



Oregon

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Public Employees Retirement System

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TO: Members of the PERS Board

FROM: AnneMarie Vu, Policy Coordinator, Policy Analysis and Compliance Section
Stephanie Vaughn, Manager, Policy Analysis and Compliance Section

SUBJECT: Adoption of Rulemaking for Membership Eligibility Rules:
 OAR 459-005-0015 *Leave of Absence Without Pay* (new)
 OAR 459-010-0003 *Eligibility and Membership for the PERS Tier One/Tier Two Program*,
 OAR 459-010-0014 *Creditable Service in PERS Chapter 238 Program*
 OAR 459-010-0035 *Six-Month Waiting Period*
 OAR 459-075-0150 [OPSRP] *Retirement Credit*
 OAR 459-010-0010 *Leave of Absence Without Pay* (repeal)

OVERVIEW

- Action: Adoption of proposed amendments to various membership eligibility rules
- Reason: Clarify eligibility rules.

BACKGROUND

Oregon PERS was established in 1953. As is the nature of more than 70-year plan, it has evolved and expanded over the years, as have the administration of the plan and the systems supporting the plan. Prior to 2004, employers reported limited data to PERS on paper for employees only once they served their waiting time and established membership. Today, employers report data to PERS electronically, generally every pay period. They report employee demographic data (date of birth, address, etc.) upon hire for all eligible employees, whether they are in qualifying or non-qualifying positions, part time, full time, regular members, or retirees working after retirement. The information PERS receives from employers today is much more detailed than the information PERS received prior to 2004.

When a member retires, as part of processing their application for retirement, PERS reviews all the member's reported data, verifying the data with the member's former employers when necessary. Evaluating the older data, particularly pre-2004 (or legacy) data can be challenging because membership eligibility standards have changed and evolved over the years, leading to inconsistencies and unintended consequences. To address this, Policy Analysis and Compliance Section (PACS) policy staff worked with a cross-divisional team to conduct a holistic review of all eligibility policies, from establishing membership, to maintaining membership, and accruing creditable service/retirement credit. The project took a few years to complete and all policies that do not require system changes or Oregon Administrative Rule (OAR) changes have been, or are now, being implemented.

The goal in reviewing the policies was to ensure that our administration is consistent with governing Oregon Revised Statutes (ORS), Oregon Administrative Rules, and agency policies. The review identified differing membership determination standards for employment occurring before August 29, 2003, and highlighted how PERS staff sometimes mistakenly apply the current rules to past periods when reviewing Tier One and Tier Two member accounts at retirement. The proposed rule amendments provide clarification on how to make accurate membership determinations, and address situations that require special consideration, such as employer reporting for school employees.

OAR 459-010-0003 outlines how to establish and maintain membership for the PERS Tier One/Tier Two Program. This rule remains relevant for describing how to maintain membership for employment occurring on and after January 1, 2006, but the current version is no longer relevant for establishing membership in the Tier One/Tier Two Program because the program was closed to new employees as of August 29, 2003.¹ The proposed rule amendments move the establishing membership portions of the rule to OAR 459-010-0035 which addresses the six-month waiting period that is required to establish Tier One and Tier Two membership. In addition, OAR 459-010-0035 was amended to provide instruction on how to evaluate concurrent employment during the six-month waiting time, and importantly clarifies that for purposes of establishing membership, concurrent employment must occur in the same months of the six-month waiting period.

Before January 1, 2006, the standard for qualifying service for a Tier One or Tier Two member only required that the position or concurrent positions *normally required* 600 or more hours of service. This is different than the current “qualifying position” definition, in that it did not require that the person *actually perform* 600 or more hours of service. The assessment of whether a position or concurrent position normally required 600 or more hours of service was made by the employer based upon their hire intent. Recognizing that prior membership eligibility determinations did not require 600 hours of service in a year to be qualifying, when reviewing employment that occurred prior to January 1, 2006, where an eligibility determination has not been made, or has been called into question, PERS staff shall apply the normally requires 600 hours standard provided in the amendment to OAR 459-010-0035 to determine whether a position is qualifying or non-qualifying.

Amendments to OAR 459-010-0014 and OAR 459-075-0150, which address how retirement credit is accrued for school employees, clarify the dates that school is presumed to be in session and describes how the employer can rebut the presumption.

As a housekeeping issue, the substance of OAR 459-010-0010 is being moved to a new OAR. The current rule applies to all PERS programs, even though it's current placement in Division 10 indicates that it only addresses PERS administration of ORS Chapter 238. As such, this rule is being repealed, renumbered and added to Division 5 (Administration), which covers all programs in both ORS Chapters 238 and 238A. This change aligns the rule with a unified legal standard for administering leaves of absence. The rule amendments also clarify that a leave of absence does not have to be reported for school employees for summer months.

¹ New employees establishing membership on and after August 29, 2003, become members of the OPSRP program.

The proposed amendments ensure consistency and clarity in PERS membership and retirement processes.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held remotely on February 25, 2025, at 2:00 p.m. The public comment period ended February 28, 2025, at 5:00 p.m. No public comment was received.

LEGAL REVIEW

The attached 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.

Benefit: The rule amendments clarify how eligibility will be determined, particularly regarding school employees and employment before 2004.

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

RULEMAKING TIMELINE

January 27, 2025:	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
February 3, 2025:	Secretary of State publishes the notice in the Oregon Administrative Rules Database. Notice is sent to employers, legislators, and interested parties. Public comment period begins.
January 31, 2025:	PERS Board notified that staff began the rulemaking process.
February 25, 2025:	Rulemaking hearing to be held remotely at 2:00 p.m.
February 28, 2025:	Public comment period ends at 5:00 p.m.
March 31, 2025:	Staff will propose adopting the rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

BOARD OPTIONS

The PERS Board may:

1. Pass a motion to adopt changes to the membership eligibility rules, as presented.
2. Direct staff to make other changes to the rules or explore other options.

STAFF RECOMMENDATION

Staff recommends the PERS Board choose Option #1.

B.3. Attachment 1 – 459-005-0015 *Leave of Absence Without Pay (new)*

B.3. Attachment 2 – *459-010-0003 Eligibility and Membership for the PERS Tier One/Tier Two Program,*

B.3. Attachment 3 – *459-010-0010 Leave of Absence Without Pay (repeal)*

B.3. Attachment 4 – *459-010-0014 Creditable Service in PERS Chapter 238 Program*

B.3. Attachment 5 – *459-010-0035 Six-Month Waiting Period*

B.3. Attachment 6 – *459-075-0150 [OPSRP] Retirement Credit*