

# House Bill 2836

Sponsored by Representative DOHERTY

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides hours of service credit for vesting purposes and retirement credit to member of Oregon Public Service Retirement Plan who receives workers' compensation disability payments and later returns to employment with participating public employer.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to credit for periods of disability under the Oregon Public Service Retirement Plan; creat-  
3 ing new provisions; amending ORS 238A.005, 238A.120 and 238A.145; and declaring an emer-  
4 gency.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS chapter 238A.**

7 **SECTION 2. (1) As used in this section, "disability payments" means:**

8 **(a) Disability payments under ORS chapter 656; or**

9 **(b) Disability payments provided in lieu of workers' compensation benefits pursuant to**  
10 **ORS 656.027 (6).**

11 **(2) A member of the pension program who receives disability payments shall receive**  
12 **hours of service credit for vesting purposes and retirement credit for the period during**  
13 **which the member receives disability payments if the member receives the payments by**  
14 **reason of injury or disease sustained while in actual performance of duty and not inten-**  
15 **tionally self-inflicted.**

16 **(3) A member may acquire hours of service credit for vesting purposes and retirement**  
17 **credit under this section only if the member returns to employment with a participating**  
18 **public employer after the period of disability.**

19 **(4) Credit acquired under this section may be used for the purpose of establishing mem-**  
20 **bership in the pension program under ORS 238A.100, or for the purpose of any other pro-**  
21 **vision of this chapter that requires a specified amount of service.**

22 **SECTION 3. ORS 238A.005, as amended by section 1, chapter 52, Oregon Laws 2014, and section**  
23 **4, chapter 107, Oregon Laws 2014, is amended to read:**

24 **238A.005. For the purposes of this chapter:**

25 **(1) "Active member" means a member of the pension program or the individual account program**  
26 **of the Oregon Public Service Retirement Plan who is actively employed in a qualifying position.**

27 **(2) "Actuarial equivalent" means a payment or series of payments having the same value as the**  
28 **payment or series of payments replaced, computed on the basis of interest rate and mortality as-**  
29 **sumptions adopted by the board.**

30 **(3) "Board" means the Public Employees Retirement Board.**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (4) “Eligible employee” means a person who performs services for a participating public em-  
 2 ployer, including elected officials other than judges. “Eligible employee” does not include:

3 (a) Persons engaged as independent contractors;

4 (b) Aliens working under a training or educational visa;

5 (c) Persons provided sheltered employment or make-work by a public employer;

6 (d) Persons categorized by a participating public employer as student employees;

7 (e) Any person who is an inmate of a state institution;

8 (f) Employees of foreign trade offices of the Oregon Business Development Department who live  
 9 and perform services in foreign countries under the provisions of ORS 285A.075 (1)(g);

10 (g) An employee actively participating in an alternative retirement program established under  
 11 ORS 353.250 or an optional retirement plan established under ORS 341.551;

12 (h) Employees of a public university listed in ORS 352.002 who are actively participating in an  
 13 optional retirement plan offered under ORS 243.800;

14 (i) Any employee who belongs to a class of employees that was not eligible on August 28, 2003,  
 15 for membership in the system under the provisions of ORS chapter 238 or other law;

16 (j) Any person who belongs to a class of employees who are not eligible to become members of  
 17 the Oregon Public Service Retirement Plan under the provisions of ORS 238A.070 (2);

18 (k) Any person who is retired under ORS 238A.100 to 238A.250 or ORS chapter 238 and who  
 19 continues to receive retirement benefits while employed; and

20 (L) Judges.

21 (5) “Firefighter” means:

22 (a) A person employed by a local government, as defined in ORS 174.116, whose primary job  
 23 duties include the fighting of fires;

24 (b) The State Fire Marshal, the chief deputy state fire marshal and deputy state fire marshals;  
 25 and

26 (c) An employee of the State Forestry Department who is certified by the State Forester as a  
 27 professional wildland firefighter and whose primary duties include the abatement of uncontrolled  
 28 fires as described in ORS 477.064.

29 (6) “Fund” means the Public Employees Retirement Fund.

30 (7)(a) “Hour of service” means:

31 (A) An hour for which an eligible employee is directly or indirectly paid or entitled to payment  
 32 by a participating public employer for performance of duties in a qualifying position; and

33 (B) An hour of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave  
 34 during which an employee does not perform duties but for which the employee is directly or indi-  
 35 rectly paid or entitled to payment by a participating public employer for services in a qualifying  
 36 position, as long as the hour is within the number of hours regularly scheduled for the performance  
 37 of duties during the period of vacation, holiday, illness, incapacity, jury duty, military duty or au-  
 38 thorized leave.

39 (b) “Hour of service” does not include any hour for which payment is made or due under a plan  
 40 maintained solely for the purpose of complying with applicable [*workers’ compensation laws or*] un-  
 41 employment compensation laws.

42 (8) “Inactive member” means a member of the pension program or the individual account pro-  
 43 gram of the Oregon Public Service Retirement Plan whose membership has not been terminated, who  
 44 is not a retired member and who is not employed in a qualifying position.

45 (9) “Individual account program” means the defined contribution individual account program of

1 the Oregon Public Service Retirement Plan established under ORS 238A.025.

2 (10) "Institution of higher education" means a public university listed in ORS 352.002, the  
3 Oregon Health and Science University or a community college, as defined in ORS 341.005.

4 (11) "Member" means an eligible employee who has established membership in the pension pro-  
5 gram or the individual account program of the Oregon Public Service Retirement Plan and whose  
6 membership has not been terminated under ORS 238A.110 or 238A.310.

7 (12) "Participating public employer" means a public employer as defined in ORS 238.005 that  
8 provides retirement benefits for employees of the public employer under the system.

9 (13) "Pension program" means the defined benefit pension program of the Oregon Public Service  
10 Retirement Plan established under ORS 238A.025.

11 (14) "Police officer" means a police officer as described in ORS 238.005.

12 (15) "Qualifying position" means one or more jobs with one or more participating public em-  
13 ployers in which an eligible employee performs 600 or more hours of service in a calendar year,  
14 excluding any service in a job for which benefits are not provided under the Oregon Public Service  
15 Retirement Plan pursuant to ORS 238A.070 (2).

16 (16) "Retired member" means a pension program member who is receiving a pension as provided  
17 in ORS 238A.180 to 238A.195.

18 (17)(a) "Salary" means the remuneration paid to an active member in return for services to the  
19 participating public employer, including remuneration in the form of living quarters, board or other  
20 items of value, to the extent the remuneration is includable in the employee's taxable income under  
21 Oregon law. "Salary" includes the additional amounts specified in paragraph (b) of this subsection,  
22 but does not include the amounts specified in paragraph (c) of this subsection, regardless of whether  
23 those amounts are includable in taxable income.

24 (b) "Salary" includes the following amounts:

25 (A) Payments of employee and employer money into a deferred compensation plan that are made  
26 at the election of the employee.

27 (B) Contributions to a tax-sheltered or deferred annuity that are made at the election of the  
28 employee.

29 (C) Any amount that is contributed to a cafeteria plan or qualified transportation fringe benefit  
30 plan by the employer at the election of the employee and that is not includable in the taxable in-  
31 come of the employee by reason of 26 U.S.C. 125 or 132(f)(4), as in effect on December 31, 2013.

32 (D) Any amount that is contributed to a cash or deferred arrangement by the employer at the  
33 election of the employee and that is not included in the taxable income of the employee by reason  
34 of 26 U.S.C. 402(e)(3), as in effect on December 31, 2013.

35 (E) Retroactive payments described in ORS 238.008.

36 (F) The amount of an employee contribution to the individual account program that is paid by  
37 the employer and deducted from the compensation of the employee, as provided under ORS 238A.335  
38 (1) and (2)(a).

39 (G) The amount of an employee contribution to the individual account program that is not paid  
40 by the employer under ORS 238A.335.

41 (H) Wages of a deceased member paid to a surviving spouse or dependent children under ORS  
42 652.190.

43 (c) "Salary" does not include the following amounts:

44 (A) Travel or any other expenses incidental to employer's business which is reimbursed by the  
45 employer.

1 (B) Payments made on account of an employee's death.

2 (C) Any lump sum payment for accumulated unused sick leave, vacation leave or other paid  
3 leave.

4 (D) Any severance payment, accelerated payment of an employment contract for a future period  
5 or advance against future wages.

6 (E) Any retirement incentive, retirement bonus or retirement gratuitous payment.

7 (F) Payment for a leave of absence after the date the employer and employee have agreed that  
8 no future services in a qualifying position will be performed.

9 (G) Payments for instructional services rendered to public universities listed in ORS 352.002 or  
10 the Oregon Health and Science University when those services are in excess of full-time employment  
11 subject to this chapter. A person employed under a contract for less than 12 months is subject to  
12 this subparagraph only for the months covered by the contract.

13 (H) The amount of an employee contribution to the individual account program that is paid by  
14 the employer and is not deducted from the compensation of the employee, as provided under ORS  
15 238A.335 (1) and (2)(b).

16 (I) Any amount in excess of \$200,000 for a calendar year. If any period over which salary is  
17 determined is less than 12 months, the \$200,000 limitation for that period shall be multiplied by a  
18 fraction, the numerator of which is the number of months in the determination period and the de-  
19 nominator of which is 12. The board shall adopt rules adjusting this dollar limit to incorporate  
20 cost-of-living adjustments authorized by the Internal Revenue Service.

21 (18) "System" means the Public Employees Retirement System.

22 **SECTION 4.** ORS 238A.120 is amended to read:

23 238A.120. (1) A vested inactive member may withdraw from the pension program if:

24 (a) The actuarial equivalent of the member's benefit under the pension program at the time of  
25 withdrawal is \$5,000 or less; and

26 (b) The inactive member has separated from all service with participating public employers and  
27 with employers who are treated as part of a participating public employer's controlled group under  
28 the federal laws and rules governing the status of the system and the fund as a qualified govern-  
29 mental retirement plan and trust.

30 (2) Upon withdrawal under this section, the Public Employees Retirement Board shall pay the  
31 withdrawing member the actuarial equivalent of the member's benefit in a lump sum.

32 (3) If a vested inactive member withdraws from the pension program under this section and is  
33 thereafter reemployed by a participating public employer:

34 (a) The person may reestablish membership in the pension program only for the purpose of ser-  
35 vice performed after the person is reemployed; and

36 (b) Any service performed before the withdrawal may not be credited toward the period of ser-  
37 vice required by ORS 238A.100 or 238A.115 or toward the accrual of retirement credit under ORS  
38 238A.140, 238A.150 or 238A.155 **or section 2 of this 2015 Act.**

39 (4) A member who has an individual account or accounts in the individual account program es-  
40 tablished under ORS 238A.025 may withdraw from the pension program under this section only if  
41 the member also withdraws all individual accounts pursuant to ORS 238A.375. A member who has  
42 a member account established under ORS chapter 238 may withdraw from the pension program un-  
43 der this section only if the member also withdraws that member account in the manner provided by  
44 ORS 238.265. A member who has an account established under ORS 238.440 may withdraw from the  
45 pension program under this section only if the member also withdraws the account established under

1 ORS 238.440.

2 (5) For the purposes of this section, the actuarial equivalent of a member's benefit does not in-  
3 clude any value attributable to adjustments to the benefit under ORS 238A.210.

4 **SECTION 5.** ORS 238A.145 is amended to read:

5 238A.145. (1) A pension program member who is not vested forfeits all retirement credit if the  
6 member performs fewer than 600 hours of service in each of five consecutive calendar years. A  
7 forfeiture under this section takes effect at the end of the fifth calendar year.

8 (2) If a pension program member forfeits retirement credit under this section and is subsequently  
9 reemployed by a participating public employer:

10 (a) The person may acquire retirement credit under the pension program only for the purpose  
11 of service performed after the person is reemployed; and

12 (b) Any service performed before the forfeiture may not be credited toward the period of service  
13 required by ORS 238A.100 or 238A.115, or toward the accrual of retirement credit under ORS  
14 238A.140, 238A.150 or 238A.155 **or section 2 of this 2015 Act.**

15 **SECTION 6. Section 2 of this 2015 Act and the amendments to ORS 238A.005, 238A.120**  
16 **and 238A.145 by sections 3 to 5 of this 2015 Act apply only to members of the Public Em-**  
17 **ployees Retirement System whose effective date of retirement is on or after the effective**  
18 **date of this 2015 Act.**

19 **SECTION 7. This 2015 Act being necessary for the immediate preservation of the public**  
20 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**  
21 **on its passage.**

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