



Oregon

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February 3, 2023

TO: Members of the PERS Board

FROM: Stephanie Vaughn, Manager, Policy Analysis & Compliance Section

SUBJECT: Notice of Rulemaking for Return-to-Work Rules:
 OAR 459-015-0045, *Return to Work*
 OAR 459-075-0150, *Retirement Credit*

OVERVIEW

- Action: Adoption of updated Return-to-Work Rules.
- Reason: Clarify how PERS calculates the accrual of retirement credit for a “period of disability” involving a workers’ compensation injury.
- Policy Issue: None identified.

BACKGROUND

ORS 238.175 provides that a Chapter 238 Tier One or Tier Two member may accrue retirement credit for the period during which the member receives a PERS disability retirement allowance or workers’ compensation payments under ORS Chapter 656. Under the statute, the accrual of retirement credit is triggered “only if the member returns to employment with a participating public employer after the period of disability.”

ORS 238A.155 contains a similar requirement for OPSRP members. The statute allows an OPSRP member to accrue retirement credit while disabled so long as the member returns to employment with a participating public employer after the period of disability.

Administration of these statutory requirements is straightforward when a member applies for and receives a PERS disability retirement allowance (Tier One or Tier Two) or disability benefit (OPSRP) because the agency has established processes for returning to work. However, when a period of disability ends is less clear in the context of members who receive workers’ compensation payments. Specifically, it is not uncommon for members who were out of work with a compensable injury to return to work in some limited or modified capacity while still receiving workers’ compensation payments. These payments can continue for an indefinite period after the member returns to work.

The current administrative rules do not address how PERS calculates a member’s creditable service or retirement credit when this situation arises. This raises a question as to when a period of disability ends.

The proposed rulemaking is intended to clarify how PERS determines the end of a member’s period of disability in the context of workers’ compensation injuries. The amendments clarify that, for purposes of calculating creditable service under ORS 238.175 and retirement credit under 238A.155, a period of disability for a member who receives workers’ compensation payments ends either when payments end or when the member returns to work with a

participating public employer, whichever is earlier. Note that in either case, the statute still requires the member to return to employment to receive credit for the period of disability. This ensures that a member who continues receiving partial workers' compensation payments after returning to work can still accrue retirement credit for the period in which they were out of work due to a compensable injury. And, that the member whose workers compensation benefits end before they return to work will receive credit only for the period, they received the workers compensation benefits.

The Chapter 238 Tier One/Tier Two rule, OAR 459-015-0045, contains additional minor edits to update the phrase "PERS covered employment" with more specific language as to whether the rule requires employment in a qualifying position. The OPSRP rule contains an additional provision to specify that members cannot accrue retirement credit beyond normal retirement age in accordance with ORS 238A.155.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held remotely on December 22, 2022, at 2:00 p.m. The public comment period ended December 27, 2022, at 5:00 p.m. No public comments were received.

LEGAL REVIEW

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

IMPACT

Mandatory: No, the board need not adopt the rule modifications.

Benefit: Updates the rules to reflect current agency practice and provides clarification for members and employers.

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

RULEMAKING TIMELINE

December 1, 2022	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
December 2, 2022	PERS Board notified that staff began the rulemaking process.
December 2, 2022	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.
December 22, 2022	Rulemaking hearing to be held remotely at 2:00 p.m.
December 27, 2022	Public comment period ends at 5:00 p.m.
February 3, 2023	Staff will propose adopting the rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to OAR 459-015-0045 and 459-075-0150, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

Reason: The rules need to be amended to reflect current agency practice and provide clarification for members and employers.

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.2. Attachment 1 – 459-015-0045, *Return to Work*

B.2. Attachment 2 – 459-075-0150, *Retirement Credit*