

Answers to your questions about Break in Service: Moving from PERS to OPSRP

1. Are all PERS Chapter 238 Program (Tier One and Tier Two) members now part of the Oregon Public Service Retirement Plan (OPSRP), the new successor plan?

Yes and no. OPSRP consists of two programs: the Pension Program and the Individual Account Program (IAP). All active and inactive PERS Chapter 238 Program members became members of the IAP on January 1, 2004, but they did not automatically become members of the Pension Program. Active PERS members will continue to accrue service credit and benefits under the PERS Chapter 238 Program unless they incur a "Break in Service."

Employees hired on or after August 29, 2003, with no prior PERS Chapter 238 Program membership became members of both the OPSRP Pension Program and the IAP when eligible.

2. What is a "Break in Service"?

When an active or inactive PERS Chapter 238 Program member other than a judge member performs no hours of service in a qualifying position for a period of six consecutive calendar months or longer, a "Break in Service" has occurred.

Note: For an explanation of "hours of service," "qualifying position," and "six consecutive months," see terms at the end of this Q&A.

3. What are the consequences of a "Break in Service"?

If you incur a "Break in Service," you will retain all PERS Chapter 238 service time and contributions (and any contributions to the IAP) that accrued before the break; however, after the break, all your future service time will accrue under the OPSRP Pension Program.

4. Does vacation time or other paid leave count toward a "Break in Service"? What about unpaid leave?

No. Paid leave counts as hours of service and not toward a "Break in Service" for vacations, holidays, illness, incapacity, jury duty, military duty, or authorized leave during which you were paid and the leave is during normally scheduled working hours Unpaid leave counts toward a "Break in Service."

5. How do I know if I have performed service in a qualifying position?

A “qualifying position” is one in which an eligible employee performs at least 600 hours of service in a calendar year for an employer participating in the PERS Chapter 238 Program.

Note: Under OAR 459-075-0010 a separate provision applies to members who begin a leave of absence for career development or family leave. This provision is for “Break in Service” purposes only and defines a qualifying position as one in which the member:

- performs at least 600 hours of service in the calendar year before the year in which leave begins, with a minimum of 50 hours per month in the six months before the leave, and
- performs at least 600 hours of service in the calendar year following the year in which leave ends, with a minimum of 50 hours per month in the first six months following return to service.

6. Must I return to the same employer after or during my leave of absence to avoid a “Break in Service”?

Not necessarily. A “Break in Service” is defined as performing no service in a qualifying position. It does not require that performance of service be with the same employer. In addition, a qualifying position is defined as one or more jobs with *one or more* public employers.

As exception exists for vested members who were inactive on August 28, 2003, and return to the same participating employer before January 1, 2006. (See Q 13.)

7. Do partial months of leave count toward a “Break in Service”?

No, only full calendar months count. OAR 459-075-0010 interprets “six consecutive months” as six full calendar months.

Example: Mary begins a period of unpaid leave on January 2. The first month of her “Break in Service” period would be February.

8. If I begin unpaid leave on January 1 and return to work July 1, do I incur a “Break in Service?”

Yes, assuming you don’t qualify for any of the exceptions in Q 13. January 1 through July 1 is six months long, and a “Break in Service” occurs if you perform no hours of service in a qualifying position for six or more consecutive full

calendar months. To avoid a “Break in Service,” you must return to a qualifying position before July 1.

9. I am a schoolteacher. Do the summer months when school is not in session count toward a “Break in Service”?

Not if certain requirements are met. OAR 459-075-0010 provides that summer months do not count as absence from service if (1) the institution is not normally in session and (2) the employee is in an employee/employer relationship both before and after that period. Thus, if you remain under contract with your employer, you will be considered to be performing service during any month (or partial month) school is not normally in session.

Example 1: Bob is a teacher under a contract with an employer, but is not paid when school is out for the summer. He works through May 15, when the school year ends, and is off for the summer. He takes unpaid leave during the fall term, which starts September 7. Assuming Bob maintained his employer/employee relationship through the summer, his “Break in Service” starts in October (the first full month) and he must return to work before the end of March (the sixth month).

Example 2: Harry is a teacher whose contract expires on May 15, the end of the school year. He takes the summer and fall term off, then returns to work as a schoolteacher in January. Because there was no employee/employer relationship during the summer, the summer months count toward a “Break in Service.” In Harry’s case, he needed to return to work before December 1 to maintain his PERS Chapter 238 Program membership.

10. I am on unpaid leave from work. How long must I return to work to avoid a “Break in Service”?

It depends. The key is that you must perform service in a *qualifying position* to avoid incurring a “Break in Service.” See terms at the end of this Q&A for definition of qualifying position.

Example 1: John plans to work full time January 1 through February 28 (480 hours), go on regular unpaid leave, then return to work on December 1 and work full time the rest of the year (160 hours). Since 640 hours are performed in the calendar year, John can return to work for any length of time between March 1 and September 1 to avoid a “Break in Service.”

Example 2: Sally plans to work 480 hours from January 1 through February 28, go on regular unpaid leave for 9½ months, and then work 80 hours in December. Since Sally would have worked only 560 hours in the year, she would need to return to work for 40 hours between March 1 and September 1 to avoid a “Break in Service.” If she returned to employment for only one day during that period, she would not be performing service in a qualifying position on that day because

her total hours of service for the year would be less than 600, and would still incur a “Break in Service.”

11. As long as I work at least 600 hours in a calendar year, can I be on leave for any length of time without incurring a “Break in Service”?

No. A “Break in Service” occurs when a member is absent from paid service in a qualifying position for six consecutive full calendar months (or 12 months – see Q 13). To avoid a “Break in Service,” you must perform service in a qualifying position before six (or 12) full calendar months have elapsed. See Q 5 and 10.

12. Does the unpaid leave I took before August 29, 2003, count toward a “Break in Service”?

Probably. If you began an unpaid leave of absence before the effective date of this new law and returned on or after August 29, 2003, the unpaid leave would count toward a “Break in Service.”

Note: An exception exists for vested members who were inactive on August 28, 2003, and return to the same participating employer before January 1, 2006. (See Q 13.)

Example: Tim began unpaid leave on January 1, 2003, and returned on September 1, 2003. Tim incurs a “Break in Service” (unless he qualifies for one of the exceptions under Q 13).

13. Are there any exceptions to the six-month “Break in Service” rule?

Yes. There are seven exceptions. There is no “Break in Service” for:

1. Members who leave for purposes qualifying for family medical leave until they have not performed service in a qualifying position for 12 consecutive full calendar months (see note in Q 5).
2. Members who leave for approved career development purposes until they have not performed service in a qualifying position for 12 consecutive full calendar months (see note in Q 5).
3. Members absent from other employment to serve as a legislator.
4. Members called to military duty and are later reemployed as provided under USERRA in a qualifying position regardless of the length of time the member is on official military leave as long as they are reemployed within the time limits set by USERRA after completing military service. This is a federal law.
5. A period during which a member receives a disability retirement allowance prior to, on, or after August 29, 2003.
6. A period during which a member is on unpaid authorized leave for fewer than 12 consecutive full calendar months due to the seasonal nature of the job.
7. A member who was inactive and vested on August 28, 2003, who returns to qualifying employment before January 1, 2006, with the same employer that employed the member immediately before the member became inactive.

14. I left on January 1 for approved family medical leave and will return on November 1. How can I perform 600 hours of service for my employer (and thus return to a qualifying position) with only two months left in the calendar year?

See Q 5 and corresponding note.

15. I am on unpaid leave for approved career development purposes which I know will be longer than 12 months. How long must I return to work during the leave of absence to avoid a “Break in Service”?

You must work in a qualifying position before 12 consecutive full calendar months have passed to avoid a “Break in Service” OAR 459-075-0010(13). See Q 5 and corresponding note.

16. Who determines whether my leave is for career development purposes?

Each employer determines this. By statute, the leave must be in accordance with written authorization of the employer under a written policy the employer applies generally to the class of employees to which the member belongs. PERS requires official notice from the employer that a member is on this kind of leave.

17. I left employment for reasons that qualified me for family medical leave, but I was only eligible for family medical leave for 12 weeks. May I still be on leave for up to 12 months without incurring a “Break in Service”?

Yes. Family medical leave must be the reason a member leaves employment to be allowed up to 12 months’ leave without a “Break in Service”. OAR 459-070-0001 clarifies that it must be the original reason for ceasing performance of service; you need not qualify for family medical leave for the entire absence.

18. I left employment for reasons that would qualify me for family medical leave, but my employer did not approve me. Am I still eligible to be on leave for up to 12 months without incurring a “Break in Service”?

No. You are allowed up to 12 months’ leave without a “Break in Service” only if your employer has officially qualified you for family medical leave.

19. I have been on disability retirement in pay status for over a year and was out on disability on August 28, 2003. If I return to work in a qualifying position, will I have incurred a “Break in Service”?

No. You will not incur a “Break in Service” during any period in which you receive a disability retirement allowance.

20. I have been a retired PERS member since January 2003. If I return to public employment in a qualifying position in January 2004, will I be a member of the PERS Chapter 238 Program or the OPSRP Pension Program?

If you are eligible to work less than 1,039 hours in a calendar year under the provisions of ORS 238.082, you will retain your status as a PERS Chapter 238 Program retired member and continue to receive retirement benefits. Your new employment will not accrue any new benefits under either plan.

If you return to employment in which you work 1,039 hours in a calendar year or you exceed 1,039 hours in a calendar year, your PERS benefits will cease until you re-retire, and future service and benefits will accrue as an active member of PERS Chapter 238 Program. The "Break in Service" provisions apply only to members who were active or inactive on August 28, 2003, not those who were retired. However, please note that all active PERS Chapter 238 Program members became IAP members on January 1, 2004.

21. I retired from PERS on September 1, 2003, and would like to return to full-time employment sometime in the future. Will my future service accrue under PERS or OPSRP?

Future service will accrue under OPSRP. Because you were either an active or inactive member on August 28, 2003, the "Break in Service" provisions apply. Therefore, if you are retired for six full months or more, you will not have performed any service for a public employer and will incur a "Break in Service."

22. I was a member of the PERS Chapter 238 Program and have incurred a "Break in Service." Do I automatically become a member of the OPSRP Pension Program when I return to work, or do I need to complete another six-month waiting period?

You will not need to complete another six-month waiting period. Your previous service under the PERS Chapter 238 Program counts toward the requirement in the OPSRP Pension Program that an eligible employee complete six months of employment before establishing membership.

23. I was a vested PERS member and have incurred a "Break in Service." Do I automatically vest in my benefits under the OPSRP Pension Program and the IAP when I return to work?

Under the OPSRP Pension Program, creditable service under the PERS Chapter 238 Program counts toward vesting in the OPSRP Pension Program and the

IAP. However, you are not necessarily vested under OPSRP if you were vested under the PERS Chapter 238 Program. This is because the two plans have different requirements for vesting.

Under ORS 238.005 you became vested because you made contributions in each of five calendar years.

You will vest in the OPSRP Pension Program on the date you complete at least 600 hours of service in each of five calendar years or the date you reach normal retirement age as defined in ORS 238A.160, whichever is earlier.

You became automatically vested in your IAP employee account on January 1, 2004. If you later establish a rollover account, you will become vested on the date the rollover account is established. If your employer establishes an employer account under OARS 238A.340, you will become vested in that account on the date you complete at least 600 hours of service in each of five calendar years; the date on which you reach normal retirement age as defined in ORS 238A.160; the date you become disabled; the date you die; or if the IAP is terminated, the date it is terminated, whichever is earlier.

Hours of creditable service earned under the PERS Chapter 238 Program will count toward the vesting requirements of the OPSRP Pension Program and IAP as long as you have not terminated your membership.

24. I left on sabbatical as a full-time teacher. To help me avoid a “Break in Service,” a neighboring district will allow me work as a substitute. Would service with that district help me avoid a break?

Yes. The definition of “employment” is all jobs worked for participating employers that total 600 hours or more in a calendar year.

25. I am a seasonal employee. If I work five months on and seven months off, will I incur a “Break in Service”?

No. See the exception in Q13.

Definitions

Hours of service – Hours worked as well as paid leave for the following reasons: vacation, holiday, illness, incapacity, jury duty, military duty, or authorized leave during which the employee was paid.

Qualifying position – One in which an eligible employee performs at least 600 hours of service in a calendar year for a PERS- or OPSRP-participating employer.

Six consecutive months – Six full calendar months, beginning on the first day of the first full month and ending on the last day of the sixth month.

Important Note: This guide is intended to be a non-technical resource for informational purposes only. Its contents are not legally binding nor should it be considered as a substitute for the Oregon Revised Statutes or Oregon Administrative Laws. The “Break in Service” issues are complicated and the preceding questions and corresponding answers are meant to be only examples for very specific situations. Whether a “Break in Service” has occurred should be determined on a case-by-case basis.

This Q&A is for general informational purposes only and is not intended to provide legal advice. If there is any conflict between this brochure and federal law, Oregon law, or administrative rules, the law and administrative rules shall prevail.

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