



PERS Policy Paper – Public Employment After Retirement

Background

Public employers face a complicated statutory framework if they decide to employ a member who has retired from PERS. A retired member could return as an active member – the member’s benefit payments are stopped, additional credit towards retirement begins to accrue, and contributions are assessed to the member and employer upon re-entering public employment.

Instead, the retired member and their public employer more commonly want to avoid affecting the member’s retired status (and have the member’s benefits continue), but there are limits on how much that member can work after retirement. A retired Tier One or Tier Two member can work for up to 1,040 hours in a calendar year; retired OPSRP members may only work up to 600 hours in the calendar year that they retire before they return to active membership.

There are exceptions to the Tier One/Tier Two limits in statute (see Appendix A). These exceptions vary by the type of employer, geographic location, population of the employer’s city or county, type of position, and other factors. Those limits have been adopted over time and with no consistent policy direction; consequently, a complicated framework has been built that allows certain members to “double dip” by continuing to work but still receive retirement benefits, while other members who don’t fit one of these exceptions must limit their public employment after retirement. Notably, however, these restrictions only apply to public employment; a PERS retired member can work in the private sector without constraint or limitation after retirement.

By statute, the public employer has to be satisfied that the reemployment is in the public’s interest, and the employer and member must carefully monitor the hours actually worked or whether they comply with exception. If not, when a retired member exceeds the limit, or their work falls outside of an allowed exception, PERS has to stop the member’s retirement benefit, invoice the member for benefits paid after the member exceeded the limit, and return them to active membership. Employers must pay the contributions and earnings for the salary paid to members after they had returned to active membership.

Policy Issue

Should public employers be allowed to employ PERS retired members without affecting that member’s retired status and, if so, under what conditions?

Discussion

In 1997, the “work after retirement” limit was raised from 600 to 1,040 hours; each legislative session since then has considered proposals to add or extend exceptions to that limit. This piecemeal approach has led to inconsistent expectations and results for the variety of employers and members in PERS. In reviewing this policy issue, the following perspectives should be weighed:

1. Public Employer Workforce Management

Employers have a variety of reasons to retain or employ a PERS member after that person has retired. These employees have served a significant portion of their career in public service and a fair amount of their skills and abilities have been developed while working for Oregon’s taxpayers. The current reemployment restrictions mean that a large segment of the potential workforce is either foreclosed from a public employer’s consideration, or subject to complicated

restrictions, depending on that employer’s appetite to navigate the existing maze. Appendix B shows the number of members who worked after retirement and the associated salary in 2015.

2. Administrative Challenges

When a retired member appears to exceed the limit, PERS compiles the number of hours worked, based on reports filed by their employer(s). Then, the employer(s) are engaged to evaluate whether any exceptions apply to that member’s particular employment (or to part of their employment, as they could be working for multiple public employers). If reports confirm that the member has exceeded the limits and no exception applies, PERS cancels the member’s retirement and then invoices the member for any benefits received and the employer(s) for contributions (and associated earnings, if any) that are owed. As employer reports can sometimes lag behind for months, these situations are not always discovered promptly. This unwinding process can occur several months after the limit was exceeded, increasing the financial consequences for members and employers.

3. Federal law considerations

PERS must maintain its status under federal tax law as a qualified retirement plan. Generally, that law requires that benefits only be paid when the member has a “bona-fide” retirement – a term that is not defined, but can include starting benefits only after the member has reached normal retirement age or been absent from employment for a certain period of time (e.g., six months). Any policy decision to relax (or eliminate) return to work restrictions must consider these federal standards so that policy is in line with, or more restrictive, than federal law allows.

Current PERS Board Policy Position

The PERS Board’s policy position on new exceptions has been that they should be narrowly tailored to meet an identified workforce shortage and should sunset within a reasonable period for that shortage to be remedied. In fact, the shortages associated with the exceptions that have been enacted have not been resolved, and proponents are perpetually seeking renewal of those that would sunset. The shortages giving rise to exception requests seem to be systemic, rather than temporary, and creating or extending exceptions does not solve the core workforce management problems that have given rise to the demand. Instead, the current work after retirement scheme leads to uncertainty and confusion for both members and employers as to whether an exception applies, or may be amended to continue into the future.

Policy Recommendation

A retired PERS member may work for any private employer in the state of Oregon, or public or private employer outside the state, without limitation or constraint, and have no effect on the PERS benefit they earned through their public service in Oregon. An Oregon public employer can hire any qualified person to work for them, but if that person happens to be a retired PERS member (over 100,000 Oregonians are), that employment decision has to be balanced against that employer’s appetite for negotiating the current maze of limits or exceptions.

Conversely, allowing a retired member to continue employment prevents another person from filling that position. Also, some critics don’t believe that people should be able to receive both a retirement benefit and a paycheck at the same time.

The “middle ground” that has been shifting since the first “crack” was enacted in 1997 has led to frustrated member and employer expectations and serial proposals to expand that crack. Oregon’s public employers would be better served by a clear and consistent standard on one side of the question or the other.

APPENDIX A –Current Exceptions to 1,040 Hour Limit for Tier One and Tier Two

- As an administrator or teacher by a school district or educational service district that has its administrative office located in a county of 35,000 or less population:
 - 1) As an administrator or teacher by a school district or community college district located in a county of 35,000 or less population; or
 - 2) As an administrator or teacher by an education service district and the retired member's primary work duties are performed in a county of 35,000 or less population.
- By the sheriff of a county with less than 75,000 population.
- By the municipal police department of a city with less than 15,000 population.
- By the state or a county for work in a correctional institution in a county of less than 75,000 population.
- By the Oregon State Police for work in a county of less than 75,000 population.
- As a temporary replacement for an employee called to active duty in the National Guard or an Armed Forces Reserve component.
- By a road assessment district organized under ORS 371.405-.535.
- By Black Butte Ranch R.F.P.D., the Black Butte Ranch Service District, or the Sunriver Service District.
- As a deputy director or assistant director of the Department of Human Services (exception must be approved by the Governor).
- As a deputy director or assistant director of the Oregon Health Authority (exception must be approved by the Governor).
- As a teacher of career and technical education (licensed by the Teacher Standards and Practices Commission to instruct any career and technical education course or program in any career and technical education field).
- As a nurse or for the purpose of teaching nursing, provided the retiree is a nurse. This exception is only available during a nursing workforce shortage declared by the Legislative Assembly or the Governor (a nursing workforce shortage was declared when this exception was passed into law).
- As a nursing instructor (the retiree must be a registered nurse).
- By the Department of Public Safety Standards and Training to provide training.
- By a school district or education service district as a speech-language pathologist or speech-language pathologist assistant.
- Is on state active duty with the National Guard and has reached "normal" retirement age (ORS 399.075(8)) (available to early retiree only if the retiree has reached normal retirement age).
- By the Legislative Assembly or the Oregon State Police for service during a legislative session. (ORS 238.092(2)).

APPENDIX B – Retired Member Hours Worked and Salary Paid in Calendar Year 2015

Tier One and Tier Two Members

Hours	State Agencies		Local Governments		School Districts		All Employers	
	Members	Salary	Members	Salary	Members	Salary	Members	Salary
< 200	452	\$1,313,865	1,155	\$3,877,649	2,890	\$6,412,685	4,497	\$11,608,243
200 – 400	307	\$3,048,539	590	\$6,282,686	1,345	\$9,691,847	2,242	\$19,025,006
401 – 600	294	\$4,904,999	465	\$8,527,579	974	\$12,435,942	1,733	\$25,869,960
601 – 800	180	\$4,082,249	329	\$7,833,400	696	\$13,674,047	1,205	\$25,590,722
801 – 1039	310	\$10,346,977	415	\$12,881,218	737	\$22,246,622	1,462	\$45,475,969
> 1039	153	\$7,339,937	279	\$21,531,130	231	\$10,834,283	663	\$39,705,860
TOTAL	1,696	\$31,036,565	3,233	\$60,933,663	6,873	\$75,295,426	11,802	\$167,275,759

OPSRP Members

Hours	State Agencies		Local Governments		School Districts		All Employers	
	Members	Salary	Members	Salary	Members	Salary	Members	Salary
< 200	24	\$72,449	27	\$87,102	55	\$67,044	106	\$226,677
200 – 400	7	\$70,303	14	\$154,470	17	\$112,800	38	\$337,603
401 – 600	12	\$164,958	21	\$395,036	20	\$230,184	53	\$790,219
601 – 800	2	\$67,048	0	\$0	0	\$0	2	\$67,048
801 – 1039	0	\$0	1	\$26,238	0	\$0	1	\$26,239
> 1039	1	\$53,945	1	\$13,912	0	\$0	2	\$67,858
TOTAL	46	\$428,702	64	\$676,757	92	\$41,0028	202	\$1,515,644

All Members

Hours	State Agencies		Local Governments		School Districts		All Employers	
	Members	Salary	Members	Salary	Members	Salary	Members	Salary
< 200	476	\$1,386,313	1,182	\$3,964,751	2,945	\$6,479,729	4,603	\$11,834,920
200 – 400	314	\$3,118,841	604	\$6,437,155	1,362	\$9,804,646	2,280	\$19,362,609
401 – 600	306	\$5,069,957	486	\$8,922,615	994	\$12,666,127	1,786	\$26,660,179
601 – 800	182	\$4,149,296	329	\$7,833,400	696	\$13,674,047	1,207	\$25,657,769
801 – 1039	310	\$10,346,977	416	\$12,907,456	737	\$22,246,622	1,463	\$45,502,207
> 1039	154	\$7,393,882	280	\$21,545,042	231	\$10,834,283	665	\$39,773,718
TOTAL	1,742	\$31,465,267	3,297	\$61,610,420	6,965	\$75,705,454	12,004	\$168,791,403