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## **NOTICE OF PROPOSED RULEMAKING**

INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 459

### **OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM**

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**FILED: 05/27/2026 12:04 PM**

ARCHIVES DIVISION SECRETARY OF STATE

FILING CAPTION: Rule making to address creditable service and leave of absence without pay

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/26/2026 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.*

#### CONTACT:

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#### Filed By:

Joel Mellor  
Rules Coordinator

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#### HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 06/23/2026

TIME: 2:00 PM

OFFICER: Joel Mellor

#### IN-PERSON HEARING DETAILS

ADDRESS: 11410 SW 68th Parkway, Tigard, OR 97223

#### REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 971-300-4342

#### SPECIAL INSTRUCTIONS:

Meeting ID: 256 569 515 341 71

Passcode: KE25Bw3G

#### Dial in by phone

+1 971-300-4342,,88787756# United States, Portland

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**NEED FOR THE RULE(S):**

During implementation of the creditable service and leave of absence without pay (LWOP) rule amendments that were adopted in December 2025 to implement the new major fraction of a month standard established in SB 581 (2025), staff requested additional clarification concerning how much salary must be paid or hours must be worked in a month for a member to receive creditable service/retirement credit, and when LWOP must be reported to PERS.

Under Oregon Revised Statutes (ORS) 238.005(15) and ORS 238A.140, “major fraction of a month”/ “major fraction of each month,” is defined as a month in which an active member: (1) is employed for more than half of the calendar days in that month, and (2) is paid salary by a participating public employer for hours worked (or paid leave hours used) in that calendar month. The statutes do not require a minimum salary amount or minimum number of hours worked; however, as written, the placement of the term “major fraction of the month” in subsection (2) of Oregon Administrative Rules (OAR) 459-010-0014 and OAR 459-075-0150 seemed to imply that the member had to be paid salary for the major fraction of the month, when that condition only applies to the employment requirement (not salary or hours).

LWOP must be reported to PERS if it “constitutes the major fraction of a month.” Although subsection (4) of OAR 459-005-0015 appears to require reporting only when a single period of LWOP meets that threshold, the proposed amendments clarify that the requirement also applies when multiple LWOP periods combined make up the major fraction of the month.

The proposed rule amendments address these concerns and provide clarification. Other edits in OAR 459-010-0014 and OAR 459-075-0150 replaced the term “service” with “employment” to align with the statutes and minor changes were made to subsection (5) to clarify references to “half of the school year.”

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**DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:**

238.650 & 238A.450, 238.05, 238.300 & 238A.140

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)

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**STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE:**

Adoption of the rule will not affect racial equity.

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**FISCAL AND ECONOMIC IMPACT:**

There are no discrete costs attributable to the rules.

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**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.

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**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.

RULES PROPOSED:

459-005-0015, 459-010-0014, 459-075-0150

AMEND: 459-005-0015

RULE SUMMARY: Explaining how periods of Leave of Absence without pay impact future PERS future benefits.

CHANGES TO RULE:

459-005-0015

Leave of Absence without pay.

(1) For purposes of this rule:¶

(a) "Major fraction of a month" means more than one-half of the total calendar days in a calendar month;¶

(b) "The period of time when school is not normally in session" means the period of time outside the dates that school is presumed to be in session as described in OAR 459-010-0014 and OAR 459-075-0150.¶

(2) Employer/Employee Agreement. An official leave of absence without pay for any purpose must have the following in order to be considered bona fide:¶

(a) An agreement in writing;¶

(b) Accordance with the applicable law, rules and regulations;¶

(c) The duration specifically stated at the time of granting; and¶

(d) Certification to PERS by the employer granting such leave.¶

(3) Creditable Service and Retirement Credit.¶

(a) A leave of absence without pay occurring on or after July 1, 1987, which constitutes the major fraction of a month:¶

(A) May not be used to calculate "years of membership" under ORS 238.300; and¶

(B) May not be used to determine "creditable service" or "retirement credit" under ORS 238.005.¶

(b) A leave of absence without pay occurring before July 1, 1987, which constitutes the major fraction of a month:¶

(A) Must be used to calculate "years of membership" under ORS 238.300; and¶

(B) Must be used to determine "creditable service" and "retirement credit" under ORS 238.005.¶

(c) A leave of absence without pay occurring on or after January 1, 2004, which constitutes the major fraction of a month may not be used to determine "retirement credit" under ORS 238A.140 for any period of employment after the date membership is established under ORS 238A.100.¶

(4) Reporting Requirement. Unless otherwise agreed upon by PERS, the employer shall report the following in a format acceptable to PERS:¶

(a) Any period, or periods, of leave of absence without pay, which constitutes (s) the major fraction of a month, for each member at the time the leave begins. The reported period (s) of leave of absence without pay must include an end date.¶

(b) Any amendment or extension to a (a) previously reported period (s) of leave of absence without pay.¶

(5) A PERS member on an official leave of absence without pay is not considered terminated from service with a participating employer.¶

(6) An employee on an official leave of absence without pay on the date the employer begins to participate in PERS, shall be considered to be an employee on such date for the purpose of determining eligibility for participation in PERS.¶

(7) A layoff from employment does not constitute a leave of absence without pay.¶

(8) Reporting Leave of Absence Without Pay for School Employees.¶

(a) Except as provided by subsection (8)(b), a school employee who is on leave of absence without pay during the period of time when school is not normally in session should not be reported to PERS under section (4) of this rule.¶

¶

(b) An employee of an institution of higher education, Department of Human Services, the Oregon Youth Authority, the Department of Corrections or the State Board of Education who is on leave of absence without pay during the period of time when school is not normally in session may be reported to PERS if:¶

(A) The employee is not engaged in teaching or other school activity at an institution supervised by the authority, board or department, and ¶

(B) The employee was required to provide service during the period under the terms of their employment agreement.

Statutory/Other Authority: 238.650, 238A.450

Statutes/Other Implemented: 238.300, 238A.140

AMEND: 459-010-0014

RULE SUMMARY: This rule explains how creditable service is calculated under the 238 program.

CHANGES TO RULE:

459-010-0014

Creditable Service in PERS Chapter 238 Program ¶

(1) For purposes of this rule:¶

(a) "Active member" has the same meaning as provided in ORS 238.005.¶

(b) "Creditable service" has the same meaning as provided in ORS 238.005.¶

(c) "Major fraction of a month" means any calendar month in which an active member is employed for more than one-half of the total calendar days in the calendar month, being paid a salary by a participating public employer, and for which benefits under ORS Chapter 238 are funded by employer contributions.¶

(2) Except as provided in OAR 459-005-0015~~(3)~~, an active member accrues one month of creditable service for each month in which the member ~~performs service or receives paid leave~~ is employed for the major fraction of the month and receives salary as described in OAR 459-010-0011 ~~for the major fraction of the month~~ O5-0001, or paid leave as described in OAR 459-010-0011.¶

(3) An active member is presumed to have ~~performed service~~ been employed for a major fraction of a month ~~if:~~¶

~~(a) The member performs during each month of employment if:~~¶

~~(a) The member performs, or receives paid leave for, at least 600 hours of service in the calendar year, and the member's employer(s) reports salary and hours for a pay period occurring within the calendar month;~~¶

~~(b) The member starts employment on or before the 15th day of the calendar month and the employment continues through the end of the month;~~¶

~~(c) The member starts employment on or before the first day of the calendar month and ends employment on or after the 16th day of the month; or~~¶

~~(d) The member starts employment on or before the first day of the calendar month and ends employment before the 16th day of the month, but is reemployed in a qualifying position before the end of the month.~~¶

(4) A member or employer may seek to rebut the determination of creditable service based on the presumptions in section (3) by providing to PERS records that establish that the member ~~did was or did was not perform service~~ employed for a major fraction of a month, and/or did or did not receive salary as described in OAR 459-005-0001, as defined in subsection (1)(c) of this rule.¶

(5) An active member who is a school employee will accrue six months of creditable service ~~if the member performs service for each half of the school year if they are employed for at the major fraction of each month of a during that half of the school year when that school is normally in session that falls between January 1 and June 30, and six months of creditable service if the member performs service for a major fraction of each month of a school year w, and receive salary as described in OAR 459-005-0001, for each of those school months.~~ ¶

~~(a) The first half of the school year falls between July 1 and December 31; the second half of the school year is normally in session that falls between July 1 and December year falls between January 1 through June 30.~~¶

~~(a) School is presumed to be in session during the following dates:~~¶

~~(A) For non-Higher Education employment, the first half of the school year is presumed to begin on or before September 15 and end on or after December 16.~~¶

~~(B) For Higher Education employment, the first half of the school year is presumed to begin on or before September 26 and end on or after December 16.~~¶

~~(C) For all school employment, the second half of the school year is presumed to begin on or before January 7 and end on or after May 26.~~¶

~~(b) If the school year falls outside the presumed dates described above, PERS must receive acceptable certification from the employer of the actual begin and end dates for each half of the school year.~~¶

~~(c) An active member who is a school employee on leave of absence without pay may accrue retirement credit as follows:~~¶

~~(A) If the period of leave of absence without pay falls outside the dates when school is presumed to be in session, the active member may accrue six months of retirement credit as described above.~~¶

~~(B) If the leave of absence without pay falls within the dates when school is presumed to be in session, the active member may only accrue six months of retirement credit if the leave of absence constitutes less than the major fraction of the month, as provided in OAR 459-0405-0010~~(3)5.~~~~¶

~~(C) If the leave of absence without pay falls within the dates when the school year is in session, the active member may not accrue six months of retirement credit if the leave of absence constitutes the major fraction of the month, as provided in OAR 459-0405-0010~~(3)5.~~ Such member may accrue one month of retirement credit for each month~~

in which the member ~~performs service or receives paid leave for the major fraction of the month~~ is employed for the major fraction of the month and receives salary as described in OAR 459-005-0001, or paid leave as described in OAR 459-010-0011, as described in section (2) of this rule.¶

(6) A member may not accrue more than one month of creditable service for any calendar month and no more than one year of creditable service for any calendar year.

Statutory/Other Authority: ORS 238.650

Statutes/Other Implemented: ORS 238.005, 238.300

AMEND: 459-075-0150

RULE SUMMARY: This rule clarifies how retirement credit works under the 238 program.

CHANGES TO RULE:

459-075-0150

Retirement Credit ¶

(1) For purposes of this rule:¶

(a) "Active member" has the same meaning as provided in ORS 238A.005.¶

(b) "Major fraction of a month" means any calendar month in which an active member is employed for more than one-half of the total calendar days in the calendar month, being paid a salary by a participating public employer, and for which benefits under ORS Chapter 238A are funded by employer contributions.¶

(2) Except as provided in OAR 459-005-0015~~(3)~~, an active member accrues one month of retirement credit for each month in which the member ~~performs service or receives paid leave~~is employed for the major fraction of the month and receives salary as described in OAR 459-0105-0011~~for the major fraction of the month~~01, or paid leave as described in OAR 459-010-0011.¶

(3) An active member is presumed to have ~~performed service~~been employed for a major fraction of a month if:¶

(a) The member performs at least 600 hours of service in the calendar year and the member's employer(s) reports salary and hours for a pay period occurring within the calendar month;¶

(b) The member starts employment on or before the 15th day of the calendar month and the employment continues through the end of the month;¶

(c) The member starts employment on or before the first day of the calendar month and ends employment on or after the 16th day of the month; or¶

(d) The member starts employment on or before the first day of the calendar month and ends employment before the 16th day of the month, but is reemployed in a qualifying position before the end of the month.¶

(4) A member or employer may seek to rebut the determination of creditable service based on the presumptions in section (3) by providing to PERS records that establish that the member ~~did was or did was not perform service~~employed for a the major fraction of a the month, and/or did or did not receive salary as described in OAR 459-005-0001 as defined in subsection (1)(~~eb~~) of this rule.¶

(5) An active member who is a school employee will accrue six months of retirement credit ~~if the member performs service for each half of the school year if they are employed for a the major fraction of each month of a during that half of the school year when that school is normally in session that falls between January 1 and June 30, and six months of creditable service if the member performs service for a major fraction of each month of a school year when school is normally in session that falls between July 1 and December, and receive salary as described in OAR 459-005-0001, for each of those school months~~ ¶

(a) The first half of the school year falls between July 1 and December 31; the second half of the school year falls between January 1 through June 30.¶

~~(a)~~ School is presumed to be in session during the following dates:¶

(A) For non-Higher Education employment, the first half of the school year is presumed to begin on or before September 15 and end on or after December 16;¶

(B) For Higher Education employment, the first half of the school year is presumed to begin on or before September 26 for Higher Education employment and end on or after December 16;¶

(C) For all school employment, the second half of the school year is presumed to begin on or before January 7 and end on or after May 26.¶

~~(b)~~ If the school year falls outside the presumed dates described above, PERS must receive acceptable certification from the employer of the actual begin and end dates for each half of the school year.¶

~~(c)~~ An active member who is a school employee on leave of absence without pay may accrue retirement credit as follows:¶

(A) If the period of leave of absence without pay falls outside the dates when school is presumed to be in session, the active member may accrue six months of retirement credit as described above.¶

(B) If the leave of absence without pay falls within the dates when school is presumed to be in session, the active member may only accrue six months of retirement credit if the leave of absence constitutes less than the major fraction of the month, as provided in OAR 459-0105-0010~~(3)~~5.¶

(C) If the leave of absence without pay falls within the dates when the school year is in session, the active member may not accrue six months of retirement credit if the leave of absence constitutes the major fraction of the month, as provided in OAR 459-0105-0010~~(3)~~5. Such member may accrue one month of retirement credit for each month in which the member ~~performs service~~is employed for the major fraction of the month, or receives paid leave for

the major fraction of the month, as described in section (2) of this rule.¶¶

(6) A member may not accrue more than one month of retirement credit for any calendar month and no more than one year of retirement credit for any calendar year.¶¶

(7) Credit for the six-month waiting period required by OAR 459-075-0010(2).¶¶

(a) Upon establishing membership in the pension program, a member shall receive credit for the waiting period required to establish membership under OAR 459-075-0010(2).¶¶

(b) If the member's waiting period before establishment of membership included an interruption of service as described in OAR 459-075-0010(2)(b), no credit shall be awarded for the period of employment before the interruption.¶¶

(8) For purposes of calculating retirement credit accrued under ORS 238A.155, the period of disability for a member who receives workers' compensation payments under ORS Chapter 656 and later returns to work with a PERS participating employer shall be deemed to end upon the earlier of:¶¶

(a) The date on which the member's workers' compensation payments end;¶¶

(b) The date on which the member returns to work with a PERS participating employer; or¶¶

(c) The date on which the member attains normal retirement age as defined in ORS 238A.160

Statutory/Other Authority: ORS 238A.450

Statutes/Other Implemented: ORS 238A.140