

Employment After Retirement

Public Employees' Retirement System

As people are retiring at an earlier age and living longer after retirement, the question of how employment after retirement will affect pension benefits is becoming more important. 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 Disability Retiree section on page 3 for exceptions to this.) Returning to public employment in New Jersey after retirement, however, could affect your benefits as described in the following information. Your prospective employer should be able to tell you whether the employment you are considering is covered under the PERS. You will be responsible for any penalties imposed based on violation of the law. If there is any doubt as to whether or not you should be enrolled in the PERS, contact the Division of Pensions and Benefits.

PERS RETIREE RETURNING TO WORK IN A PERS COVERED POSITION

PERS Membership Continued

When you return to PERS covered employment is critical in determining your PERS status.

You are not considered to be "retired" from the PERS until your retirement becomes "due and payable" and after the employer/employee relationship is severed. This occurs after there has been a break in employment without pay of at least 30 days immediately following your retirement date, or 30 days after the approval of your retirement by the PERS Board of Trustees, whichever is later.

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.

This means that 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 not be considered valid, and you will remain an active employee under your original PERS account.

PERS Reenrollment Required

In addition to the State agencies, over 1,800 local employers throughout New Jersey participate in the PERS. You should expect to be reenrolled in the PERS if, as a retiree, you accept employment with the State or any of the local participating employers in a PERS covered position and:

- Your aggregate salary from all post-retirement PERS-eligible public employment will exceed \$15,000 in a calendar year (except disability retirees, see page 3); and
- Your position is not covered by a different State-administered retirement system.

PERS Enrollment Not Permitted

You cannot rejoin the PERS if:

- The aggregate annual salary or salaries for the position or positions does not exceed \$15,000 in a calendar year, or \$7,499* from a single employer for a retiree on disability retirement;
- 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

*The minimum annual salary required for enrollment in Tier 3 of the PERS is \$7,500 for calendar years 2008 and 2009. Under the provisions Chapter 89, P.L. 2008, this amount is subject to adjustment in future years.

**Chapter 355, P.L. 2001 provides 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.

- 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 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.

In addition, PERS enrollment is **optional** if you are a special service employee hired under the federal Older American Community Service Employment Act. If you decline optional enrollment in the PERS, you are entitled to collect your PERS retirement allowance while you are receiving salary as a special service employee.

\$15,000 Salary Threshold

A PERS retiree may be hired in a PERS position without having to resume active PERS membership provided that the aggregate calendar year salary (or salaries) of the new position(s) does not exceed \$15,000. The retiree must also sever the employer/employee relationship, having a break in service of at least 30 consecutive days without pay after the retirement date or Board approval date and prior to the resumption of employment in the new position.

Regardless of the type of position you accept (except hourly), you should expect to be reenrolled immediately in the PERS if your contractual compensation is more than \$15,000 per year.

If you are an hourly employee, you should expect to be reenrolled in the PERS as soon as your compensation exceeds \$15,000 in a calendar year. For example, a PERS retiree working on an on-call basis as a substitute teacher would not be reenrolled until the \$15,000 threshold was reached.

The calculation for determining whether the \$15,000 salary threshold has been reached by a PERS retiree who returns to work with more than one PERS employer, considers the salaries earned at all PERS covered employment. For example, a retiree who earns \$7,000 per year from each of two PERS positions (\$14,000 annually) will not be eligible to reenroll, but a retiree who earns \$7,501 per year from each of two PERS positions (\$15,002) will be required to reenroll.

If you work for more than one PERS employer, and you know that your combined contractual salary will exceed \$15,000, you should inform your employers immediately so that you may be reenrolled in the PERS as of the beginning of your employment. Your employers cannot do this for you because they do not share payroll information with each other.

Annually, the Division of Pensions and Benefits does compare retirement lists against New Jersey Department of Labor and Workforce Development wage reporting records from public employers in New Jersey. Therefore, PERS retirees who exceed the \$15,000 earnings limit without reenrolling will be identified. You should be very aware of this earnings limitation and be careful not to exceed it. If the Division of Pensions and Benefits becomes aware of earnings in excess of the \$15,000, you will be required to suspend your retirement allowance and be reenrolled in the PERS. You will also be required to reimburse the Division for any retirement benefits you received after the threshold amount was reached and be required to make pension contributions back to the date when you should have been reenrolled (see "Effect on Retirement..." below).

Once you have returned to employment and reenrolled in the PERS, you must remain in the PERS as an active employee until you terminate all PERS covered employment and retire again. Falling below the \$15,000 earnings limit will not eliminate the requirement that you continue to contribute to the PERS.

EFFECT ON RETIREMENT BENEFITS IF REEMPLOYED IN A PERS ELIGIBLE POSITION

If you are required to reenroll in the PERS as a condition of employment in a full- or part-time position, your retirement allowance will be suspended for the duration of your employment and you become an active contributing member *under the PERS membership tier in effect at the time you reenroll*. (If you are over age 60, you must also prove insurability for group life insurance coverage.)

If you die while under the second membership, no benefits from the previous membership or retirement are payable, other than the return of any contributions not used to pay your retirement allowance. This means that retirement option benefits and life insur-

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ance death benefits from the suspended retirement would not be paid to your beneficiaries.

If you return to employment under the PERS and are eligible for membership but you fail to reenroll, you will be required to reimburse the retirement system in the amount of all retirement benefits you received since the date you should have reenrolled. In addition, you will be required to pay pension contributions in the form of back deductions back to your enrollment date. 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.

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. These two calculations are paid in one retirement check.

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; a reduction applies if the retiree is under certain ages as defined by the PERS membership tiers (age 55 for **Tier 1** members, age 60 for Tier 2 members, and age 62 for **Tier 3** members).

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 IN A POSITION COVERED BY ANOTHER NEW JERSEY STATE-ADMINISTERED RETIREMENT SYSTEM

In this case, your retirement allowance continues and you can receive salary but you cannot become a member of that retirement system.

DISABILITY RETIREES RESTORED TO ACTIVE SERVICE IN THE PERS

Before you can return to active service in a PERS-eligible title you must:

1. Make a written request to return to active service to the Division of Pensions and Benefits.
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.

When you return to active service your original account and PERS membership tier are restored — provided that you will earn at least the minimum annual salary required for enrollment in your PERS membership tier (\$1,500 for Tier 1 or Tier 2 members or \$7,500 subject to annual adjustment for Tier 3 members). Deductions for pension begins and you are treated as an active employee in all respects. Upon subsequent retirement, you will receive a benefit based on total service.

DISABILITY RETIREES — EARNINGS AFTER RETIREMENT

A disability retirement allowance may be adjusted if you have earnings from any occupation after retirement. If your pension, when added to the earnings from other employment, exceeds what your former position currently pays, the law states that the disability pension shall 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*.

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 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- 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 coverage associated with your new (non-PERS) employment.

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 a rule, the Division of Pensions and Benefits 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 sys-

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tem in a timely fashion and you will be required to refund all retirement benefits received after the date enrollment should have occurred. You must also pay any retroactive pension contributions due on the new PERS account.

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

A) 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.

B) 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.

C) 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

**SPECIAL NOTICE FOR
RETIREES IF REENROLLED
TO 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 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 of active members. Once you retire again, the death benefits associated with your first retirement become effective.

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