

Reemployment of Retired Public Employee Retirement System Members ("PERS Retiree")

DISCLAIMER

The following is provided as an information resource only. It is not intended to replace the advice and counseling of Public Employees Retirement System (PERS), the Attorney General's office, or Human Resource Services Division (HRSD). PERS retirees are responsible for ensuring their employment status does not impact their retirement benefits. Before hiring a PERS retiree, agency Human Resource and Payroll staff need to understand the requirements and responsibilities associated with hiring a PERS retiree. Additional information may be found on the PERS Employer web site at: <http://www.pers.state.or.us/> under "PERS Counseling Services" click on "Employer Information."

OVERVIEW

There are two primary statutes that control reemployment of PERS retirees:

- ORS 238.078 allows a PERS retiree to be re-employed by any public employer and resume making contributions to the retirement fund from the PERS retiree's date of hire provided the employee repays benefits in some circumstances and the employer immediately resumes making contributions.
- ORS 238.082 allows a PERS retiree to be re-employed by any public employer with a period of employment not to exceed 1,039 hours in any calendar year or the number of hours allowed by Social Security for a calendar year if the retiree is receiving Social Security benefits. (Reference: PERS Employer Brief 98-02.)

It is important that employers understand the limitations and responsibilities associated with hiring a PERS retiree and the impact of the statutes that govern rehiring of PERS retirees. The correct statutory provision must be identified at the time of hire - either ORS 238.078 or.082.

If the employee/retiree is rehired for an employment period of 1,039 hours or less, then the employment may be pursuant to 238.082. The employee may continue to receive retirement benefits from PERS and the employer will not be required to make continuing contributions. However, ORS 238.082 does not provide an employer the means to avoid paying contributions for the first 1,039 hours of employment made under ORS 238.078.

COMMONLY ASKED QUESTIONS

QUESTION #1: Is an employer obligated to extend benefits to a PERS retiree who is employed in other than a temporary appointment capacity such as a limited duration appointment?

RESPONSE: A PERS retiree hired under ORS 238.078 is a regular employee and is afforded the same rights and benefits. The hiring agency should contact PERS to discuss whether previously accrued sick leave can be restored to a retiree hired under ORS 238.078.

A PERS retiree hired under ORS 238.082 who is hired in a temporary or limited duration capacity is afforded the same benefits as any other person an agency hires in the same capacity. For example, if a state agency hired an individual into a limited duration management service position they would be eligible for vacation and sick leave benefits under HRSD Policies, regardless of whether or not they are a PERS retiree. Similarly, an employee who is hired into a classified-represented limited duration position would receive benefits under the appropriate collective bargaining agreement.

PERS retirees may be eligible for insurance benefits, depending upon the number of hours they work in a month. Insurance is available through PERS for retirees but it is not automatic. There are a number of insurance options available to PERS retirees. Retirees should contact PERS Health Insurance Program at 1-800-768-7377 in order to make a fully informed decision about their insurance benefits as their selection could impact their present insurance benefits.

Before accepting any position a PERS retiree should contact PERS and discuss their employment and benefit options so they make fully informed employment choices.

QUESTION #2: Can a PERS retiree use previously accrued sick leave if they are hired in a capacity other than temporary?

RESPONSE: PERS Employer Brief 99-01 states, in relevant part:

“An employer that participates in the unused sick leave provision for retirement benefits should have reported unused sick leave hours on the separation form sent to PERS. The key phrase is ‘unused sick leave hours.’ Hours reported as unused are not available for use while working after retirement. A PERS employer that hires a retiree to work 1,039 hours or less after retirement might include a provision for paid sick days in the new employment agreement. Since the employment is not covered by PERS, there would be no additional reporting of unused sick leave hours to PERS.”

Retirees hired under ORS 238.082 are not eligible to have their sick leave restored upon rehire. Agency Payroll offices need to ensure any sick leave that the employee had at the time of retirement is not restored to the employee upon reemployment.

The agency should contact PERS to determine whether a PERS retiree hired under ORS 238.078 can have previously accrued sick leave restored.

QUESTION #3: For temporary appointments, HRSD State policy uses a 12-month period for tracking the 1,040 threshold, while PERS uses 12 calendar months. For PERS retirees, which definition controls?

RESPONSE: Neither policy or law is controlling. They are separate and must be used in concert with each other. All temporary appointments must comply with HRSD State Policy, 40.025.01, and ORS 240.309. Temporary appointments may not exceed the equivalent of six calendar months (1,040 hours) in a 12-month period. PERS retirees must ensure that any period of employment for a PERS covered employer, temporary or otherwise, does not exceed 1,039 hours in a calendar year.

Summary of Key Points:

- ✓ At the time of hire the agency must designate which statute applies to the PERS retiree: ORS 238.078 or 238.082. The agency makes this designation by completing PERS form #459-305 "Employment of PERS Retiree."
- ✓ ORS 238.082 is used when the Retiree's employment period will be 1,039 hours or less in any calendar year. All hours *paid* to a PERS retiree count towards the 1,039-hour "period of employment." It is important that agencies track all hours paid and hours that will be paid upon termination (compensatory and vacation time) so the total hours paid at termination do not exceed 1,039.
- ✓ Retirees hired under ORS 238.082 are not eligible to have their sick leave restored upon rehire. Agency Payroll offices need to ensure any sick leave that the employee had at the time of retirement is not restored to the employee.
- ✓ The agency should contact PERS to determine whether a PERS retiree hired under ORS 238.078 can have previously accrued sick leave restored.
- ✓ Agencies need to remind the PERS retiree of their responsibility to assist the agency in tracking their hours so their employment does not jeopardize their retirement status. The total hours paid during the employment period which includes any vacation and compensatory time that will be paid upon separation must be tracked.