



Thinking of Returning to Work?

A Guide for PERS Retirees Returning to Covered Service



Some Public Employees' Retirement System of Mississippi (PERS) retirees decide to go back to work after retiring. Taking a job with a non-PERS-covered employer is permissible for PERS retirees, but taking a job with a PERS-covered employer while remaining retired has stipulations that must be thoroughly understood by the retiree and the employer. This guide covers those stipulations.

Required Break in Service

No PERS retiree (whether service or disability) may return to employment with a PERS-covered employer for at least 90 consecutive calendar days from his or her effective date of retirement without terminating retirement (see page 3 for rules that apply to local elected officials). This requirement cannot be waived, and the break in service must begin with a complete withdrawal from service, which is defined by statute as the complete

severance of employment in state service of any member by resignation (including retirement), dismissal, or discharge. Furthermore, the member and employer cannot make any pre-arranged agreements regarding post-retirement employment.

The Internal Revenue Service (IRS) requires an employee who participates in a governmental pension plan to have a break in service. The IRS defines "retire" to mean "stop working." Employees who retire with the explicit understanding with their employer that they will return to work are not legitimately retired because they have not had a true separation from service. These retirements violate IRS Code 401(a) and can result in the disqualification of the plan.

A member has not withdrawn from service if he or she is reemployed with a PERS-covered employer in any capacity, including that of an independent contractor or a service-without-pay employee (volunteer),

within the 90-day break-in-service period, or if he or she was promised or guaranteed reemployment before the effective date of retirement. If a retiree is reemployed by a PERS-covered employer without a full withdrawal from service for 90 days, his or her retirement will be voided and he or she will be required to repay any benefit payments received.

Educators' Required Break in Service

A member who retires from a covered educational institution at the end of a school year after working on a less-than-12-month basis may not return to work with a covered educational institution until 90 consecutive calendar days *after* the beginning of the next school year unless he or she cancels his or her retirement.



Provisions for Returning to Work

Notifying PERS

If a retiree decides to return to employment with a covered employer, that retiree and the employer must notify PERS in writing (see page 4) within five days of the reemployment and provide the conditions under which he or she is being reemployed. Notification must be repeated each new fiscal year of post-retirement employment.

Limited Reemployment

A service retiree may be employed with a covered employer and continue to receive service retirement benefits only if one of the following limited reemployment conditions is met:

- the retiree works for a period of time not to exceed one-half of the normal working days or hours for the position in any fiscal year during which the retiree will receive no more than one half of the salary in effect for the position at the time of employment **or**
- the retiree works long enough in any fiscal year to earn no more than 25 percent of his or her average compensation that was used in the calculation of his or her benefit.

These conditions also apply to any service retiree who returns to work with a state agency as a contract worker.

An individual is classified as an employee if the employer has the right to: 1) control the work being performed (regardless of

whether the employer exercises that right); 2) give the worker instructions about when, where, and how to do the work; 3) set the hours worked; 4) require the work to be done on the employer's premises; and 5) hire or fire the worker.

To return to work with a covered employer under limited reemployment conditions, you must file Form 4B, *Reemployment of PERS Service Retiree Certification/Acknowledgement*. Also, employers who hire retirees are required to submit employer contributions on the applicable compensation.

Full-Time Reemployment

The monthly benefits of a retiree will be stopped upon a return to full-time covered employment. Upon subsequent retirement, benefits will be recalculated to include this additional service if the reemployment exceeds six months. Additionally, a different option and/or a new beneficiary may be selected. The laws, policies, and procedures in effect at the time of subsequent retirement will be applied in the recalculation of benefits.

The Cost-of-Living Adjustment (COLA) for a reemployed retiree is calculated taking into consideration all full fiscal years in retirement—not just fiscal years since the last retirement—and is payable immediately upon the next retirement. The retiree will receive a prorated COLA amount monthly if his or her re-retirement date

is later than July 1. The selected COLA option will go into effect when the new fiscal year begins.

Where a member selected the PLSO at initial retirement, the subsequent retirement allowance will be reduced in accordance with the applicable procedures based on the retirement option selected.

Disability Retirees

Disability retirement benefit recipients may work and earn no more than the difference between their average compensation before retirement and the benefit amount paid after retirement, excluding Cost-of-Living Adjustments. Disability retirees cannot be reemployed in the same general position from which they retired or in a position with similar job requirements.

These income restrictions apply until the benefit converts to a service retirement benefit, at which time normal reemployment rules apply. If retired under the Age Limited Plan, their benefits convert at age 60. If they retired under the tiered plan, their benefits convert at the end of a temporary period. This limitation applies to earned income only, not passive income such as interest income or Social Security income.

Disability retirees must annually submit copies of their federal income tax returns and other supporting income earnings documents.

Independent Contractors/Elected Positions

Independent Contractors

Independent contractors are not, by definition, employees or contract workers.

They work independently of the employer and are not subject to the direct control of the employer. They normally supply their own materials, tools, or equipment for the job and may choose when and where they will work. These individuals are only responsible for the end result of the work and are free to perform their work in any manner and at any place and time they choose. As independent contractors, these individuals have compensation reported on an IRS Form 1099.

No service retiree receiving a PERS benefit payment may be reemployed by a covered employer outside the noted limited reemployment conditions unless he or she meets the criteria of a true independent contractor as determined by PERS through the completion and submission by the employer of an *Employee vs. Independent Contractor Determination Questionnaire*. Restrictions also apply to any retiree returning to work through a third-party employer. Seek counsel from PERS before starting such employment.

Elected Positions

Municipal/County

Members serving in municipal or county elected office who decide to retire may continue in office at retirement without the required 90-day break in service provided they have reached age 59^{1/2}.

A retiree elected to a municipal or county elected position may either cancel his or her retirement and return to work (accruing additional service credit while receiving the salary for the position) or remain in retirement and waive the salary or receive compensation not to exceed 25 percent of his or her average compensation at retirement.

If a retiree chooses to serve in local elected office and continue in retirement, he or she must file annually Form 9C, *County/Municipal Elected Official Reemployment Acknowledgement/Election*.

For purposes of the reemployment limitations, county elected positions include: supervisor, chancery clerk, circuit clerk, tax assessor, tax collector (if separate from tax assessor), sheriff, county surveyor, justice court judge, county/youth court judge, constable, county coroner or medical examiner, elected county prosecutor/elected county attorney, and

elected superintendent of education.

Municipal elected positions include: mayor, alderperson (councilperson or selectperson), police chief or marshal, municipal judge, tax collector, tax assessor, and city or town clerk.

Simultaneous Reemployment in Elected and Non-Elected Positions

If during the fiscal year a retiree is reemployed in both a local elected position (and thus considered a full-time employee) and on a limited basis in a non-elected position, he or she must either:

- begin or continue under the 25 percent of average compensation limitation and apply what has already been earned during the state fiscal year to that limitation; **or**
- stay under an existing election to work no more than one-half of the normal working days and earn no more than one-half of the salary for a non-elected position and waive the salary for the local elected position.

Generally, a reemployed retiree may make only one election for reemployment each fiscal year that applies to all employment with covered employers during that fiscal year.



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Returning to Work in Three Simple Steps

Step 1 - Break in Service

Retiree must complete a 90-day break in service (see page 1).

Step 2 - Notify PERS

Retiree and employer should, within five days of reemployment, notify PERS on the conditions of reemployment by submitting:

- **Form 4B, Reemployment of PERS Service Retiree Certification/Acknowledgement** - If retiree is going to work on a limited basis (see page 2)
- **Letter** - If retiree is stopping all benefits to come out of retirement and work full time for a covered employer (see page 2)

- **Form 9C, County/Municipal Elected Official Reemployment Acknowledgement/Election** - If retiree chooses to serve in local elected office and continue in retirement (see page 3)
- **Employee vs. Independent Contractor Determination Questionnaire** - If retiree thinks he or she may be an independent contractor (see page 3)

Step 3 - Renew Notice Annually

Retiree must notify PERS of the conditions of reemployment each new fiscal year, per Step 2.



Other Resources

Along with all forms referenced in this publication, the following resources can be found on the PERS website.

- PERS Retiree Handbook
- PERS Board Regulation 34, *Reemployment after Retirement*
- PERS Board Regulation 45A, *Administration of Disability Benefits under PERS*

Disclaimer

This guide is published for members of the Public Employees' Retirement System of Mississippi (PERS) to provide general information regarding PERS laws, policies, and regulations and is subject to periodic revision as laws, policies, and regulations change. See all current PERS Board of Trustees Regulations at www.pers.ms.gov/Content/Pages/Board-Regulations.aspx.

PERS administers the benefits described in this guide on behalf of participating employers. This guide is meant to serve as a general reference to our members and should not be used as a legal reference or a complete statement of the laws or administrative rules related to service retirement. If any conflict exists between the information in this guide and the applicable laws or administrative rules, the laws and administrative rules shall prevail.