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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 459  
OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM

**FILED**  
10/01/2020 9:16 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Clarify earnings credited to Employee Pension Stability Account (EPSA) on withdrawal, clarify contribution rates terminology.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/21/2020 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

*A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.*

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Filed By:  
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NEED FOR THE RULE(S):

Clarify how earnings should be credited to the Employee Pension Stability Account (EPSA) on withdrawal, and clarify terminology used with respect to employer contribution rates for PERS retirees.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

ORS 238A.245, ORS 238A.353, ORS 238A.450, ORS 238.078, ORS 238.082, ORS 238.088, ORS 238.092, ORS 238.225, ORS 238.265, ORS 238.605, ORS 238.630, ORS 238.650, ORS 399.075, 2005 OL, Ch. 808, Sec. (12), (13), (14), 2007 OL Ch. 499 & 774, 2015 OL Ch. 108 & 475, 2018 OL Ch. 48 & 2019 OL Ch. 355, 2019 OL, Ch. 355, Sec. 35 & 37  
These documents are available on the Internet at: [https://www.oregonlegislature.gov/bills\\_laws/Pages/ORS.aspx](https://www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx)

FISCAL AND ECONOMIC IMPACT:

There are no discrete costs attributable to the rules.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

None

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The rules do not affect small businesses and therefore small businesses were not involved in the development of the

rules.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

A public hearing will be held and the PERS Board solicits input on rules from any interested or affected parties.

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RULES PROPOSED:

459-007-0370, 459-009-0070, 459-017-0060, 459-075-0300

AMEND: 459-007-0370

RULE SUMMARY: Clarify how earnings should be credited to the Employee Pension Stability Account (EPSA) on withdrawal, and clarify terminology used with respect to employer contribution rates for PERS retirees.

CHANGES TO RULE:

459-007-0370

Crediting Earnings to the Employee Pension Stability Account on Withdrawal

(1) When a member withdraws his or her Employee Pension Stability Account (EPSA) under ORS 238A.375, earnings or losses from the effective date of the last annual rate to the date of distribution shall be credited in the manner specified in this rule.¶

(2) Earnings or losses on the member's EPSA shall be credited as follows:¶

(a) If earnings or losses for the calendar year prior to the ~~effective date of withdrawal~~date of distribution have not been credited, earnings or losses for that year shall be credited to the member's EPSA based on the latest year-to-date calculation for that year.¶

(b) Earnings or losses ~~from January 1 of~~credited for the calendar year of the ~~effective date of withdrawal to the effective date of withdrawal~~distribution shall be credited to the member's EPSA based on the latest year-to-date calculation as of the ~~effective date of withdrawal~~first day of the calendar month of the date of distribution.

Statutory/Other Authority: ORS 238.650

Statutes/Other Implemented: ORS 238.265, 238A.353

AMEND: 459-009-0070

RULE SUMMARY: Clarify how earnings should be credited to the Employee Pension Stability Account (EPSA) on withdrawal, and clarify terminology used with respect to employer contribution rates for PERS retirees.

CHANGES TO RULE:

459-009-0070

#### Actuarial Pooling of Employer Liability ¶¶

(1) Definitions. Definitions as used in this rule:¶¶

(a) "Actuarial Surplus" means the excess of the fair market actuarial value of assets over the actuarial liabilities.¶¶

(b) "Consolidation" means the uniting or joining of two or more political subdivisions into a single new successor political subdivision.¶¶

(c) "Liability" or "Liabilities" means any costs assigned by the Board to a specific employer or to a pool of employers to provide PERS benefits.¶¶

(d) "Local government" shall have the same meaning as in subsection (f) of this section.¶¶

(e) "Merger" means the extinguishment, termination and cessation of the existence of one or more political subdivisions by uniting with and being absorbed into another political subdivision.¶¶

(f) "Political subdivision" means any city, county, municipal or public corporation, any other political subdivision as provided in Oregon Law, or any instrumentality thereof, or an agency created by one or more political subdivisions to provide themselves governmental service. Political subdivision does not mean a school district or a community college.¶¶

(g) "Pooled" or "pooling" means the combining or grouping of public employers participating in PERS for the purposes of determining employer liability for retirement or other benefits under ORS Chapter 238.¶¶

(h) "School district" means a common school district, a union high school district, or an education service district, including chartered schools authorized under Oregon law.¶¶

(i) "Transition Unfunded Actuarial Liabilities or Surplus" means the unfunded actuarial liability or actuarial surplus, attributed to an individual employer for the period of time the employer was not participating in a pool, prior to entry into the Local Government Rate Pool or the State and Local Government Rate Pool.¶¶

(j) "Unfunded Actuarial Liabilities" or "UAL" means the excess of the actuarial liabilities over the fair market actuarial value of assets.¶¶

(2) Two employer pools. In accordance with ORS 238.225 and only for the purposes of determining the amounts that are actuarially necessary to adequately fund the benefits provided by the contributions of PERS participating employers, employers will be pooled as a single employer as follows:¶¶

(a) The State and Local Government Rate Pool, which consists of the following employers:¶¶

(A) The State of Oregon, excluding the state judiciary under ORS 238.500;¶¶

(B) All community colleges; and¶¶

(C) All political subdivisions which elect to join the pool; or¶¶

(b) The School District Pool, which consists of all school districts of the state.¶¶

(3) The Local Government Rate Pool established as of January 1, 2000, and certified by the Board on June 12, 2001, for political subdivisions was dissolved as of December 31, 2001.¶¶

(4) Political subdivision participation. Political subdivisions may elect to participate in the State and Local Government Rate Pool by the adoption of a resolution or ordinance by the governing body of the political subdivision and submitting a copy of the resolution or ordinance to the Board. The effective date of the election is established as follows:¶¶

(a) If the election is received, in accordance with OAR 459-005-0220, by December 31, 2001, the political subdivision will join the pool effective January 1, 2002. Its liability as a member of the pool, from the effective date of entering the pool, will be based on the actuarial valuation period beginning on January 1, 2002; or¶¶

(b) If the election is received, in accordance with OAR 459-005-0220, on or after January 1, 2002, the political subdivision will join the pool effective the first day of the next actuarial valuation period following the date of

receipt of the election.¶

(c) Prior to entering the pool, any unfunded actuarial liabilities or surplus of such employers will be actuarially accounted for as provided in section (10) of this rule.¶

(d) Participation in the pool, as provided in this section, is irrevocable by the employer.¶

(e) Political subdivisions that do not elect to participate in the State and Local Government Rate Pool, as provided in this section, shall be regarded as individual employers for actuarial purposes.¶

(5) Employer rates. The basis for any actuarial computation required under ORS 238.225 or this rule will be the actuarial report on PERS prepared in accordance with ORS 238.605.¶

(6) In determining the amounts to be paid to PERS by a public employer pooled as provided in section (2) of this rule, the PERS consulting actuary will express those amounts as a rate or percentage of PERS covered payroll.¶

(7) In determining the amounts to be paid to PERS by employer participants in the Local Government Rate Pool, the State and Local Government Rate Pool, and the School District Pool, the PERS Board will issue rate(s) representing the amount necessary to provide benefits as provided in ORS 238.225, for all members of that pooled group. The rates, at a minimum, shall include:¶

(a) Rates representing the amount necessary to provide benefits as provided in ORS 238.225, for all Tier One and Tier Two police officer and firefighter members of that pooled group.¶

(b) Rates representing the amount necessary to provide benefits as provided in ORS 238.225, for all Tier One and Tier Two general service members of that pooled group.¶

(c) In addition to the rate(s) in this section, the State of Oregon will be charged the additional amount necessary to fund the Retiree Health Insurance Premium Account as provided in ORS 238.415(5).¶

(8) A public employer employing a retired member shall apply the employer's net contribution rate for its ~~active members~~ covered payroll to the wages paid to the retired member based upon the employee's pension program membership at the time of the member's retirement and the job classification of the position in which the retired member is employed. Such employer shall make a payment to the Public Employees Retirement Fund. This payment is in addition to the employer's contribution required under ORS 238.225 or 238A.220.¶

(a) Retired member wages will not be included in covered payroll for purposes of determining the employer's contribution rate.¶

(b) The additional payment will be applied to the employer's rate pool's liabilities, including pension benefit costs and retiree medical benefit costs.¶

(c) If the employer has a side account established under ORS 238.229, or any other individual surplus or liability that applies to the employer's contribution rate for its active members, that surplus or liability will be applied to the employer's contribution rate for its retired members.¶

(9) For each participant in the State and Local Government Rate Pool:¶

(a) Each employer's police officer and firefighter payroll as reported for the actuarial valuation will be multiplied times the rate described in subsection (7)(a) of this rule;¶

(b) Each employer's general service payroll as reported for the actuarial valuation will be multiplied times the rate described in subsection (7)(b) of this rule.¶

(c) By dividing the sum of the amounts in subsections (a) and (b) of this section by the employer's total payroll as reported for the actuarial valuation, a composite employer contribution rate is derived, which will be the basis for the employer contributions.¶

(10) Unfunded actuarial liabilities or surplus.¶

(a) If a political subdivision elected to join the Local Government Rate Pool described in section (3) of this rule, any transition unfunded actuarial liabilities or surplus as of December 31, 1999, will remain part of the actuarial calculation of employer costs for the individual political subdivision, until fully amortized, and will not be pooled with other public employers. However, the political subdivision will continue to be pooled for the purpose of funding the resulting unfunded actuarial liabilities associated with the Local Government Rate Pool from January 1, 2000 to December 31, 2001.¶

(b) If a political subdivision elects to join the State and Local Government Rate Pool as provided in section (4) of this rule, any transition unfunded actuarial liabilities or surplus as of the day immediately preceding the effective

date of entering the pool will remain part of the actuarial calculation of employer costs for each individual political subdivision, until fully amortized, and will not be pooled with other public employers in the State and Local Government Rate Pool.¶¶

(c) The pooled unfunded actuarial liability or surplus for the community colleges and the State of Oregon as of December 31, 2001, will remain part of the actuarial calculation of employer costs for community colleges and the State of Oregon combined until fully amortized, and will not be pooled with any political subdivision.¶¶

(d) Any unfunded actuarial liability or surplus for the State and Local Government Rate Pool that accrues during a valuation period occurring after December 31, 2001, will become part of the actuarial calculation of employer costs for only those employers who participated in the pool during that valuation period.¶¶

(e) Any unfunded actuarial liabilities or surplus of individual employers being amortized as provided for in subsection (a), (b), or (c) of this section, will be amortized based on the Board's adopted assumed earnings rate and amortization period. If at the end of the amortization period a surplus remains, the surplus will continue to be amortized as determined by the Board.¶¶

(f) If the PERS Board should change the assumed earnings rate, as it applies to ORS 238.255, in effect at the time of the amortization provided for in subsection (a), (b), or (c) of this section, the actuary will recalculate the remaining liability or surplus being amortized using the new assumed earnings rate. The amortization period provided in subsection (e) of this section will not change due to this recalculation.¶¶

(11) Employer UAL lump-sum payment. If an employer elects to make a UAL lump-sum payment to offset the unfunded actuarial liabilities under subsection (10)(a), (b), (c), or (d) of this rule, or as provided under ORS 238.225(8), the payment shall be made in accordance with ORS 238.225 and OAR 459-009-0084.¶¶

(12) New employers and integrations. Political subdivisions entering PERS, as provided in ORS 238.015(3), 238.035, or 238.680, will be pooled upon election to join the State and Local Government Rate Pool as follows:¶¶

(a) To join the pool upon entering PERS, the election as well as the methods and effective date of entry, must be included in the coverage agreement or contract of integration. If the election is made after the effective date of joining PERS, the political subdivision will join the pool effective the first day of the next actuarial valuation period following the date of receipt of the election.¶¶

(b) An election completed by an integrating employer or a partially integrated employer will apply to all current and future groups of employees who are integrated into PERS by the employer. Upon entering the respective pool, any unfunded actuarial liabilities or surplus of such employers will be actuarially accounted for as provided in section (10) of this rule.¶¶

(13) Dissolution of an employer or non-participating employer. In the event a public employer is dissolved, no longer has PERS eligible employees, or is no longer eligible to participate in PERS, the employer or its successor will be required to make the contributions necessary to fund any remaining unfunded actuarial liability, as provided for in subsection (10)(a), (b), or (c) of this rule, for PERS benefits. The Board will determine the method and amount of funding this unfunded actuarial liability or the return of any surplus, as well as the determination of the employer's successor.¶¶

(14) Consolidation of political subdivisions. In the event a political subdivision consolidates with another political subdivision, the succeeding employer will determine the status in the pool by election into the pool.¶¶

(a) If the succeeding employer has not elected to join the pool as of the effective date of the consolidation, the following will occur:¶¶

(A) The pooled and non-pooled assets, liabilities, and employees of the former employers will continue as they were prior to the consolidation;¶¶

(B) Any unfunded actuarial liability or surplus of the former employers as of the effective date of the consolidation will be combined and assumed by the succeeding employer;¶¶

(C) New hires will not be pooled; and¶¶

(D) If the succeeding employer consists of pooled and non-pooled employees, separate payrolls must be maintained for each and reported to PERS.¶¶

(E) At any time after the consolidation, the succeeding employer may elect to join the pool and the effective date will be the first day of the next actuarial valuation period following the date of receipt of an election.¶¶

(b) If the succeeding employer elects to join the pool as of the effective date of the consolidation, the following will occur:¶¶

(A) Any non-pooled assets, liabilities, and employees of the former employers will be added to the pool;¶¶

(B) Any unfunded actuarial liability or surplus of the former employers as of the effective date of the consolidation will be combined and assumed by the succeeding employer and provided for as in subsection (10)(a) or (b) of this rule; and¶¶

(C) New hires will be pooled.¶¶

(c) The succeeding employer must join the pool as of the effective date of the consolidation if it consists of only pooled employers. Any unfunded actuarial liability or surplus of the former employers as of the effective date of the consolidation will be combined and assumed by the succeeding employer.¶¶

(15) Merger of political subdivisions. In the event a political subdivision merges with another political subdivision, the status of the surviving employer in the pool depends on its status prior to the merger.¶¶

(a) If the surviving employer was not in the pool and has not elected to join the pool as of the effective date of the merger, the following will occur:¶¶

(A) The pooled and non-pooled assets, liabilities, and employees of the former employers will continue as they were prior to the merger;¶¶

(B) Any unfunded actuarial liability or surplus of the former employers as of the date of the merger will be transferred to the surviving employer;¶¶

(C) New hires will not be pooled; and¶¶

(D) If the surviving employer consists of pooled and non-pooled employees, separate payrolls must be maintained for each and reported to PERS.¶¶

(E) At any time after the merger, the surviving employer may elect to join the pool and the effective date will be the first day of the next actuarial valuation period following the date of receipt of an election.¶¶

(b) If the surviving employer was in the pool as of the effective date of the merger, the following will occur:¶¶

(A) Any non-pooled assets, liabilities, and employees of the former employers will be added to the pool as of the effective date of the merger;¶¶

(B) Any unfunded actuarial liability or surplus of the former employers as of the effective date of the merger will be transferred to the surviving employer and provided for in subsection (10)(a) or (b) of this rule; and¶¶

(C) New hires will be pooled.¶¶

(16) In the event of any legal mandates or changes adopted by the Board:¶¶

(a) If the change provides for an increased or decreased benefit to police officer and firefighter members, but is not applicable to general service members, the PERS Board will direct the actuary to attribute the cost or savings of the change to the rate indicated in subsection (7)(a) of this rule.¶¶

(b) If the change provides for an increased or decreased benefit to general service members, but is not applicable to police officer or firefighter members, the PERS Board will direct the actuary to attribute the cost or savings of the change to the rate indicated in subsection (7)(b) of this rule.¶¶

(17) Section (8) of this rule is repealed effective January 2, 2025.

Statutory/Other Authority: ORS 238.650

Statutes/Other Implemented: 2005 OL, Ch. 808, Sec. (12), (13), (14), ORS 238.225, 238.605, 2019 OL, Ch. 355, Sec. 35 & 37

AMEND: 459-017-0060

RULE SUMMARY: Clarify how earnings should be credited to the Employee Pension Stability Account (EPSA) on withdrawal, and clarify terminology used with respect to employer contribution rates for PERS retirees.

CHANGES TO RULE:

459-017-0060

#### Reemployment of Retired Members ¶¶

(1) For purposes of this rule: ¶¶

(a) "Bona fide retirement" means that the retired member has been absent from service with all participating employers and all employers in a controlled group with a participating employer for at least six full calendar months between the effective date of retirement and the date of hire.¶¶

(b) "Retired member" means a member of the PERS Chapter 238 Program who is retired for service.¶¶

(2) A retired member may be employed under ORS 238.082 by a participating employer without loss of retirement benefits provided:¶¶

(a) The period or periods of employment with one or more participating employers total less than 1,040 hours in a calendar year; or¶¶

(b) If the retired member is receiving retirement, survivors, or disability benefits under the federal Social Security Act, the period or periods of employment total less than either 1,040 hours in a calendar year, or the total number of hours in a calendar year that, at the retired member's specified hourly rate of pay, would cause the annual compensation of the retired member to exceed the following Social Security annual compensation limits, whichever is greater.¶¶

(A) For retired members who have not reached full retirement age under the Social Security Act, the annual compensation limit is \$18,240; or¶¶

(B) For the calendar year in which the retired member reaches full retirement age under the Social Security Act and only for compensation for the months before reaching full retirement age, the annual compensation limit is \$48,600.¶¶

(3) The limitations on employment in section (2) of this rule do not apply if the retired member has reached full retirement age under the Social Security Act.¶¶

(4) The limitations on employment in section (2) of this rule do not apply if:¶¶

(a) The retired member meets the requirements of ORS 238.082(4), (5), (6), (7), or (8), and did not retire at a reduced benefit under the provisions of ORS 238.280(1), (2), or (3);¶¶

(b) The retired member retired at a reduced benefit under ORS 238.280(1), (2), or (3), is employed in a position that meets the requirements of ORS 238.082(4), the date of hire is more than six months after the member's effective retirement date, and the member's retirement otherwise meets the standard of a bona fide retirement;¶¶

(c) The retired member is employed by a school district or education service district as a speech-language pathologist or speech-language pathologist assistant and:¶¶

(A) The retired member did not retire at a reduced benefit under the provisions of ORS 238.280(1) or (3); or¶¶

(B) The retired member retired at a reduced benefit under the provisions of ORS 238.280(1) or (3), but is not employed by any participating employer until more than six months after the member's effective retirement date, and the member's retirement otherwise meets the standard of a bona fide retirement;¶¶

(d) The retired member meets the requirements of section 2, chapter 499, Oregon Laws 2007, as amended by section 1, chapter 108, Oregon Laws 2015;¶¶

(e) The retired member meets the requirements of section 2, chapter 475, Oregon Laws 2015;¶¶

(f) The retired member is employed for service during a legislative session under ORS 238.092(2);¶¶

(g) The retired member meets the requirements of ORS 238.088(2), and did not retire at a reduced benefit under the provisions of ORS 238.280(1), (2), or (3); or¶¶

(h) The retired member is on active state duty in the organized militia and meets the requirements under ORS 399.075(8).¶¶

- (i) The retired member is employed as a special campus security officer commissioned by a public university and meets the requirements under section 5, chapter 152, Oregon Laws 2019.¶
- (j) The retired member is employed as a security officer for a community college and meets the requirements under section 5, chapter 152, Oregon Laws 2019.¶
- (k) The retired member is employed by Harney County Health District as a person licensed, registered or certified to provide health services and meets the requirements under section 2, chapter 496, Oregon Laws 2019.¶
- (5) For purposes of population determinations referenced by statutes listed in this rule, the latest federal decennial census shall first be operative on the first day of the second calendar year following the census year.¶
- (6) For purposes of ORS 238.082(6), a retired member replaces an employee if the retired member:¶
  - (a) Is assigned to the position of the employee; and¶
  - (b) Performs the duties of the employee or duties that might be assigned to an employee in that position.¶
- (7) If a retired member is reemployed subject to the limitations of ORS 238.082 and section (2) of this rule, the period or periods of employment subsequently exceed those limitations, and employment continues into the month following the date the limitations are exceeded:¶
  - (a) If the member has been retired for six or more calendar months:¶
    - (A) PERS will cancel the member's retirement.¶
    - (i) If the member is receiving a monthly service retirement allowance, the last payment to which the member is entitled is for the month in which the limitations were exceeded.¶
    - (ii) If the member is receiving installment payments under ORS 238.305(4), the last installment payment to which the member is entitled is the last payment due on or before the last day of the month in which the limitations were exceeded.¶
    - (iii) If the member received a single lump sum payment under ORS 238.305(4) or 238.315, the member is entitled to the payment provided the payment was dated on or before the last day of the month in which the limitations were exceeded.¶
    - (iv) A member who receives benefits to which he or she is not entitled must repay those benefits to PERS.¶
    - (B) The member will reestablish active membership the first of the calendar month following the month in which the limitations were exceeded.¶
    - (C) The member's account must be rebuilt in accordance with the provisions of section (9) of this rule.¶
  - (b) If the member has been retired for less than six calendar months:¶
    - (A) PERS will cancel the member's retirement effective the date the member was reemployed.¶
    - (B) All retirement benefits received by the member must be repaid to PERS in a single payment.¶
    - (C) The member will reestablish active membership effective the date the member was reemployed.¶
    - (D) The member account will be rebuilt as of the date that PERS receives the single payment. The amount in the member account must be the same as the amount in the member account at the time of the member's retirement.¶
- (8) For purposes of determining period(s) of employment in section (2) of this rule:¶
  - (a) Hours of employment are hours on and after the retired member's effective retirement date for which the member receives wages, salary, paid leave, or other compensation.¶
  - (b) Hours of employment that are performed under the provisions of section (4) of this rule on or after the later of January 1, 2004, or the operative date of the applicable statutory provision, are not counted.¶
- (9) If a member has been retired for service for more than six calendar months and is reemployed in a qualifying position by a participating employer under the provisions of 238.078(1):¶
  - (a) PERS will cancel the member's retirement effective the date the member is reemployed.¶
  - (b) The member will reestablish active membership on the date the member is reemployed.¶
  - (c) If the member elected a benefit payment option other than a lump sum option under ORS 238.305(2) or (3), the last monthly service retirement allowance payment to which the member is entitled is for the month before the calendar month in which the member is reemployed. Upon subsequent retirement, the member may choose a different benefit payment option.¶
  - (A) The member's account will be rebuilt as required by ORS 238.078 effective the date active membership is



reestablished.¶¶

(B) Amounts from the Benefits-In-Force Reserve (BIF) credited to the member's account under the provisions of paragraph (A) of this subsection will be credited with earnings at the BIF rate or the assumed rate, whichever is less, from the date of retirement to the date of active membership.¶¶

(d) If the member elected a partial lump sum option under ORS 238.305(2), the last monthly service retirement allowance payment to which the member is entitled is for the month before the calendar month in which the member is reemployed. The last lump sum or installment payment to which the member is entitled is the last payment due before the date the member is reemployed. Upon subsequent retirement, the member may not choose a different benefit payment option unless the member has repaid to PERS in a single payment an amount equal to the lump sum and installment benefits received and the earnings that would have accumulated on that amount.¶¶

(A) The member's account will be rebuilt as required by ORS 238.078 effective the date active membership is reestablished.¶¶

(B) Amounts from the BIF credited to the member's account under the provisions of paragraph (A) of this subsection, excluding any amounts attributable to repayment by the member, will be credited with earnings at the BIF rate or the assumed rate, whichever is less, from the date of retirement to the date of active membership.¶¶

(e) If the member elected the total lump sum option under ORS 238.305(3), the last lump sum or installment payment to which the member is entitled is the last payment due before the date the member is reemployed. Upon subsequent retirement, the member may not choose a different benefit payment option unless the member has repaid to PERS in a single payment an amount equal to the benefits received and the earnings that would have accumulated on that amount.¶¶

(A) If the member repays PERS as described in this subsection the member's account will be rebuilt as required by ORS 238.078 effective the date that PERS receives the single payment.¶¶

(B) If any amounts from the BIF are credited to the member's account under the provisions of paragraph (A) of this subsection, the amounts may not be credited with earnings for the period from the date of retirement to the date of active membership.¶¶

(f) If the member received a lump sum payment under ORS 238.315:¶¶

(A) If the payment was dated before the date the member is reemployed, the member is not required or permitted to repay the benefit amount. Upon subsequent retirement:¶¶

(i) The member may choose a different benefit payment option.¶¶

(ii) The member's retirement benefit will be calculated based on the member's periods of active membership after the member's initial effective retirement date.¶¶

(B) If the payment was dated on or after the date the member is reemployed, the member must repay the benefit amount. Upon subsequent retirement:¶¶

(i) The member may choose a different benefit payment option.¶¶

(ii) The member's retirement benefit will be calculated based on the member's periods of active membership before and after the member's initial effective retirement date.¶¶

(iii) The member's account will be rebuilt as described in ORS 238.078(2).¶¶

(g) A member who receives benefits to which he or she is not entitled must repay those benefits to PERS.¶¶

(10) If a member has been retired for less than six calendar months and is reemployed in a qualifying position by a participating employer under the provisions of 238.078(2):¶¶

(a) PERS will cancel the member's retirement effective the date the member is reemployed.¶¶

(b) All retirement benefits received by the member must be repaid to PERS in a single payment.¶¶

(c) The member will reestablish active membership effective the date the member is reemployed.¶¶

(d) The member account will be rebuilt as of the date that PERS receives the single payment. The amount in the member account must be the same as the amount in the member account at the time of the member's retirement.¶¶

(e) Upon subsequent retirement, the member may choose a different benefit payment option.¶¶

(11) Upon the subsequent retirement of any member who reestablished active membership under ORS 238.078

and this rule, the retirement benefit of the member must be calculated using the actuarial equivalency factors in effect on the effective date of the subsequent retirement.¶

(12) The provisions of paragraphs (9)(c)(B), (9)(d)(B), and (9)(e)(B) of this rule are applicable to retired members who reestablish active membership under ORS 238.078 and this rule and whose initial effective retirement date is on or after March 1, 2006.¶

(13) A participating employer that employs a retired member must notify PERS in a format acceptable to PERS under which statute the retired member is employed.¶

(a) Upon request by PERS, a participating employer must certify to PERS that a retired member has not exceeded the number of hours allowed under ORS 238.082 and section (2) of this rule.¶

(b) Upon request by PERS a participating employer must provide PERS with business and employment records to substantiate the actual number of hours a retired member was employed.¶

(c) Participating employers must provide information requested under this section within 30 days of the date of the request.¶

(14) Accumulated unused sick leave reported by an employer to PERS upon a member's retirement, as provided in ORS 238.350, may not be made available to a retired member returning to employment under sections (2) or (9) of this rule.¶

(15) Subsections (4)(c) and (4)(d) of this rule are repealed effective January 2, 2026.¶

(16) Subsection (4)(e) of this rule is repealed effective June 30, 2023.¶

(17) A member who is retired for service maintains their status as a retired member of the system, and does not accrue additional benefits during the period of employment. A retired member may not participate in the pension program or the Individual Account Program as an active member, except as provided by ORS 238.092(1) or 237.650.¶

(18) For calendar years 2020 through 2024, a public employer employing a retired member shall apply the employer's net contribution rate for its ~~active members~~ covered payroll to the wages paid to the retired member. The public employer shall make a payment to the Public Employees Retirement Fund in that amount. This payment is in addition to the employer's contribution required under ORS 238.225, and will be applied to the employer's liabilities, including pension benefit costs and retiree medical benefit costs. If the employer is a member of a pool established under ORS 238.227, the additional payment will be applied to the employer's rate pool's liabilities.¶

(19) For calendar years 2020 through 2024, the limitations on employment in section (2) of this rule do not apply to a retired member unless the member retired under the provisions of ORS 238.280(1), (2), or (3), and does not have a bona fide retirement.¶

(20) For calendar years 2020 through 2024, if the member retired under the provisions of ORS 238.280(1), (2), or (3), and does not have a bona fide retirement, the member is subject to the limitations on employment in section (2) of this rule.¶

(21) Sections (18), (19), and (20) of this rule are repealed effective January 2, 2025.

Statutory/Other Authority: ORS 238.650, ORS 238.630

Statutes/Other Implemented: ORS 238.078, ORS 238.082, ORS 238.088, ORS 238.092, ORS 399.075, 2007 OL Ch. 499 & 774, 2015 OL Ch. 108 & 475, 2018 OL Ch. 48, 2019 OL Ch. 355

AMEND: 459-075-0300

RULE SUMMARY: Clarify how earnings should be credited to the Employee Pension Stability Account (EPSA) on withdrawal, and clarify terminology used with respect to employer contribution rates for PERS retirees.

CHANGES TO RULE:

459-075-0300

#### Reemployment of a Retired Member of the OPSRP Pension Program ¶¶

- (1) For purposes of this rule, "bona fide retirement" means that the retired member has been absent from service with all participating employers and all employers in a controlled group with a participating employer for at least six full calendar months between the effective date of retirement and the date of hire.¶¶
- (2) If a retired member of the OPSRP Pension Program who is receiving monthly pension payments is employed by a participating public employer in a qualifying position: ¶¶
  - (a) The member's retirement is canceled effective the first of the month in which the member was hired.¶¶
  - (b) The last pension payment the member is entitled to receive is for the month before the calendar month in which the member was hired. A member who receives benefits to which he or she is not entitled must repay those benefits to PERS. ¶¶
  - (c) The member reestablishes active membership effective the date the member was hired. ¶¶
- (3) If a retired member of the OPSRP Pension Program who received a lump sum benefit in lieu of a small pension under ORS 238A.195 is employed by a participating public employer in a qualifying position, the member reestablishes active membership effective the date of hire. ¶¶
  - (a) If the member was hired after the date of the payment, the member is not required or permitted to repay the benefit amount. ¶¶
  - (b) If the member was hired on or before the date of the payment, the member must repay the gross benefit amount. ¶¶
- (4) A retired member of the OPSRP Pension Program who is hired by a participating public employer in a non-qualifying position may receive pension payments or a lump sum payment under ORS 238A.195 without affecting the member's status as a retired member, provided the period or periods of employment worked as a retired member total less than 600 hours in a calendar year. ¶¶
  - (a) If, by reason of hours of service performed by the retired member, the non-qualifying position becomes qualifying in a calendar year, the position is qualifying effective the later of the first day of the calendar year or the date of hire.¶¶
  - (A) If the member retired under the provisions of ORS 238A.185 and was retired for six or more calendar months before returning to work for a PERS participating employer, the member's retirement benefits shall end and the member shall reestablish active membership as of the date the position becomes qualifying under subsection (a) of this section.¶¶
  - (B) If the member retired under the provisions of ORS 238A.185 and was retired for less than six calendar months before returning to work for a PERS participating employer, the member's retirement shall be canceled and the member shall reestablish active membership as of the date the position becomes qualifying under subsection (a) of this section.¶¶
  - (b) If a position becomes qualifying under subsection (a) of this section, the retired member is subject to the provisions of sections (2) and (3) of this rule. ¶¶
- (5) A retired member who reestablishes active membership may, at subsequent retirement, elect any option provided in ORS 238A.180 and 238A.190, subject to the provisions of ORS 238A.195. ¶¶
  - (a) The member's subsequent retirement benefit will be calculated based on the member's periods of active membership before and after the member's initial effective retirement date if at the initial retirement: ¶¶
    - (A) The member received a monthly pension; or ¶¶
    - (B) The member received a lump sum payment under ORS 238A.195 and repaid the benefit amount under subsection (3)(b) of this rule. ¶¶

- (b) The member's subsequent retirement benefit will be calculated based on the member's periods of active membership after the member's initial effective retirement date if: ¶¶
- (A) At initial retirement, the member received a lump sum payment under ORS 238A.195 and was not required to repay the benefit amount under subsection (3)(a) of this rule; or ¶¶
- (B) The member is required to repay the benefit amount under subsection (3)(b) of this rule and, as of the effective retirement date of the member's subsequent retirement, the member has not repaid the benefit amount. ¶¶
- (c) The member's subsequent retirement benefit will be calculated using the actuarial equivalency factors in effect on the effective retirement date of the subsequent retirement. ¶¶
- (6) A member who is retired for service maintains the member's status as a retired member of the system and does not accrue additional benefits during the period of employment. A retired member may not participate in the pension program or the Individual Account Program as an active member, except as provided by ORS 238A.250 or 237.650.¶¶
- (7) For calendar years 2020 through 2024, a public employer employing a retired member shall apply the employer's net contribution rate for its ~~active members~~ covered payroll to the wages paid to the retired member. The public employer shall make a payment to the Public Employees Retirement Fund in that amount. This payment is in addition to the employer's contribution required under ORS 238A.220 and will be applied to the employer's liabilities, including pension benefit costs and retiree medical benefit costs.¶¶
- (8) For calendar years 2020 through 2024, the limitations on employment in section (4) of this rule do not apply to a retired member unless the member retired under the provisions of ORS 238A.185 and does not have a bona fide retirement.¶¶
- (9) For calendar years 2020 through 2024, if a member retired under the provisions of ORS 238A.185 and does not have a bona fide retirement, the member is subject to the limitations on employment in section (4) of this rule.¶¶
- (10) Sections 7, 8, and 9 of this rule are repealed effective January 2, 2025.

Statutory/Other Authority: ORS 238A.450, ORS 238.630

Statutes/Other Implemented: ORS 238A.245, 2019 OL, Ch. 355, Sec. 37