

Employment After Retirement

Public Employees' Retirement System

This fact sheet provides information a Public Employees' Retirement System (PERS) retiree should consider when deciding on returning to the work force in either a full- or part-time capacity.

Working for private industry, the federal government, or a government agency in another state will not normally affect your PERS retirement benefits. (See the special rules for Disability Retirees on page 4.)

Returning to public employment in New Jersey after retirement, however, could affect your benefits as shown in the following information.

IRS PROVISIONS

A PERS retiree who returns to public employment before age 59½ may be subject to 10 percent additional federal tax withholding for an in service distribution under the Internal Revenue Code. Because this issue is fact sensitive, you should consult with the Internal Revenue Service or a qualified tax consultant and **are strongly advised to use caution if considering a return from retirement to public employment.**

BONA FIDE RETIREMENT

In applying the return to employment provisions described in this fact sheet, it is assumed that the PERS retirement is considered to be “bona fide.” This means the retiree has **made a good faith action to retire and that the employer/employee relationship is completely severed.**

- A “bona fide” retirement must also be “due and payable.” Your retirement does not become “due and payable” until there has been a cessation of employment of *at least* 30 days following your retirement date, or 30 days following approval of your retirement by the PERS Board of Trustees, whichever is later. If you return to a PERS covered position — on either a paid or voluntary basis — before the 30 days have elapsed, you should expect to continue enrollment in the PERS. Your retirement will be

considered invalid, and you will remain an active employee under your original PERS account.

Note: N.J.A.C. 17:2-2.6(a) requires that employees who work a 10-month school year and retire on July 1 or August 1, must count the 30-day break in service from the start of the following normal school year in September.

Other situations where a retirement may not be considered “bona fide” include, but are not limited to, the following examples:

- If you make arrangements prior to your retirement to return to the same or similar public employment as a regular employee, contract employee, leased employee, or an independent contractor, the employer/employee relationship has not been completely severed — regardless of the length of any break in employment — and your retirement will be determined to be invalid. In this case you will remain an active employee under your PERS account while in the new position.
- If you are re-employed or appointed by the same employer to the same or a similar position that would have qualified for continued membership in the retirement system had the retirement not occurred, this may indicate that the employer/employee relationship has not been completely severed and, therefore, your retirement may be determined to be invalid. In this case you will remain an active employee under your PERS account while in the new position.

If your retirement is determined to be invalid (not “bona fide”), you will be required to reimburse the retirement system for the amount of any retirement benefits you receive from the date of retirement and be required to pay pension contributions in the form of back deductions going back to the reenrollment date. **There is no limitation on the amount of reimbursement that may be recovered by the retirement system in these situations.**

The information contained in the rest of this fact sheet assumes that the returning retiree has a “bona fide” retirement. If it is established at any time that the retirement was not made in good faith or that the employer/employee relationship was not completely severed, the provisions described below will not apply.

PERS RETIREE RETURNING TO WORK IN A PERS COVERED POSITION

PERS Reenrollment Required

If, as a “bona fide” PERS retiree, you accept regular employment in a position that makes you eligible for the PERS, you must reenroll as a condition of employment (except as indicated in the next section “PERS Enrollment Not Permitted”).

- Membership in the PERS is required if you accept regular employment in a position covered by the PERS, work at least the minimum hours per week required for PERS enrollment (35 hours per week for State employees; 32 hours per week for local government or local education employees), and you earn more than \$15,000 annually, in aggregate, from PERS-covered employment

Note: If you work less than the 35/32 hour minimum **or** earn less than \$15,000 annually, see the “IRS Provisions” on page 1 about federal tax implications.

Your prospective employer should be able to tell you if the employment you are considering is covered by the PERS. However, if there is any doubt, you should have the prospective employer contact the Division of Pensions and Benefits for verification prior to your accepting any public employment after retirement. You will be responsible for any penalties imposed based on violation of the law.

If reenrolled, your retirement allowance and any related health benefits will be canceled for the duration of your employment. If you die while in the second membership, no benefits from the previous membership or retirement are payable (except for the return of uncollected contributions). This includes optional settlements and death benefits. (If you are over age 60, you must prove insurability for life insurance coverage.)

Your date of reenrollment is determined under the general enrollment procedures of the PERS and you are treated as an active PERS member in all respects. You will be enrolled in a new PERS account under the membership tier in effect at the time you return to employment (see special rules for “Disability Retirees Restored to Active Service in the PERS” on page 4).

PERS Enrollment Not Permitted

Reenrollment in the PERS is not required if you are a “bona fide” retiree and:

- You work *less than* the minimum hours per week required for PERS enrollment — 35 hours per week for State employees; 32 hours per week for local government or local education employees (see the “IRS Provisions” on page 1 about federal tax implications — disability retirees see below);
- You are a PERS **disability** retiree who has been approved to return to PERS covered employment but earn *less than* the minimum annual salary required for enrollment under your original PERS membership tier (see page 4 for rules and salary limits for disability retirees);
- The position is not covered by Social Security;
- You are a seasonal or intermittent employee as recognized by the Division;
- You are employed under a professional services contract;
- You are employed by the New Jersey Department of Education* in a position of critical need as determined by the Commissioner of Education; or
- You are employed by a board of education* in a position of critical need as determined by the superintendent of the district on a contractual basis for a term of not more than one year. You

*N.J.S.A. 43:15A-57.2(c) requires that if you accept employment with the same employer from which you retired **within 120 days of retirement**, you would have to reenroll in the retirement system.

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will be able to renew the employment contract for one additional year; however, your total period of employment with any individual board of education may not exceed a two-year period.

FAILURE TO ENROLL IN A PERS ELIGIBLE POSITION

If you return to employment under the PERS and

- You are eligible for membership but you fail to reenroll; or
- It is determined that your PERS retirement is not “bona fide” (see page 1);

You will be required to reimburse the retirement system in the amount of all retirement benefits you received from the date you should have reenrolled and — if still employed — enroll in the PERS. In addition, you will be required to pay pension contributions in the form of back deductions back to the date you should have been reenrolled. Your employer may also be liable for pension and Social Security contributions.

There is no limitation on the amount of reimbursement that may be recovered by the retirement system in these situations.

REENROLLMENT PROCEDURES

The following steps should occur when you are reemployed and reenrolled in the PERS:

1. Your employer must submit a PERS *Enrollment Application* on your behalf to the Division of Pensions and Benefits. You will be enrolled in a new PERS account under the membership tier in effect at the time you are reemployed.
2. Your retirement allowance will be suspended as of the date you are required to reenroll. The date of enrollment is not negotiable. The Retirement Bureau of the Division of Pensions and Benefits will advise you of the suspension.
3. Your *Enrollment Application* will be processed and a *Certification of Payroll Deductions* will be sent to your employer. This certification will include instructions to collect pension contributions and any back deductions, if appropriate.

4. You will be billed for any retirement payments you received after the effective date of your new PERS enrollment. Because of the sequence of events, most retirees are enrolled in the PERS on a retroactive basis. You should therefore anticipate that you will be required to refund one or more pension checks to the retirement system.

5. On or before the effective date of your second retirement, you must file an *Application for Retirement Allowance*. You must meet all the qualifications and requirements for retirement under the PERS membership tier of your second account. Your former retirement allowance and any option selection will be restored along with any appropriate cost-of-living adjustment due based upon your original date of retirement. In addition, you will receive a retirement allowance based upon your new period of service. The two calculations are paid in separate retirement checks.

You cannot combine your first and second account to qualify for a different type of retirement — such as a Veteran Retirement. By law, the combined retirement allowances cannot be greater than the allowance you would have received if your first retirement had not occurred.

Note: Any additional allowance due as a result of the second period of service will be determined under the Service Retirement formula.

Service credit from your first and second account can be combined to qualify for employer-paid health benefits coverage. In order to receive this coverage, you must meet the eligibility requirements for State- or employer-paid coverage when you retire from your final employer in the retirement system.

RETURNING TO WORK COVERED BY A DIFFERENT STATE-ADMINISTERED RETIREMENT SYSTEM

If, as a “bona fide” retiree, you return to work covered by a different New Jersey State-administered retirement system, your PERS retirement allowance may continue and you can receive salary from the employment; however, you cannot become a mem-

ber of that retirement system (see “IRS Provisions” on page 1 about federal tax implications).

Elected Officials

Repealing N.J.S.A. 43:15A-47.2, Chapter 78, P.L. 2011 provides that a member of the PERS can no longer retire while holding an elective public office covered by the PERS and collect a retirement allowance. PERS retirees who were granted a retirement allowance under those sections prior to effective date of Chapter 78, P.L. 2011 (June 28, 2011) and are currently in the same elective office covered by either of those systems may continue to receive their pension benefit and salary for the elective office.

Under N.J.S.A. 43:3C-3, a bona fide (see page 1) retired member of a State-administered retirement system who is elected to public office may either continue to receive a retirement benefit from the former employment and would not be eligible for enrollment in the new retirement system, or may suspend the retirement benefit (and any related health benefits coverage) from the former employment and enroll in the new retirement system while serving in the elected office. Upon termination of the elected office, the retirement benefit from the former employment would be reinstated.

DISABILITY RETIREES — EARNINGS AFTER RETIREMENT

A disability retirement allowance may be adjusted if you have earnings from **any** occupation or employment (public or non-public) after retirement. If your pension, when added to the earnings from other employment, exceeds what your former position currently pays, the law requires that the disability pension be reduced dollar for dollar by the excess earnings above what the former position currently pays. PERS disability retirees are subject to an annual earnings test and the Division of Pensions and Benefits may request copies of your federal tax returns, *Form W-2*, and *Form 4506T*.

DISABILITY RETIREES RESTORED TO ACTIVE SERVICE IN THE PERS

If you retired on a PERS disability retirement *but are no longer disabled*, before you can return to active

service in a PERS eligible title with any public employer, you must first prove to the satisfaction of the Board of Trustees that you are no longer disabled. A disability retiree must:

1. Make a written request to the Division of Pensions and Benefits requesting a return to active service.
2. Submit a physician's report to the Division certifying that you are no longer disabled and can return to employment. The physician should be one with the same specialty as the physician who originally certified that you were disabled.
3. Be examined by a physician appointed by the PERS Board of Trustees.
4. Be approved for return to active service by the PERS Board of Trustees.

If approved to return to active service in a position covered by the PERS, your original PERS account and PERS membership tier are restored — provided that you work the minimum number of hours or earn the minimum annual salary required for enrollment in your original PERS membership tier (\$1,500 for Tier 1 or Tier 2 members or \$7,700 subject to annual adjustment for Tier 3 members).^{*} When membership is restored, deductions for pension resume and you are treated as an active member in all respects.

Upon subsequent retirement, you must meet the retirement qualifications of your PERS membership tier and file an *Application for Retirement Allowance* with the Division of Pensions and Benefits before any benefits can be paid. You will receive a benefit based on total service.

OTHER CONSIDERATIONS

Health Benefits Retired Group Coverage

Returning to public employment in New Jersey may affect your eligibility to continue coverage under the State Health Benefits Program (SHBP) or School Employees' Health Benefits Program (SEHBP). If

^{*}Tier 4 members are not eligible for Ordinary Disability or Accidental Disability Retirement, however, they may qualify for disability insurance benefits.

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your retirement allowance is suspended because you return to work in a position covered by the PERS, your retired group SHBP or SEHBP coverage is also suspended.

If you are eligible for SHBP or SEHBP coverage based on your second retirement, the Division of Pensions and Benefits will send you an offering letter and a *Retired Coverage Enrollment Application* (for health benefits enrollment). Complete and return the application. You will be asked to submit payment with your application. If your previous coverage was State-paid or employer-paid, attach a note to the application identifying your prior retirement account.

If you are not eligible for SHBP or SEHBP coverage based on your second account, you must write to the Division of Pensions and Benefits to have your retired health benefits coverage from your first account reinstated.

Returning to a position that is not covered by PERS will not affect your eligibility for retired group coverage under the SHBP or SEHBP. Maintaining retired group health benefits coverage also does not affect your eligibility for active group health benefits coverage associated with your new (non-PERS) employment, provided that the active coverage is not through the SHBP or SEHBP — multiple SHBP/SEHBP coverage as **both** a retiree and an employee is prohibited.

If you work in a position that does not entail pension membership, the time in that position does not count towards meeting service requirements for employer-paid health benefits coverage in retirement.

Social Security Benefits

There is an earnings test for people under full retirement age receiving Social Security benefits. Check with the Social Security Administration at 1-800-772-1213 for information on earnings limits before accepting employment.

SELF EMPLOYMENT ISSUES

The Division of Pensions and Benefits is frequently approached by PERS retirees who seek recognition as independent contractors rather than employees. Many of these retirees want to resume work similar

to that performed while they were public employees without it affecting their eligibility to receive PERS retirement benefits.

While it is the public agency's responsibility to correctly classify the worker's employer-employee relationship, our experience indicates that workers are frequently incorrectly identified as independent contractors when they are, in fact, employees of the agency.

As with any other return to employment from retirement, the employer and retiree should establish that the PERS retirement is “bona fide.” If there was any arrangement prior to retirement to return to employment **or** if the retiree returns to the same or similar public employment with the same employer — whether as a regular employee, contract employee, leased employee, or an independent contractor — the employer/employee relationship may not be completely severed and the retirement could be determined to be invalid (see “Bona Fide Retirement” on page 1 for more information).

Assuming that the original retirement is determined to be “bona fide”, the Division of Pensions and Benefits, as a rule, accepts the tests and standards used by the Internal Revenue Service (IRS) to determine the employer-employee relationship. Since penalties levied by the IRS can be severe, both you (the worker) and the employer should give careful consideration before classifying you as an independent contractor. In addition to IRS penalties, in the event that you are incorrectly classified as an independent contractor, there are penalties relating to the PERS. The employer will be assessed delinquent enrollment charges for failing to enroll you in the retirement system in a timely fashion. You will also be required to refund all retirement benefits received after the date enrollment should have occurred and pay any retroactive pension contributions due on the new PERS account.

The IRS test to assess the employer-employee relationship includes the following factors:

Behavioral Control – Included in this test are instructions and training.

- (1) Instructions – if the individual receives extensive instructions on how work is to be done, this suggests an employee relationship exists. Ask

how, when, or where the person is asked to do the work; what and who owns the tools or equipment used; what assistants are hired to help with the work and where and by whom supplies and services are purchased. If one receives less extensive instructions about what should be done, but not how it should be done, the person may be an independent contractor. Each of these factors will vary dependent upon the actual position.

(2) Training – If the business provides training about required procedures and methods, this indicates that the business wants the work done in a certain way, and that suggests that the individual may be an employee.

Financial Control – Included in this test are facts which would reveal whether there is a right to direct or control the business part of the work. Examples are:

(1) If the individual has made a significant investment in a position, this may qualify as an independent contractor.

(2) If the individual is not reimbursed for some or all business expenses, then he or she may qualify as an independent contractor, especially if unreimbursed business expenses are high.

(3) If the individual can realize a profit or incur a loss, this suggests that the person is in business for themselves and may be an independent contractor.

Relationship to Parties – These are facts that illustrate how the business and the worker perceive their relationship. For example:

(1) Does the person receive benefits such as paid leave or insurance? This may indicate employee status.

(2) Written contracts – A written contract may show what both the individual and the employer intend.

No one of these factors is controlling and the response to all factors must be weighed together, under the common law definition of "employment." However, one of the most important factors for consideration is whether the employer has the right to instruct and control the employee with respect to the details of the work that is performed by the employee. There are several IRS documents that discuss how to evaluate individual circumstances that are available at: www.irs.gov

NOTICE FOR RETIREES REENROLLED IN A PERS COVERED POSITION

If you are reenrolled in the PERS after retirement, you are treated as an active member in all respects. Your retirement allowance is suspended as a result of a return to PERS covered employment and no retirement or life insurance benefits associated with your former retirement will be paid to your beneficiary should you die during your second membership. If you are over the age of 60 when you reenroll, you will be required to prove insurability through physical examination before you will be covered by the group life insurance benefits for active members. Once you retire again, the retirement and life insurance benefits associated with your first retirement become effective.

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