

# D R A F T

## SUMMARY

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 subsequently is reemployed by any 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  
3 Retirement Plan; creating new provisions; amending ORS 238A.005,  
4 238A.120 and 238A.145; and declaring an emergency.

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

6 **SECTION 1. Section 2 of this 2017 Act is added to and made a part**  
7 **of ORS chapter 238A.**

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

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

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

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

19 **(3) A member may acquire hours of service credit for vesting pur-**

1 **poses and retirement credit under this section only if the member re-**  
2 **turns to employment with a participating public employer after the**  
3 **period of disability.**

4 **(4) Credit acquired under this section may be used for the purpose**  
5 **of establishing membership in the pension program under ORS**  
6 **238A.100, or for the purpose of any other provision of this chapter that**  
7 **requires a specified amount of service.**

8 **SECTION 3.** ORS 238A.005, as amended by section 2, chapter 33, Oregon  
9 Laws 2016, is amended to read:

10 238A.005. For the purposes of this chapter:

11 (1) "Active member" means a member of the pension program or the in-  
12 dividual account program of the Oregon Public Service Retirement Plan who  
13 is actively employed in a qualifying position.

14 (2) "Actuarial equivalent" means a payment or series of payments having  
15 the same value as the payment or series of payments replaced, computed on  
16 the basis of interest rate and mortality assumptions adopted by the board.

17 (3) "Board" means the Public Employees Retirement Board.

18 (4) "Eligible employee" means a person who performs services for a par-  
19 ticipating public employer, including elected officials other than judges.

20 "Eligible employee" does not include:

21 (a) Persons engaged as independent contractors;

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

23 (c) Persons provided sheltered employment or make-work by a public em-  
24 ployer;

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

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

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

31 (g) An employee actively participating in an alternative retirement pro-

1 gram established under ORS 353.250 or an optional retirement plan estab-  
2 lished under ORS 341.551;

3 (h) Employees of a public university listed in ORS 352.002 who are ac-  
4 tively participating in an optional retirement plan offered under ORS 243.800;

5 (i) Any employee who belongs to a class of employees that was not eligi-  
6 ble on August 28, 2003, for membership in the system under the provisions  
7 of ORS chapter 238 or other law;

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

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

14 (L) Judges.

15 (5) "Firefighter" means:

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

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

20 (c) An employee of the State Forestry Department who is certified by the  
21 State Forester as a professional wildland firefighter and whose primary du-  
22 ties include the abatement of uncontrolled fires as described in ORS 477.064.

23 (6) "Fund" means the Public Employees Retirement Fund.

24 (7)(a) "Hour of service" means:

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

28 (B) An hour of vacation, holiday, illness, incapacity, jury duty, military  
29 duty or authorized leave during which an employee does not perform duties  
30 but for which the employee is directly or indirectly paid or entitled to pay-  
31 ment by a participating public employer for services in a qualifying position,

1 as long as the hour is within the number of hours regularly scheduled for  
2 the performance of duties during the period of vacation, holiday, illness, in-  
3 capacity, jury duty, military duty or authorized leave.

4 (b) “Hour of service” does not include any hour for which payment is  
5 made or due under a plan maintained solely for the purpose of complying  
6 with applicable [*workers’ compensation laws or*] unemployment compensation  
7 laws.

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

12 (9) “Individual account program” means the defined contribution individ-  
13 ual account program of the Oregon Public Service Retirement Plan estab-  
14 lished under ORS 238A.025.

15 (10) “Institution of higher education” means a public university listed in  
16 ORS 352.002, the Oregon Health and Science University or a community  
17 college, as defined in ORS 341.005.

18 (11) “Member” means an eligible employee who has established member-  
19 ship in the pension program or the individual account program of the Oregon  
20 Public Service Retirement Plan and whose membership has not been termi-  
21 nated under ORS 238A.110 or 238A.310.

22 (12) “Participating public employer” means a public employer as defined  
23 in ORS 238.005 that provides retirement benefits for employees of the public  
24 employer under the system.

25 (13) “Pension program” means the defined benefit pension program of the  
26 Oregon Public Service Retirement Plan established under ORS 238A.025.

27 (14) “Police officer” means a police officer as described in ORS 238.005.

28 (15) “Qualifying position” means one or more jobs with one or more par-  
29 ticipating public employers in which an eligible employee performs 600 or  
30 more hours of service in a calendar year, excluding any service in a job for  
31 which benefits are not provided under the Oregon Public Service Retirement

1 Plan pursuant to ORS 238A.070 (2).

2 (16) “Retired member” means a pension program member who is receiving  
3 a pension as provided in ORS 238A.180 to 238A.195.

4 (17)(a) “Salary” means the remuneration paid to an active member in re-  
5 turn for services to the participating public employer, including  
6 remuneration in the form of living quarters, board or other items of value,  
7 to the extent the remuneration is includable in the employee’s taxable in-  
8 come under Oregon law. “Salary” includes the additional amounts specified  
9 in paragraph (b) of this subsection, but does not include the amounts speci-  
10 fied in paragraph (c) of this subsection, regardless of whether those amounts  
11 are includable in taxable income.

12 (b) “Salary” includes the following amounts:

13 (A) Payments of employee and employer money into a deferred compen-  
14 sation plan that are made at the election of the employee.

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

17 (C) Any amount that is contributed to a cafeteria plan or qualified  
18 transportation fringe benefit plan by the employer at the election of the  
19 employee and that is not includable in the taxable income of the employee  
20 by reason of 26 U.S.C. 125 or 132(f)(4), as in effect on December 31, 2015.

21 (D) Any amount that is contributed to a cash or deferred arrangement by  
22 the employer at the election of the employee and that is not included in the  
23 taxable income of the employee by reason of 26 U.S.C. 402(e)(3), as in effect  
24 on December 31, 2015.

25 (E) Retroactive payments described in ORS 238.008.

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

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

31 (H) Wages of a deceased member paid to a surviving spouse or dependent

1 children under ORS 652.190.

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

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

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

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

8 (D) Any severance payment, accelerated payment of an employment con-  
9 tract for a future period or advance against future wages.

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

12 (F) Payment for a leave of absence after the date the employer and em-  
13 ployee have agreed that no future services in a qualifying position will be  
14 performed.

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

20 (H) The amount of an employee contribution to the individual account  
21 program that is paid by the employer and is not deducted from the compen-  
22 sation of the employee, as provided under ORS 238A.335 (1) and (2)(b).

23 (I) Any amount in excess of \$200,000 for a calendar year. If any period  
24 over which salary is determined is less than 12 months, the \$200,000 limita-  
25 tion for that period shall be multiplied by a fraction, the numerator of which  
26 is the number of months in the determination period and the denominator  
27 of which is 12. The board shall adopt rules adjusting this dollar limit to in-  
28 corporate cost-of-living adjustments authorized by the Internal Revenue Ser-  
29 vice.

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

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

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

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

5 (b) The inactive member has separated from all service with participating  
6 public employers and with employers who are treated as part of a partic-  
7 ipating public employer's controlled group under the federal laws and rules  
8 governing the status of the system and the fund as a qualified governmental  
9 retirement plan and trust.

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

13 (3) If a vested inactive member withdraws from the pension program un-  
14 der this section and is thereafter reemployed by a participating public em-  
15 ployer:

16 (a) The person may reestablish membership in the pension program only  
17 for the purpose of service performed after the person is reemployed; and

18 (b) Any service performed before the withdrawal may not be credited to-  
19 ward the period of service required by ORS 238A.100 or 238A.115 or toward  
20 the accrual of retirement credit under ORS 238A.140, 238A.150 or 238A.155  
21 **or section 2 of this 2017 Act.**

22 (4) A member who has an individual account or accounts in the individual  
23 account program established under ORS 238A.025 may withdraw from the  
24 pension program under this section only if the member also withdraws all  
25 individual accounts pursuant to ORS 238A.375. A member who has a member  
26 account established under ORS chapter 238 may withdraw from the pension  
27 program under this section only if the member also withdraws that member  
28 account in the manner provided by ORS 238.265. A member who has an ac-  
29 count established under ORS 238.440 may withdraw from the pension pro-  
30 gram under this section only if the member also withdraws the account  
31 established under ORS 238.440.

1 (5) For the purposes of this section, the actuarial equivalent of a  
2 member's benefit does not include any value attributable to adjustments to  
3 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  
6 retirement credit if the member performs fewer than 600 hours of service in  
7 each of five consecutive calendar years. A forfeiture under this section takes  
8 effect at the end of the fifth calendar year.

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

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

13 (b) Any service performed before the forfeiture may not be credited to-  
14 ward the period of service required by ORS 238A.100 or 238A.115, or toward  
15 the accrual of retirement credit under ORS 238A.140, 238A.150 or 238A.155  
16 **or section 2 of this 2017 Act.**

17 **SECTION 6.** **Section 2 of this 2017 Act and the amendments to ORS**  
18 **238A.005, 238A.120 and 238A.145 by sections 3 to 5 of this 2017 Act apply**  
19 **only to members of the Public Employees Retirement System whose**  
20 **effective date of retirement is on or after the effective date of this 2017**  
21 **Act.**

22 **SECTION 7.** **This 2017 Act being necessary for the immediate pres-**  
23 **ervation of the public peace, health and safety, an emergency is de-**  
24 **clared to exist, and this 2017 Act takes effect on its passage.**

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