

**Reemployment of Retired Public Employee
Retirement System Members (“PERS Retirees”)
2005-2007 Guidelines**

[Information provided by the Human Resource Management and Consultation (HRMC) section of the Human Resource Services Division (HRSD) and last reviewed 8/4/05]

IMPORTANT NOTICE

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 website at: <http://oregon.gov/PERS/index.shtml> under “Retirees” click on “Work after Retiring.”

OVERVIEW OF PERS STATUTES

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. **Bottom-line: the employee “un-retires”.**
- **ORS 238.082** allows a PERS retiree to be re-employed by any public employer, if such employment is deemed in the public interest, 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. (Special hours restrictions apply to PERS retirees who selected the total lump-sum retirement option.) **Bottom-line: the employee retains retirement status and continues to receive retirement benefits.**

It is important that both employees and employers understand the limitations and responsibilities associated with employment of 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 238.082.

If the retiree is rehired for an employment period of 1,039 hours or less, then the employment may be pursuant to 238.082. The statute states an 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.

ORS 238.082 (3) - (7) now provides for the following exceptions to the 1,039 hours limitation, (as long as the member did not retire early at a reduced benefit (ORS 238.280 (1)) but rather, had attained normal retirement age):

If the employee is a PERS Chapter 238 retiree who is employed as a teacher or administrator by a school district or education service district that has its administrative office located in a county with a population of not more than 35,000 inhabitants, the employee is excluded from the 1,039-hour limitation and may work any number of hours. Other exclusions to the 1,039-hour rule include those employed by the:

- Sheriff of a county with a population of fewer than 75,000 inhabitants.
- Municipal police department of a city with less than 15,000 inhabitants.
- State or county for work in a correctional institution located in a county with less than 75,000 inhabitants (correctional institutions as defined by PERS include Oregon Youth Authority (OYA) youth correctional facilities).
- Oregon State Police for work in a county with less than 75,000 inhabitants.
- Any participating employer where the retired member is employed to temporarily replace an employee serving in the National Guard or in a reserve unit of the United States Armed Forces who is called to federal active duty.

Note: If hiring a PERS retiree to fill in behind an employee on Military Leave a temporary appointment would be appropriate since neither PERS statute (238.082) nor Temporary statute (240.309) places an hour restriction on such appointments.

****REMINDER****: When reemploying a PERS retiree under ORS 238.082, please remember to utilize the new Personnel Action (PA) codes implemented 9/1/04 for PERS retiree appointments. PA code 148 is to be used for permanent, limited duration (LD) or seasonal PERS retiree appointments, while PA code 168 is for temporary PERS retiree appointments. When these PA codes are used, the computer assigned PERS: WAGE/JOB CLASS code will be "R", ensuring that the retiree is identified as receiving a service retirement allowance and thus not eligible for PERS contributions. It is important to use these codes when the employee has retired from the state (Term code 530). In addition, it is important to use these same codes when hiring an employee who has retired from another PERS participating employer.

COMMONLY ASKED QUESTIONS

Question #1: Under ORS 238.082 can a state agency hire a PERS retiree in a limited duration, permanent part-time, or seasonal position?

RESPONSE: Yes. State agencies have the option of reemploying a PERS retiree as a permanent part-time (or full-time), seasonal, or LD appointment, as well as a temporary appointment. The specific conditions for such appointments are governed by the provisions of ORS 240 and by applicable collective bargaining agreements, just as any non-retiree appointment would be.

Note on LD Appointments:

- Rehiring PERS retirees into LD appointments must follow all of the same provisions applicable to non-retiree LD appointments, contained in OAR 105-040-0040, Types of Appointments, (d) Limited Duration Appointment, as well as the provisions of any applicable collective bargaining agreement. Normally LD appointments are afforded the same benefits (PEBB benefit coverage, paid leave accruals) as a non-LD position in the same category of state service, i.e. classified represented, management non-represented, etc.

- Two distinguishing characteristics of an LD appointment for PERS retirees are 1) the retiree is not eligible for PERS contributions and 2) the retiree is not eligible for restoration of sick leave upon rehire. Otherwise, PERS retirees are usually afforded all other benefits normally associated with LD appointments. (There may be exceptions due to limits imposed by grant funding, for example.)

- A model Limited Duration Agreement specifically revised for PERS retirees can be found on HRMC's website at: <http://www.oregon.gov/DAS/HR/hrmc.shtml> under "Sample Forms and Letters". Reference to eligibility for PERS contributions has been removed. Rather than a specific hour limitation, the form places the responsibility of ensuring retirement benefits are not jeopardized on the employee. In addition, we have added a reference to the statutory language requiring reemployment of PERS retirees to be "in the public interest" (ORS 238.082 (1)). LD agreements will continue to require modification to fit the circumstances of each individual appointment. Always remember to check the provisions of any applicable collective bargaining agreement (CBA). We strongly suggest that any variation of the model LD Agreement be subjected to legal review.

QUESTION #2: 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, permanent part-time, or seasonal?

RESPONSE: A PERS retiree, who is hired under ORS 238.082 in a permanent part-time, seasonal, or limited duration capacity, is normally 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 LD 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 seasonal position would receive benefits under the appropriate CBA.

PERS retirees may be eligible for insurance benefits, through PERS, depending upon the number of hours they work in a month, but it is not automatic. There are a number of insurance options available to PERS retirees. Additional information may be found on the PERS website at: <http://oregon.gov/PERS/index.shtml> under "Retirees" click on "Retiree Ins Program". 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 #3: Can a PERS retiree use previously accrued sick leave if they are hired in a capacity other than temporary?

RESPONSE: PERS OAR 459-017-0060, Reemployment of Retired Members, provides in part that accumulated unused sick leave reported by the employer to PERS upon retirement will not be made available to a retired employee returning to work for a public employer. The sick leave is unavailable whether the PERS retiree is hired back under ORS 238.078 and resumes making contributions to the retirement fund or is hired back under ORS 238.082 and retains retirement status.

As stated in the above referenced rule, retirees hired under ORS 238.082 are not eligible to have their sick leave restored. 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. However, a PERS employer that hires a retiree to work 1,039 hours or less after retirement might include a provision for paid sick days to accrue in the new employment agreement.

QUESTION #4: For temporary appointments, HRSD State policy uses a 12-month period for tracking the 1,040 hour 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. In addition, 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, so that their employment status does not impact their retirement benefits.

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.
- ✓ ORS 238.082 is used when the retiree's employment period will be 1,039 hours or less in any calendar year or when hired under the exceptions to the 1,039 hour limitation as provided in ORS 238.082 (3) – (7). For retirees hired with the 1,039 hour limitation, all hours *paid* to that PERS retiree count towards the 1,039-hour "period of employment." It is therefore 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. Agency Payroll offices need to ensure any sick leave that the employee had at the time of retirement is not restored to the employee.
- ✓ When reemploying PERS retirees under ORS 238.082 the specific PA codes of 148 (permanent, LD or seasonal appointments) or 168 (temporary appointments) must be utilized in order to prevent the crediting of PERS contributions.

- ✓ 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.