

MEMORANDUM

To: Joint Committee on Pensions, Investments, and Benefits

From: Alan D. Conroy, Executive Director

Date: December 19, 2014

Subject: Working After Retirement

The Joint Committee requested additional information regarding working after retirement at its November 17, 2014, meeting.

Pre-Arranged Return to Work

The Internal Revenue Code provides specific conditions for member benefit eligibility with respect to qualified pension plans, including a requirement that the plan member must have a bona fide separation from service. The criteria for determining whether the member had a bona fide separation from service includes whether or not the member had a prearranged agreement regarding the member's returning to work after "retirement." As reported at the November meeting of the Joint Committee, the IRS weighed in on the topic of prearrangement with a private letter ruling issued in April 2014. The IRS' private letter ruling (PLR) indicated that a plan could be held accountable for allowing a member to begin receiving benefits when there is evidence that no bona fide separation from service occurred due to a prearranged agreement for the member to return to work.

KPERS' statutes are designed to incorporate applicable IRS rules and requirements; therefore, all relevant IRS rules for determining whether there has been a bona fide break in service applies to the plan. The primary statutory requirement related to establishing a bona fide separation from service is the 60-day waiting period in K.S.A. 74-4914(1).

Each member must acknowledge that the member is aware of the 60-day waiting period on the member's retirement application. This rule has been approved by the IRS as part of the overall plan qualification process known as the Determination Letter. KPERS has not undertaken any additional form of comprehensive enforcement or determination of bona fide separation from service in the past. Kansas statutes do not provide KPERS with the authority for enforcement, and the IRS has tacitly approved the 60-day waiting period as sufficient.

Enforcement of Bona Fide Separation of Service in Other States

KPERS staff queried other public pension plans on what enforcement mechanisms are provided by the laws in their respective states that ensure members have a bona fide separation from service after retirement and prior to reemployment. KPERS received responses from 16 plans, which are attached herewith. Generally, enforcement capabilities include:

- Suspension of benefit payments;
- Repayment of benefits received by the member;
- Forfeiture of wages received while improperly reemployed; and
- Voiding retirement and reenrolling the member.

As mentioned above, KPERS does not have specific statutory enforcement authority related to post-retirement prearrangements, and has not historically attempted to enforce instances of such prearrangements other than through the mandatory waiting period.

Working After Retirement Documents

The Committee requested additional documents that were received by the House Committee on Pensions and Benefits in the recent past. Also attached to this memo are:

- Scenarios on the costs of a member returning to work, including:
 - A member who retires when first eligible at age 55 but returns to work until age 60;
 - A member who retires when first eligible at age 55 but returns to work until age 58; and
- A table comparing working after retirement provisions in various states.

Attachments

Enforcement of Return-to-Work Requirements

System or Fund	Applicable Law
Denver Employees Retirement Plan	DERP has authority to suspend retirement payments and demand repayment of the retirement benefits received by the member. If benefits are not repaid, DERP can withhold the payment from future retirement benefits upon second retirement.
Public Employee Retirement System of Idaho	Idaho Code 59-1356 Requires the employer to advise PERSI of the employment of any retired member so that PERSI can stop benefits. Generally, if an early retired member is reemployed with the same employer within 90 days from retiring, or the early retired member is guaranteed reemployment with the same employer, the member shall be considered to have continued in the status of an employee and not to have separated from service. Any benefits received by the member must be repaid to the system.
Illinois Municipal Retirement Fund	Members are allowed to return to a participating employer in a non-qualifying position at any time, but the moment a retiree returns to a qualifying position, pension must be suspended and the retiree participates in the plan again. If IMRF is not informed of reemployment and finds that the member is in a qualifying position, member is required to pay unpaid contributions that should have come out of salary as well as overpayment of pension. Money is collected from their pension upon re-retirement.
Indiana Public Retirement System	IC 5-10.2-4-8 INPRS has a 30 day separation requirement and voids retirements where there is an agreement, formal or informal, to rehire the member prior to the retirement application being received by INPRS. The statute requires that benefits stop and any payments made must be repaid to the plan. INPRS generally finds out about violations through complaints from other members. INPRS then notifies the member and employer of the complaint and conducts a fact finding inquiry to make an initial determination under the Indiana Orders and Procedures Act. If the determination is unfavorable, the member may request review by an administrative law judge where an evidentiary hearing is held. If the determination is still unfavorable to the member, the member may request judicial review.
Teachers' Retirement System of Louisiana	La.R.S. 11:710(B)(1)(a) La.R.S. 11:710(B)(1)(b) Only certain classes of retirees can return to work drawing their retirement check along with their salary. These include retirees

	grandfathered in before the change in the law, retirees returning to a critical shortage area, and certain substitute teachers. This is not an exhaustive list. Retirees who fit into these classes are still subjected to a 12 month waiting period. If the reemployment is based on an agreement between the teacher and employer that was perfected prior to retirement allowing the teacher to return within the 12 months following retirement, the 12 month waiting period gets extended from the date of reemployment.
Mississippi	Title 27, Part 210, Chapter 34 § 101-111 Miss. Code Ann. § 25-11-127 Mississippi has a 90 day statutory separation period for everyone except local elected officials aged 62 or older. If this separation period has been breached, the retirement is terminated and benefits must be repaid.
Public School and Education Employee Retirement Systems of Missouri	Mo. Rev. Stat. § 169.560; 169.561 Missouri generally requires a one month separation of service, usually interpreted to mean one complete calendar month. If a retiree returns to work for a covered employer earlier than one full month, the benefit is on hold until the full month is completed and the retiree must repay improper benefit payment. Admin rules specify that a retiree cannot execute a contract for future employment prior to receiving benefit payments. There is no enforcement mechanism for unwritten prearrangements.
North Carolina	North Carolina has two different waiting periods depending on the retiree. Under their local system there is a 30 day waiting period and for retirees under the Teachers & State System, 6 months. There are no prearrangements allowed and there is no effective mechanism in place to enforce this prohibition. If a retiree returns to work during this time period, the retiree is considered to not have retired and as a result, any benefits which have been paid must be repaid.
School Employees Retirement System of Ohio	Ohio Rev. Code § 3309.341(C) A retiree who is employed by a public employer prior to the expiration of a two month waiting period forfeits the retirement allowance or disability benefit for any month the retiree is employed prior to the expiration of the two month period.
Oregon	Oregon Revised Statutes 238.078 - .092 Oregon Revised Statutes 238A.245 - .250 238.078- A member who has been retired for service for more than six consecutive calendar months may be reemployed by a participating public employer. If employed after the six month waiting period, payments received by the member shall not be

repaid into the retirement fund after the person reenters public employment. Upon reemployment, the former retirement of the reemployed person and any election of option for payment of retirement benefits made by the person shall be canceled. A member who has been retired for less than six months may be reemployed by a participating public employer only upon immediate repayment in a lump sum by the member of the amount of retirement benefits drawn. A person may be reemployed by a public employer that is not participating in the system, or may be employed by a participating public employer in a position that is in a class of employees that was not designated as a class of employees that become members of the system, without affecting the person's status as a retired member or the person's continued receipt of retirement benefits.

238.082- Any public employer may employ any member who is retired for service if the administrative head of the public employer is satisfied that such employment is in the public interest. These members are required to stay below 1,040 hours annually (exceptions are made for a member who is employed by a school district or community college district located within a county with a population less than 35k and other positions listed within the statute).

238.088- A person who is elected to a full-time salaried office of the state or one of the participating political subdivisions does not forfeit any retirement rights accrued or accruing. However, for the period that such a person holds office, the person is not entitled to any pension or annuity provided. Upon ceasing to hold office, the benefits shall be computed or recomputed by OPERS on the basis of age then attained.

238.092- A retired member of the Public Employees Retirement System who has retired as other than a member of the Legislative Assembly and who is thereafter appointed or elected as a member of the Legislative Assembly may elect, by giving the Public Employees Retirement Board written notice, to receive the pension and annuity provided by this chapter for service as other than a member of the Legislative Assembly, and be an active member of the system as a member of the Legislative Assembly for the purpose of service in the Legislative Assembly.

238A.245- Except as provided in ORS 237.650 and 238A.250, the Public Employees Retirement Board shall cease making pension payments to a retired member of the pension program who is reemployed by a participating public employer in a qualifying

	<p>position. A retired member of the pension program who is employed in a qualifying position becomes an active member of the pension program without serving the probationary period provided for in ORS 238A.100. If a retired member of the pension program is reemployed under the provisions of this section, any option chosen by the member under ORS 238A.190 is canceled, and upon retiring thereafter the member may elect any option provided for in ORS 238A.180 and 238A.190. The board shall recalculate the pension of the member upon subsequent retirement.</p> <p>238A.250- A retired member who has retired as other than a member of the Legislative Assembly and who is thereafter appointed or elected as a member of the Legislative Assembly may elect, by giving the Public Employees Retirement Board written notice, to receive the pension provided by this chapter for service as other than a member of the Legislative Assembly, and be an active member as a member of the Legislative Assembly for the purpose of service in the Legislative Assembly. A person may make an election under this subsection only if the person becomes an active member for the purpose of service in the Legislative Assembly as provided in <u>ORS 237.650 (5)</u>. Notice of an election under this subsection must be given by the person not more than 30 days after the person takes office.</p> <p>A member of the Legislative Assembly who is a member of the Public Employees Retirement System under this chapter as a member of the Legislative Assembly and who becomes eligible to retire by reason of service as other than a member of the Legislative Assembly, without regard to when that service was performed, may elect, by giving the board written notice, to retire and receive the pension provided by this chapter for service as other than a member of the Legislative Assembly, and to continue, for the purpose of service in the Legislative Assembly, as an active member as a member of the Legislative Assembly. Upon receipt of the notice provided for in subsection (1) or (2) of this section, the board shall determine the member's pension for non-legislative service based on the number of years of non-legislative service, and shall determine any additional pension to be received after the member subsequently retires based on the number of years of service in the Legislative Assembly.</p>
Overland Park, Kansas	OP relies upon HR staff to make certain they do not rehire a former employee when to do so would violate return-to-work rules.
Sacramento County	Require that a retiree that returned to work prior to 180 day waiting period mandated forfeit wages earned in violation.

San Bernardino
County Employees'
Retirement Assoc.

California plans have taken a passive approach to enforcement, mainly relying on employers to enforce the limits. SBCERA has drafted a new implementation policy that will require employers to report proposed reemployment by making an acknowledgement by the employer and employee that they are aware of, and agree to comply with the requirements of CGCS 7522.56 and 31680.6 (extension of time for which retired persons may be employed in special skill or knowledge positions; retired persons who have received unemployment compensation in prior 12 month period). Additionally, the employee must certify that s/he did not receive any unemployment insurance compensation arising out of the employee's prior employment with a SBCERA participating employer; that the employee will not work more than 960 hours annually; that the employee's pay will not be less than the minimum, or greater than the maximum, paid to other employees performing comparable jobs; that the employee understands that compliance is ultimately the employee's responsibility; that failure to comply may result in:

1. reinstatement of the employee to active membership status, with a suspension of any retirement benefit payments,
2. a requirement that all retirement benefit payments received during any unlawful reemployment be returned to the system with interest;
3. the collection by SBCERA from both the employee and employer of contributions on any pay received by the employee during any period of unlawful reemployment, and
4. the employee earning a new benefit for the period of reemployment, pursuant to §31680.7.

California Government Code Section 7522.56-

A retired person shall not serve, be employed by, or be employed through a contract directly by, a public employer in the same public retirement system from which the retiree receives the benefit without reinstatement from retirement, except as permitted by this section.

A person who retires from a public employer may serve by appointment during an emergency to prevent stoppage of public business or because the retired person has skills needed to perform work of limited duration without reinstatement from retirement or loss or interruption of benefits provided by the system.

	<p>Retirees authorized for reemployment under this section are required to stay under 960 hours, or other equivalent time, annually.</p> <p>Notwithstanding the emergency appointment exception, any retiree is not eligible to serve or be employed by a public employer if they received any unemployment insurance compensation arising out of prior employment. If an individual has received unemployment accepts an appointment must terminate that employment on the last day of the current pay period and shall not be eligible for reappointment for 12 months following the last day of employment.</p> <p>A retired person is not eligible to be employed for a period of 180 days following the date of retirement unless:</p> <ol style="list-style-type: none"> 1. The employer certifies the nature of the employment and the employment is necessary to fill a critically needed position and the appointment has been approved by the governing body of the employer in a public meeting, 2. The state employer certifies the nature of the employment and that the appointment is necessary to fill a critically needed state employment position and has been approved by the Department of Human Resources 3. The retiree is eligible to participate in the Faculty Early Retirement Program 4. The retiree is a public safety officer or firefighter hired to perform a function or functions regularly performed by a public safety officer or firefighter <p>Exceptions from this statute are made for a retiree who retired under the States Teachers' Retirement System, a subordinate judicial officer whose position is converted to a judgeship and s/he returns to work in the converted position and the employer is a trial court, or a retiree who takes office as a judge of a court of record pursuant to Article VI of the California Constitution or a retiree of the Judges' Retirement System or the Judges' Retirement System II who is appointed to serve as a retired judge.</p>
<p>San Diego City Employees' Retirement System</p>	<p>Division managers and retiree sign a form acknowledging that there is no pre-arranged agreement for the member to return to work during the first months after retirement. SDCERS does not have statutory authority to suspend a member's benefit if the member violates a six month waiting period after retirement, but does subject retirees who have retired before age 59 ½ to a 20% penalty retroactive to the beginning of their retirement until age 59 ½.</p>

<p>South Carolina Retirement System</p>	<p>§ 9-1-1790</p> <p>A member who has been retired for at least 30 calendar days may be hired and return to employment by any covered position under SCRS or other approved plan. A member can earn up to \$10k without affecting the monthly retirement allowance the member is receiving. If the member goes over the allowed \$10k in a calendar year, the member's allowance is then discontinued during his period of service in the remainder of the calendar year. If the member returns to a plan-qualified position sooner than the 30 day waiting period, the retirement allowance is suspended while the member remains employed by the employer. If the employer fails to notify the system of the engagement of retired member to perform services, the employer shall reimburse the system for all benefits wrongly paid to the retiree.</p> <p>SCRS does not have an effective way to prevent or respond to prearrangements to return to work after retirement. Generally, if the employer reports that the member has terminated his employment, such that the member establishes a retirement date, and if the member satisfies the necessary waiting period after that retirement date before returning to covered employment, the member may return to work and receive a retirement benefit, subject to an earnings limitation in certain instances.</p>
<p>Texas Municipal Retirement System</p>	<p>Texas law generally provides that for city employees:</p> <ul style="list-style-type: none"> (i) if you retire from "City A", and go back to work for City A at any time (in a position that meets the definition of "employee" under the TMRS Act), then you are re-enrolled in TMRS, your annuity is suspended, it does not resume until you re-retire, and the suspended payments are forfeited (with 1 exception described in (iii) below); (ii) if you retire from City A and then go to work for City B (or any other TMRS city that is not City A), then your annuity is not suspended; and (iii) forfeiture exception - if you return to work for City A 8 years or more after you retire from City A, then your annuity will still be suspended while back at work, but when you re-retire you get a lump sum payment of the suspended annuity payments. <p>TMRS tries to educate both cities and members about the requirement for a bona fide termination of employment before any kind of distribution can be made. The means that there should be no prearrangements, no simple change of status from employee to contractor, etc.</p>