



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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July 16, 2009

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Deputy Director  
SUBJECT: Adoption of Rules for Vesting in the OPSRP Pension Program and in an IAP Employer Account:  
OAR 459-075-0060, *Vesting in the OPSRP Pension Program*  
OAR 459-080-0060, *Vesting in an IAP Employer Account*

### OVERVIEW

- Action: Adopt rules for vesting in the OPSRP Pension Program and in an IAP employer account.
- Reason: Clarification of hours of service that may be considered for vesting in the OPSRP Pension Program and in an IAP employer account.
- Subject: Vesting in the OPSRP Pension Program and in an IAP employer account.
- Policy Issue: What standards should be used to determine hours of service before January 1, 2004 for the purpose of vesting in the OPSRP Pension Program and in an IAP employer account?

### BACKGROUND

A member must be vested in the OPSRP Pension Program and in the account(s) of the Individual Account Program (IAP) to receive benefits under those programs. ORS 238A.115 and 238A.320 provide a common standard by which a member vests in the pension program and in the IAP Employer Account, if one is provided: by completing 600 hours of service in each of five calendar years. The proposed new rules clarify the application of this standard for each program.

OAR 459-075-0060, *Vesting in the OPSRP Pension Program*, clarifies that the determination of hours of service within a calendar year will include hours served during the member's waiting time and hours served by the member with all PERS employers during a calendar year. For calendar years 2004 and later, hours of service will be determined based on hours reported by employers (Once the electronic reporting system, EDX, was implemented, employers started reporting hours worked). The rule also incorporates statutory restrictions on hours that may be considered.

OAR 459-080-0060, *Vesting in an IAP Employer Account*, similarly clarifies the hours of service to be included in the vesting determination. It also clarifies that hours of service performed before an employer account is established are included in the determination. A member who has performed 600 hours of service in each of five calendar years before the employer account is established will vest in the employer account on the date it is established.

ORS 238A.320 does not limit hours of service to hours served after the establishment of an IAP employer account.

### POLICY ISSUE

*What standards should be used to determine hours of service before January 1, 2004 for the purpose of vesting in the OPSRP Pension Program and in an IAP employer account?*

Employers could not report hours of service before electronic reporting was imposed for service performed as of January 1, 2004 and forward. Therefore, PERS does not have records to determine whether an employee worked the requisite 600 hours in a calendar year to have that year count towards their vesting in the OPSRP Pension Program or IAP employer account. The statutes do not provide a standard for converting creditable service to hours of service for the purpose of vesting. However, creditable service is accrued by an active member, who is a member employed in a position normally requiring 600 hours of service in a calendar year. The proposed rules address several specific situations, generally using that presumption about active members working at least 600 hours in a calendar year. This is the same standard PERS applies to eligibility determinations conducted for this earlier period. Similarly, these rules would allow for an exception to this presumption if records provided to PERS demonstrate that the member did not in fact work the requisite 600 hours in that calendar year.

For example, ORS 238A.320(5) provides for the inclusion of creditable service accrued in the PERS Tier One/Tier Two Program as hours of service for the purpose of vesting in an IAP employer account. Unlike the similar provision for vesting in the OPSRP Pension Program, this provision is relevant for all Tier One/Tier Two Program members who accrued creditable service before January 1, 2004. Accordingly, staff recommends and the proposed rule provides that an IAP member is presumed to have worked at least 600 hours in any calendar year before 2004 in which the member was an active member, absent some records provided to PERS which establish that the employee did not work at least 600 hours.

Similarly, ORS 238A.115(3) provides for the inclusion of creditable service accrued in the PERS Tier One/Tier Two Program as hours of service for the purpose of vesting in the OPSRP Pension Program. With the elimination of “Break in Service,” this provision became moot for most employees but is still relevant for a member of the Tier One/Tier Two Program who becomes a member of the Legislative Assembly and elects to participate in OPSRP. Staff recommends and the proposed rule provides that the legislative member is presumed to have worked at least 600 hours in any calendar year before 2004 in which the member was an active member, absent some records provided to PERS that establishes that the employee did not work at least 600 hours.

Conversely, employees hired on or after August 29, 2003 and before December 31, 2003 have hours of service during calendar year 2003 that may be relevant to a vesting determination. Unless an employee was hired during the first few days of this period and worked full-time for the entire period, it is very unlikely that the employee performed 600 hours of service in 2003. Staff recommends and the proposed rule provides that an employee hired during the period August 29, 2003 to December 31, 2003 is presumed to have worked less than 600 hours in calendar year 2003, but that the employee or the employer may provide records to PERS to establish that the employee worked at least 600 hours.

### SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

#### OAR 459-075-0060:

Section (1) was deleted as unnecessary and subsequent sections renumbered. References are to the renumbered sections.

In section (5), the word “unless” was added before “records.”

In section (6), the “notwithstanding” clause was deleted as unnecessary.

Minor edits were made in sections (4) and (5) for clarity.

#### OAR 459-080-0060:

Section (1) was deleted as unnecessary and subsequent sections renumbered. References are to the renumbered sections.

In subsection (1)(c), changed citation to “238A.300.”

In subsection (1)(e), the word “unless” was added before “records.” Minor edits were made in the subsequent text for clarity.

In subsection (1)(f), the “notwithstanding” clause was deleted as unnecessary.

### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on June 16, 2009 at 2:00 p.m. at PERS headquarters in Tigard. No one presented comment on these rules. The public comment period ended on July 1, 2009 at 5:00 p.m. No public comment was received.

### LEGAL REVIEW

The attached draft rules were submitted to the Department of Justice for legal review and any comments or changes are incorporated in the rules as presented for adoption.

### IMPACT

Mandatory: No, the Board need not adopt the rules.

Impact: Members, employers, and staff will benefit from the clarification of vesting standards.

Cost: There are no discrete costs attributable to these rules.

### RULEMAKING TIMELINE

April 15, 2009	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
May 1, 2009	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
May 29, 2009	PERS Board notified that staff began the rulemaking process.
June 16, 2009	Rulemaking hearing held at 2:00 p.m. in Tigard.

July 1, 2009

Public comment period ended at 5:00 p.m.

July 16, 2009

Board may adopt the permanent rules.

### BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt rules for Vesting in the OPSRP Pension Program and in an IAP Employer Account, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

### STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: Clarification of hours of service that may be considered for vesting in the OPSRP Pension Program and in an IAP employer account

If the Board does not adopt: Staff would return with rule modifications that more closely fit the Board’s policy direction if the Board determines that a change is warranted.

B.3. Attachment 1 – OAR 459-075-0060, *Vesting in the OPSRP Pension Program*

B.3. Attachment 2 – OAR 459-080-0060, *Vesting in an IAP Employer Account*