactively correct for the erroneous certification and any contributions withheld.

Situations that require contributions to be submitted in arrears or refunded contributions for an erroneous certification should be handled on a case-by-case basis. Please contact SURS Employer Services for assistance at emprep@surs.org or (800)275-7877.

7. **The Patient Protection and Affordable Care Act (ACA) indicates 30 hours per week is a full-time employee (FTE) rather than the traditional 40 hours per week. Is a 30-hour-per-week employee now 100% for SURS?**

The ACA rule sets the minimum bar for full-time employment, but each employer must set the definition of full-time employment under their own employment policies. Accordingly, the percentage of employment for each individual should be based on the definition of full-time employment under those policies. For example, if an employer’s policy requires that non-faculty staff employees work 37.5 hours per week to be considered full-time, then the employee would need to work 3.75 hours per week to meet the 10% FTE requirement for Continuous employment.

8. **If a position is funded by a grant, is the employee in that position excluded from SURS participation since future funding is not guaranteed?**

Employees who are paid through grant funding should participate in SURS if they meet all other criteria of SURS participation. To meet the “Duration” requirement, a position must either be “Permanent” or meet the “Minimum Continuous Duration” standard. A position that is funded by a grant would not be likely to meet the Permanent and Continuous standard. However, if the position meets the Minimum Continuous Duration standard of at least four months (or 16 weeks) or one academic term, whichever is less, the Duration test is passed. Then consider whether the position meets the Continuous requirement (for staff or academic position), the Payroll Standard, and is not one of the specific statutory exclusions. Please note that a grant-funded position is temporary and excluded from SURS participation if funding for the position is temporary and renewal of that
funding is not customarily sought from year to year. If these criteria are met, then the employee should be certified as a SURS member. If the situation changes and funding is no longer available, re-evaluate the situation to determine if the employee still meets the SURS participation requirements. If not, provide SURS with a termination status report.

CONCURRENT EMPLOYMENT

9. How is the SURS participation eligibility determined when an individual holds multiple jobs on campus?

If an individual is concurrently employed in more than one position with the same employer, and at least one position meets the SURS participation requirements, then the other position(s) also qualifies for participation during the duration of the qualifying employment. If none of the positions meet participation requirements alone, the participation requirements cannot be met by “combining jobs.”

If an individual is employed at more than one employer, employment at the other employer is not taken into consideration when determining SURS participation eligibility.

ADJUNCT FACULTY

10. The term faculty includes adjunct/part-time faculty, does that mean adjuncts are reported as academic?

Yes, individuals who have an academic appointment such as professor, associate or assistant professor, adjunct faculty or professor, professor of practice, instructor, or lecturer are considered faculty.

11. Are adjunct faculty who don’t teach every semester excluded from SURS participation? How should we handle adjunct faculty that teach on a semester-by-semester basis?

An adjunct employee does not have to teach every semester to meet the definition of Employee for SURS participation purposes. The SURS eligibility determination is made at the time of hire. For an adjunct faculty employee, the time of hire is when the adjunct faculty contract or letter of appointment is effective indicating the employment expectations for the upcoming semester. If, at the time of hire, the adjunct faculty employee is expected to meet SURS participation requirements then the employee should be certified as a SURS participant even if the employment is not guaranteed or expected past the initial academic term.

If the adjunct faculty contract or letter of appointment does not specify that the employee is to work every fall or spring semester, but on a semester-by-semester basis then there may be intervening periods during which no work is performed. Section 15-107(f) of the Illinois Pension Code provides that absences without pay, other than formal leaves of absence, during any period of 12 months that exceed 30 workdays (not including summer session), interrupt the employee status as of the 31st work day. Accordingly, SURS participation criteria should be revisited at the beginning of each new academic term for adjunct faculty. If it is determined that the employee is not expected to meet participation requirements for the upcoming term, the employee should be terminated with SURS. If the employee meets participation requirements for a future academic term, they should be recertified at that time.

12. If adjunct faculty teach only eight-week accelerated courses, do we change the percent time worked and start and end dates to meet the "Rendered Over" a semester length?
No, actual dates of employment and actual percentage of time worked should be reported. However, for SURNS participation determination purposes, accelerated courses that are taught over a period that is shorter than an academic term are treated as having been taught over the full academic term if: 1) the course carries the same contact hour or credit hour loads as the full-term unaccelerated version, and 2) the unaccelerated full-term version is also being offered during the same semester. An individual teaching an accelerated course in the spring or fall semester may be certified as a SURS participant even if the course is only eight weeks. Non-accelerated eight-week courses do not meet the Minimum Continuous Duration Standard. Please note, this applies only to spring or fall courses as summer session is not considered an academic term. Furthermore, although the accelerated course exception permits participation in SURS for shorter duration employment, service credit and pensionable earnings are credited based on actual employment history.

13. Does an adjunct who takes over for a lecturer due to illness mid-term contribute to SURS?

No, assuming that the adjunct faculty was hired for only this purpose, hiring an individual to fill a temporary vacancy due to an illness or other leave of absence is considered temporary and does not meet SURS participation requirements.

FLUCTUATING FTES - STAFF/ACADEMIC POSITIONS (NON-ADJUNCT)

14. If a non-SURS eligible employee becomes eligible for SURS participation due to a change in employment terms, when should the SURS certification / participation become effective?

Employers are required to determine SURS eligibility status when employees are initially hired, rehired or when they transfer to a different position that is substantially different in character or duration (e.g., from a faculty to a non-faculty staff position). An employee who was initially hired and a determination was made that the position is not SURS-eligible, then the employee must “transfer to a different position that is substantially different in character or duration” to be considered for SURS eligibility. An employee is deemed to have transferred to a different position if the expectations of the original position have permanently changed in terms of duration or continuousness (including percentage of employment), and the employer determines that this position now meets the SURS participation requirements, the employee should be certified in SURS effective the date the position expectations were permanently changed.

Alternatively, if an employee is participating in SURS based on a determination made for employment that originally began on or after Jan. 1, 2023, and the expectations of the original position permanently change and the employee no longer meets participation criteria, the employer should send SURS a termination status. The termination status should be effective the date the expectations of the position were permanently changed.

FLUCTUATING FTES - ADJUNCTS

15. What if the percentage of employment changes after the participation determination has been made and classes have begun? For example, what if an adjunct is expected to teach over 10% full time equivalent (FTE) but a class doesn’t fill and is dropped, resulting in a FTE of less than 10%? Or, conversely, what if the adjunct began the semester with one course for less than 10% FTE and later picks up an additional load which puts them over the 10% threshold?

SURS participation determination is made at the time of hire. For adjunct faculty employed on or after Jan. 1, 2023, the employer is expected to determine SURS eligibility on a semester-by-semester basis. FTE changes that occur mid-semester that are out of the employer’s control do not affect SURS participation eligibility for that semester. For additional guidance on adjuncts, please refer to question No. 9 above for guidance on adjunct faculty participation.
SARS will monitor percentages of employment that are consistently falling below the 10% threshold. A position that shows a pattern of employment below the threshold will be reviewed and may result in a retroactive correction of employment status.

16. Our adjunct employees do not have contracts. How do we determine the time of hire?
If you have adjuncts who teach without a contract, there should be some form of employment agreement, such as letter of appointment, written terms of appointment/employment, etc. Without an agreement outlining the details of employment, including courses and credit hours, the employee would not be eligible for SARS participation because it would be considered irregular, intermittent or temporary employment.

SUMMER EMPLOYMENT

17. Is a 12-week summer session considered an academic term for purposes of this new participation rule?
Summer session is not an academic term. Only spring semester and fall semester are academic terms.

18. If an adjunct instructor (assuming they meet 10% of a full load) is hired to teach a 12-week summer session course, summer after summer, would that be a SARS-eligible position?
An appointment that only permits work during the summers would not be an eligible position because the work is not occurring for the duration of an academic term and would not be continuous due to its seasonal nature (summers only).

19. If an adjunct is eligible to contribute to SARS for the spring semester and also teaches in the summer would the summer session also be SARS eligible?
Yes.

20. If an adjunct is planning to teach during summer session and will be teaching fall and fall employment is SARS-eligible, will summer employment also be SARS-eligible?
Yes.

21. An adjunct instructor is hired to teach an eight-week summer course which is an accelerated version of a spring course, but it is not taught during the spring academic term. Would that qualify as an “accelerated course” and meet the requirement for the Minimum Duration Standard?
No. The accelerated course provision is an exception to the “four months or academic term” duration requirement that applies to faculty who teach during an academic term. The exception is not applicable to accelerated courses taught during summer session, as summer session is not an academic term.