MEMORANDUM

To: House Insurance and Pensions

From: Alan D. Conroy, Executive Director

Date: February 14, 2022

Subject: HB 2639; Working After Retirement

When a member retires from KPERS, there are statutory rules regarding that retiree returning to work for a KPERS employer in a covered position. The statutory rules include:

1. **Waiting Period.** Members who retire before age 62 have a 180-day waiting period before being rehired by a KPERS employer. Members who retire at age 62 or later have a 60-day waiting period.
2. **No Prearrangements.** Before retirement and during the waiting period, retirees and employers cannot communicate in any way about returning to work.
3. **Employer Contributions.** If a retiree returns to work in a covered position, the employer makes contributions to KPERS to help fund the System. Employers pay the statutory contribution rate (currently 13.11% for Schools) for the first $25,000 of the retiree's salary, and a 30% contribution rate on earnings over $25,000.

KPERS retirees who return to work do not have an earnings limitation.

If a KPERS member retires and goes to work for a private company or other non-KPERS employer, there are no restrictions.

A summary of the current working after retirement rules are included in Attachment A.

Change in HB 2639

HB 2639 establishes a blanket 30-day waiting period for all retirees hired by a KPERS employer, ending June 30, 2023. There are no changes to the employer contributions.

After June 30, 2023, the current rules would again take effect.

HB 2639 also strikes several expired sections of K.S.A. 74-4914.

KPERS

Working After Retirement Experience
In the 12/31/2020 KPERS actuarial valuation there were about 5,500 retirees reported as having returned to work for a KPERS affiliated employer.

Over the past 10 years, the average number of retirements from the KPERS School group has been about 5,300 annually.

Since the current working after retirement rules went into effect on January 1, 2018, 37% of members retired before age 62 and were subject to the 180-day waiting period.

Internal Revenue Service Regulations
The IRS requires a "bona fide" retirement before members begin receiving retirement benefits. This requires termination from covered employment and no agreement to return to work.

Establishing a bona fide retirement depends on the facts and circumstances of each individual member. KPERS processes more than 5,000 retirements each year, which would make it challenging to review the circumstances of each retirement.

As part of the plan design, the Legislature includes a statutory waiting period as a proxy test to establish that termination from covered employment has occurred and therefore establishes bona fide retirement. In general terms, the longer the waiting period in place the stronger the test of a bone fide retirement. The IRS has not specified the required length of the waiting period in order to be considered a valid test, but a 60-day waiting period was in place during the last plan review by the IRS and the plan passed the review without comment on the waiting period.

Under no circumstance is an employer and employee allowed to enter into a prearranged agreement for the employee to return to work after "retiring." This is true regardless of the age of the member. The IRS has clearly ruled that prearranged agreements are not allowed and jeopardize the qualified status of 401(a) qualified governmental retirement plans like KPERS.

The statutory waiting period also acts as a barrier to prearranged agreements between employers and employees.

Actuarial Cost Implications
The changes in HB 2639 permit members who retire under age 62 to return to work sooner than under current law.

Changing the working after retirement rules has the potential to impact member behavior and therefore, could impact costs. For example, if a member has the opportunity to retire and begin receiving benefits and then return to work in the same job, it could create an incentive for members to retire at a younger age, which increases costs. However, it is impossible to reliably calculate a cost for this change in behavior because it is dependent on individual retirement decisions.

The actuarial cost concerns are at least partially mitigated by the fact that the change in HB 2639 is limited to a one-year window. The changes to the current working after retirement rules proposed by HB 2639 are not without funding risk, but guardrails are included to reduce the risk of significant or ongoing negative actuarial funding impacts.

I would be pleased to respond to any questions the Committee has regarding HB 2639.

Attachment

Attachment A

KPERS Working After Retirement

Who is included & why?

Working After Retirement rules **apply** to all KPERS retirees returning to work for any KPERS employer. These statutory provisions were put in place to comply with **IRS regulations**.

The rules **don't apply** to non-KPERS employers.

Waiting period

All KPERS retirees have a waiting period before they can go back to work for any KPERS employer.

Before age 62	Age 62 +
180 days	**60** days

No prearrangement to return to work

Members cannot make "prearrangements" to return to work while still employed or during the waiting period. There should be **no communication** in any way about an interest or intent to return to work with a KPERS employer.

Statutory penalty for violations

Retirees who violate these rules will have their **benefit suspended** starting the month they returned to work and ending six months after they end employment. They must also **repay benefits** paid while working after retirement.

No earnings limit

KPERS retirees do not have an earnings limit, and they **do not** make member contributions.

Employer contributions

Employers **pay contributions** on salaries of retirees who return to work in positions covered by KPERS benefits. Covered positions are not seasonal or temporary and meet other membership requirements.

Retiree Earnings	Rate Type	***Local*** (CY22)	***State/School*** (FY22)
First $25,000	Regular employer rate	8.90%	13.33%
More than $25,000	Working After Retirement rate	30%	30%

Statutory exceptions

These positions do follow the prearrangement and waiting-period rules, but do not pay employer contributions.

- Positions covered by the Board of Regents Mandatory Retirement Plan
- State/local elected officials (30-day wait, no wait if filling vacant office)
- Legislative staff, election poll workers, State hospital nurses