



PERS Policy Paper — Public Employment After Retirement

Background

PERS administers the Public Employees Retirement System for the state of Oregon under Oregon Revised Statutes (ORS) Chapters 238 (Tier One/Tier Two) and 238A (Oregon Public Service Retirement Plan). As a qualified governmental retirement plan under Internal Revenue Code (IRC) 401(a), PERS laws must comply with federal tax laws that impose employment restrictions for retirees who return to work with an employer in the same public retirement system from which they receive a benefit. Generally, federal law requires that benefits only be paid when the member has a *bona fide* retirement. The IRS has not defined *bona fide* retirement, but IRS guidance on the topic indicates that it can include starting benefits only after the member: (1) is a minimum age of 59 ½ years old (IRC 26 USC §401(36)); (2) has reached the retirement plan's normal retirement age; or (3) in cases of early retirement age, has been absent from employment for a certain period of time (e.g., six months).¹

Prior to 2020 and resuming January 2025 (see information below regarding years 2020-2024)

PERS laws have evolved over the years. A retired PERS member receiving a PERS benefit must comply with prescribed work-hour limits or risk cessation of their retirement benefits. Tier One or Tier Two retirees are allowed to work less than 1,040 hours in a calendar year, while OPSRP retirees are limited to less than 600 hours in a calendar year. These restrictions only apply to employment with a participating public employer. PERS retirees can work in the private sector without limitation after retirement. PERS retirees who comply with these prescribed hour limits are allowed to receive retirement benefits during their restricted employment. As restricted retirees, additional credit towards retirement benefits does not accrue, and no contributions are assessed to the member or employer.

Statute includes a complicated framework of exceptions that allow certain retirees to work unlimited hours based upon a number of factors, including the member's retirement age, various work-force shortages identified by prior legislative sessions, the position in which they are reemployed, and whether they work in a low-population county. (See Appendix A.)

With the work after retirement (WAR) hour restrictions in place, a PERS retiree can be returned to active membership either voluntarily or involuntarily. A PERS retiree may return to employment as an "active member" voluntarily by canceling their retirement and working in a qualifying position. They may also be returned to active member status involuntarily if they are subject to a limit in hours they can work in a calendar year and they exceed the limit. In both cases, the member's retirement benefit payments are stopped; additional credit towards retirement benefits for post-retirement employment accrues, and required contributions are assessed to the member and employer.

¹ Merriam-Webster defines *bona fide* as: (1) neither specious nor counterfeit: genuine; (2) made with earnest intent: sincere; and (3) made in good faith without fraud or deceit.

It should be noted that in the case of an involuntary return to active membership, a retired member who does not track their hours may be unaware of when they returned to active membership. They may receive retirement benefits during the period of active membership that must be paid back to PERS upon PERS' notice of the overpayment. Such repayment obligation may be burdensome for many retirees who were not aware that they had exceeded their WAR hour limits and do not have the funds to immediately repay their overpaid benefits.

Calendar Years 2020-2024 (Senate Bill 1049 (2019) WAR Provisions)

Recently, the Oregon State Legislature passed Senate Bill (SB) 1049 (2019), which temporarily amended the WAR hour restrictions for normal-age retirees, and early retirees with a *bona fide* retirement (PERS defines *bona fide* early retirees as a retiree with a six-month break from service). These amendments primarily allow retired members to work after retirement without employment restrictions during calendar years 2020 through 2024 as long as they retired at normal retirement age or retired at early retirement age and have at least a six month break from employment with all participating public employers.² SB 1049 also requires employers to submit contributions on all working retirees' salary.

The temporary nature of the amendments means that these provisions will sunset on January 2, 2025. However, during session hearings, the legislature expressed the intent to revisit these laws prior to their expiration to determine whether the laws should sunset or be extended.

Policy Issue

Should the legislature extend or remove the January 2, 2025, WAR sunset provision or allow the WAR provisions of SB 1049 to expire on their own terms?

Discussion

Option 1 — Allow SB 1049's WAR provisions to expire through sunset.

Absent any new legislative changes that would make SB 1049's WAR provisions permanent, in January 2025, all pre-SB 1049 statutory hourly limits and exceptions would resume for all retirees. Retirees would have to go back to tracking the number of hours they work as a retiree post-retirement or risk involuntary return to active membership and potential repayment of retirement benefits. The pre-SB 1049 restrictions include a complicated statutory framework of exceptions that allow unlimited hours for retirees based upon a number of factors, including: the member's retirement age, various work-force shortages identified by prior legislative sessions, the position they hold post-retirement, and in some cases whether they work in a low-population county. (See Appendix A.) These hourly limit exceptions would likely have to be re-examined by this year's legislative assembly and re-visited in subsequent legislative sessions.

Option 2 — Extend or remove the sunset provision.

Overall, employers and retirees have welcomed the less restrictive WAR framework because it allows them to hire employees to address work-force issues without impacting a retired

² SB 111 (2021), in addition to clarifying that early retirees must be absent from all PERS employment for six months to be eligible to work unlimited hours, also removed language from SB 1049's unlimited hour provisions that requires an hourly limit for Social Security recipients until they attain full Social Security age. It also equalized the unlimited hour standard for Tier One/Tier Two and OPSRP members (Tier One/Tier Two elected officials were still limited under the original SB 1049 language).

employee's ability to continue to receive their retirement benefit, thereby enlarging the pool of possible candidates. The additional employer contributions associated with retiree salary have increased money coming into the PERS Fund. For calendar year 2020, the plan received \$39,180,949.52 in employer contributions attributable to retirees working after retirement. For calendar year 2021, the plan received \$42,337,841 in employer contributions on retiree salary. This is illustrated in Appendix B below.

We note that in 2020, when SB 1049 was first effective, the executive branch (which included state agencies, PERS' largest employer) had a policy of limiting a retired employee's hours to the pre-SB 1049 hour limits, notwithstanding SB 1049's provisions. However, in 2021 the executive branch withdrew that policy and allowed retired employees to work unlimited hours as allowed under SB 1049. We believe the uptick in contributions in 2021 was from the executive branch's removal of their internal policy of limiting retiree working hours. PERS plans to obtain updated data for calendar year 2022 during the legislative session and will update this paper when information becomes available.

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 — Employer Contributions for Active Members and Retired Members

Calendar Year 2022 PAY DATES as of data reported January 20, 2023				
Plan type	Job class	Total active-member employer contributions	Total retiree employer contributions	WAR members as % of active members
Tier One	General Service	\$174,186,202	\$27,746,647.22	15.9%
Tier Two	General Service	\$368,580,413	\$45,438,054	1.5%
Tier One	P&F	\$26,581,560	\$7,964,124	29.9%
Tier Two	P&F	\$102,005,342	\$2,696,043	2.6%
OPSRP	General Service	\$1,230,974,679	\$1,945,716	0.1%
OPSRP	P&F	\$259,754,351	\$234,163	0.09%
		\$2,162,082,629	\$46,024,748	2.1%

Calendar Year 2021 PAY DATES as of data reported January 24, 2022				
Plan type	Job class	Total active-member employer contributions	Total retiree employer contributions	WAR members as % of active members
Tier One	General Service	\$215,886,123	\$27,464,287	12.7%
Tier Two	General Service	\$407,330,308	\$4,939,855	1.2%
Tier One	P&F	\$33,212,181	\$7,130,643	21.5%
Tier Two	P&F	\$104,579,260	\$1,451,431	1.4%
OPSRP	General Service	\$1,132,528,055	\$1,225,419	0.1%
OPSRP	P&F	\$223,385,678	\$126,207	0.1%
		\$2,116,921,605	\$42,337,841	2.0%

Calendar Year 2020 PAY DATES as of data reported January 24, 2022				
Plan type	Job class	Total active-member employer contributions	Total retiree employer contributions	WAR members as % of active members
Tier One	General Service	\$249,527,242.34	\$27,485,019.19	11.01%
Tier Two	General Service	\$429,657,902.25	\$4,427,147.04	1.03%
Tier One	P&F	\$41,693,949.21	\$5,776,037.00	13.9%
Tier Two	P&F	\$104,847,450.58	\$664,696.82	0.63%
OPSRP	General Service	\$1,019,810,575.10	\$764,407.69	0.08%
OPSRP	P&F	\$193,561,028.21	\$63,641.78	0.03%
		\$2,039,098,147.69	\$39,180,949.52	1.92%