



# Oregon

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## **PERS Policy Paper – Public Employment After Retirement**

### **Background**

Public employers face a complicated statutory framework if they employ a member who has retired and receives a PERS benefit. If the retiree returns to employment as an active member – the member’s retirement benefit payments are stopped, additional credit towards retirement benefits begins to accrue, and contributions are assessed to the member and employer. However, if the retiree returns as a retired member – the member’s benefit payments continue, additional credit towards retirement benefits does not accrue, and no contributions are assessed to the member and employer. To maintain retired member status while working after retirement, retirees must comply with the prescribed hour limits, unless any statutory exceptions apply. If the retiree exceeds the limits and no exceptions apply, then PERS must return them to active membership.

### ***Hour Limits for Retired Members***

Generally, a retired Tier One or Tier Two member may work less than 1,040 hours in a calendar year; while retired OPSRP members are limited to less than 600 hours in the calendar year that they retire. These restrictions only apply to public employment; a PERS retired member can work in the private sector without limitation after retirement.

### ***Exceptions to Hour Limits***

In addition to the hour limitations described above, specific statutory exceptions allow certain Tier One and Tier Two members to work unlimited hours without affecting their retired member status (see Appendix A). The exceptions vary by the type of employer, geographic location, population of the employer’s city or county, type of position, and other factors. No exceptions apply to retired OPSRP members.

### ***Challenges to Compliance with Hour Limit Exceptions***

Statutory exceptions that allow retirees to work without hour limitation have been adopted over time with no consistent policy direction. Consequently, the complicated framework requires members and employers to carefully monitor the number of hours worked, and any of the various other conditions that must be met to qualify for any particular exception (i.e., population changes or whether an emergency declaration is still in effect).

The complicated framework leads to disparate results as PERS members are allowed to “double dip” to varying degrees. “Double dipping” refers to when a public employee receives a salary and a pension benefit while employed by a public employer. However, public employees do not accrue additional retirement benefits while employed as a retired member. Some proponents believe the practice creates cost savings because additional pension liability does not accrue for the retired member, as it does for an active non-retired member.

Retired members who meet the various exceptions are allowed unlimited double dipping; while other members who don’t fit one of these exceptions are limited to the number of hours allowed according to their membership program, i.e., 1,040 or 600 hours.

The complicated framework also leads to frustration and financial consequences when the employer and retired member mistakenly believe the member qualifies for an exception, only to

discover that the member does not qualify and must repay any retirement benefits received while working as an active member. Employers also face the cost of paying contributions for the active member's increased pension liability that is recalculated at the subsequent retirement.

### **Policy Issue**

Should public employers be allowed to employ members who have retired and receive a PERS benefit without affecting the member's retired status? If so, under what conditions?

### ***Discussion***

The ability of retirees to “work after retirement” has been allowed under Oregon law since 1953. 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 various PERS employers and members. The following perspectives should be considered:

#### **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 2017.

#### **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 returns the member to active member status. PERS 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 in cases of early retirement age, been absent from employment for a certain period of time (e.g., six months). Any policy decision to relax (or eliminate) post-retirement work restrictions must consider these federal standards so that policy is in line with, or more restrictive, than federal law allows.

### **PERS Recommendation**

Due to the challenges of administering a complicated statutory framework, PERS has recommended that new exceptions 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,

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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 workforce shortages giving rise to exception requests seem to be systemic, rather than temporary. Creating or extending hour limit exceptions does not solve the core workforce management problems that have given rise to the demand. Instead, the current work after retirement limits lead to uncertainty and confusion for members and employers as to whether an exception applies, or may be amended to continue into the future.

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, that employment decision has to be balanced against the employer's appetite for negotiating the current maze of hour 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 salary at the same time.

The "middle ground" that has been shifting since the first "crack" of exceptions 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 – Exceptions to 1,040 Hour Limit for Tier One and Tier Two (ORS 238.082)**

- 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 2017**

*Tier One and Tier Two Members*

Hours	State Agencies		Local Governments		School Districts		All Employers	
	Members	Salary	Members	Salary	Members	Salary	Members	Salary
< 200	274	\$841,072	1,282	\$4,244,390	3,085	\$8,345,713	4,641	\$13,431,174
200 – 400	205	\$2,046,846	622	\$7,008,136	1,486	\$12,769,857	2,313	\$21,824,839
401 – 600	194	\$3,253,783	466	\$8,297,639	1,019	\$15,102,528	1,679	\$26,653,949
601 – 800	182	\$4,460,622	320	\$8,134,730	726	\$15,363,636	1,228	\$27,958,988
801 – 1039	238	\$7,646,327	448	\$16,268,965	924	\$28,809,182	1,610	\$52,724,474
> 1039	182	\$9,967,466	431	\$30,341,585	1,269	\$87,709,575	1,882	\$128,018,626
<b>TOTAL</b>	<b>1,275</b>	<b>\$28,216,116</b>	<b>3,569</b>	<b>\$74,295,445</b>	<b>8,509</b>	<b>\$168,100,490</b>	<b>13,353</b>	<b>\$270,612,051</b>

*OPSRP Members*

Hours	State Agencies		Local Governments		School Districts		All Employers	
	Members	Salary	Members	Salary	Members	Salary	Members	Salary
< 200	19	\$64,489	77	\$271,989	134	\$315,991	230	\$652,469
200 – 400	15	\$143,605	38	\$419,225	54	\$437,624	107	\$1,000,454
401 – 600	10	\$156,748	23	\$365,476	37	\$508,780	70	\$1,031,004
601 – 800	3	\$49,591	6	\$133,319	16	\$274,341	25	\$457,252
801 – 1039	0	\$0	3	\$82,359	3	\$78,228	6	\$160,588
> 1039	0	\$0	3	\$137,271	10	\$358,849	13	\$496,119
<b>TOTAL</b>	<b>47</b>	<b>\$414,433</b>	<b>150</b>	<b>\$1,409,639</b>	<b>254</b>	<b>\$1,973,814</b>	<b>451</b>	<b>\$3,797,885</b>

*All Members*

Hours	State Agencies		Local Governments		School Districts		All Employers	
	Members	Salary	Members	Salary	Members	Salary	Members	Salary
< 200	293	\$905,560	1,359	\$4,516,378	3,219	\$8,661,705	4,871	\$14,083,643
200 – 400	220	\$2,190,451	660	\$7,427,361	1,540	\$13,207,481	2,420	\$22,825,293
401 – 600	204	\$3,410,532	489	\$8,663,114	1,056	\$15,611,307	1,749	\$27,684,953
601 – 800	185	\$4,510,213	326	\$8,268,050	742	\$15,637,977	1,253	\$28,416,240
801 – 1039	238	\$7,646,327	451	\$16,351,324	927	\$28,887,410	1,616	\$52,885,062
> 1039	182	\$9,967,466	434	\$30,478,856	1,279	\$88,068,424	1,895	\$128,514,746
<b>TOTAL</b>	<b>1,322</b>	<b>\$28,630,549</b>	<b>3,719</b>	<b>\$75,705,084</b>	<b>8,763</b>	<b>\$170,074,304</b>	<b>13,804</b>	<b>\$274,409,936</b>

