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ARCHIVES DIVISION

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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 459  
OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM

**FILED**

09/24/2024 1:55 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Amendment to resolve administrative error created in filing prior amendment with the Secretary of State.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/25/2024 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.*

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Filed By:  
Chris Geier  
Rules Coordinator

HEARING(S)

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

DATE: 10/22/2024

TIME: 2:00 PM - 3:00 PM

OFFICER: Chris Geier Daniel Rivas

REMOTE HEARING DETAILS

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

PHONE NUMBER: 1-971-300-4342

CONFERENCE ID: 960743473

SPECIAL INSTRUCTIONS:

Meeting ID: 218 401 635 051

Passcode: 3qM2je

NEED FOR THE RULE(S)

Amendment to resolve administrative error created in filing prior amendment with the Secretary of State.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

ORS 238.078, 238.082, 238.088, 238.092, 238.630, 238.650, 399.075, 2007 OL Ch. 499 & 774, 2015 OL Ch. 108 & 475, 2018 OL Ch. 48 & 2019 OL Ch. 355, House Bill 2296 (2023) 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)

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

Adoption of the rule will not affect racial equity.

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.

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AMEND: 459-017-0060

RULE SUMMARY: PERS staff seeks board approval to amend this administrative rule due to an administrative error. On December 1, 2023, proposed rule revisions to OAR 459-017-0060 were presented for notice at the PERS Board meeting to implement changes pursuant to House Bill 2296 (2023). For background, Senate Bill 1049 (2019) introduced new work after retirement allowances for retirees which were set to expire at the end of calendar year 2024. HB 2296 extended SB 1049's work after retirement provisions until the end of calendar year 2034.

On February 2, 2024, the PERS Board adopted the rules as presented at the December 1, 2023 PERS Board meeting. Also on February 2, 2024, staff opened the same administrative rule to update the Social Security Income limits for working retirees who receive Social Security payments.

On April 1, 2024, the PERS Board adopted the Social Security amendments to the rule as presented at the February 2, 2023 PERS Board meeting. On this date, PERS filed a Permanent Administrative Order with the Secretary of State amending OAR 459-017-0060 as approved by the Board, however, the Permanent Order filing did not include the previous HB 2296 changes. The administrative error resulted in the work after retirement extensions being omitted from the current version of the rule.

Proposed revision of OAR 459-017-0060 amends the rule to incorporate the changes required by HB 2296, which have already been reviewed and adopted by the Board on February 2, 2024.

CHANGES TO RULE:

459-017-0060

Reemployment of Retired Members ¶¶

(1) For purposes of this rule: ¶¶

(a) "Bona fide retirement" means that the retired member has been absent from service with all participating employers and all employers in a controlled group with a participating employer for at least six full calendar months between the effective date of retirement and the date of hire.¶¶

(b) "Retired member" means a member of the PERS Chapter 238 Program who is retired for service.¶¶

(2) A retired member may be employed under ORS 238.082 by a participating employer without loss of retirement

benefits provided:¶

(a) The period or periods of employment with one or more participating employers total less than 1,040 hours in a calendar year; or¶

(b) If the retired member is receiving retirement, survivors, or disability benefits under the federal Social Security Act, the period or periods of employment total less than either 1,040 hours in a calendar year, or the total number of hours in a calendar year that, at the retired member's specified hourly rate of pay, would cause the annual compensation of the retired member to exceed the following Social Security annual compensation limits, whichever is greater.¶

(A) For retired members who have not reached full retirement age under the Social Security Act, the annual compensation limit is \$22,320; or¶

(B) For the calendar year in which the retired member reaches full retirement age under the Social Security Act and only for compensation for the months before reaching full retirement age, the annual compensation limit is \$59,520.¶

(3) The limitations on employment in section (2) of this rule do not apply if the retired member has reached full retirement age under the Social Security Act.¶

(4) The limitations on employment in section (2) of this rule do not apply if:¶

(a) The retired member meets the requirements of ORS 238.082(4), (5), (6), (7), or (8), and did not retire at a reduced benefit under the provisions of ORS 238.280(1), (2), or (3);¶

(b) The retired member retired at a reduced benefit under ORS 238.280(1), (2), or (3), is employed in a position that meets the requirements of ORS 238.082(4), the date of hire is more than six months after the member's effective retirement date, and the member's retirement otherwise meets the standard of a bona fide retirement;¶

(c) The retired member is employed by a school district or education service district as a speech-language pathologist or speech-language pathologist assistant and:¶

(A) The retired member did not retire at a reduced benefit under the provisions of ORS 238.280(1) or (3); or¶

(B) The retired member retired at a reduced benefit under the provisions of ORS 238.280(1) or (3), but is not employed by any participating employer until more than six months after the member's effective retirement date, and the member's retirement otherwise meets the standard of a bona fide retirement;¶

(d) The retired member meets the requirements of section 2, chapter 499, Oregon Laws 2007, as amended by section 1, chapter 108, Oregon Laws 2015;¶

(e) The retired member meets the requirements of section 2, chapter 475, Oregon Laws 2015;¶

(f) The retired member is employed for service during a legislative session under ORS 238.092(2);¶

(g) The retired member meets the requirements of ORS 238.088(2), and did not retire at a reduced benefit under the provisions of ORS 238.280(1), (2), or (3); or¶

(h) The retired member is on active state duty in the organized militia and meets the requirements under ORS 399.075(8).¶

(i) The retired member is employed as a special campus security officer commissioned by a public university and meets the requirements under section 5, chapter 152, Oregon Laws 2019.¶

(j) The retired member is employed as a security officer for a community college and meets the requirements under section 5, chapter 152, Oregon Laws 2019.¶

(k) The retired member is employed by Harney County Health District as a person licensed, registered or certified to provide health services and meets the requirements under section 2, chapter 496, Oregon Laws 2019.¶

(5) For purposes of population determinations referenced by statutes listed in this rule, the latest federal decennial census shall first be operative on the first day of the second calendar year following the census year.¶

(6) For purposes of ORS 238.082(6), a retired member replaces an employee if the retired member:¶

(a) Is assigned to the position of the employee; and¶

(b) Performs the duties of the employee or duties that might be assigned to an employee in that position.¶

(7) If a retired member is reemployed subject to the limitations of ORS 238.082 and section (2) of this rule, the period or periods of employment subsequently exceed those limitations, and employment continues into the month following the date the limitations are exceeded:¶

(a) If the member has been retired for six or more calendar months:¶

(A) PERS will cancel the member's retirement.¶

(i) If the member is receiving a monthly service retirement allowance, the last payment to which the member is entitled is for the month in which the limitations were exceeded.¶

(ii) If the member is receiving installment payments under ORS 238.305(4), the last installment payment to which the member is entitled is the last payment due on or before the last day of the month in which the limitations were exceeded.¶

(iii) If the member received a single lump sum payment under ORS 238.305(4) or 238.315, the member is entitled to the payment provided the payment was dated on or before the last day of the month in which the limitations were exceeded.¶

- (iv) A member who receives benefits to which he or she is not entitled must repay those benefits to PERS.¶
- (B) The member will reestablish active membership the first of the calendar month following the month in which the limitations were exceeded.¶
- (C) The member's account must be rebuilt in accordance with the provisions of section (9) of this rule.¶
- (b) If the member has been retired for less than six calendar months:¶
  - (A) PERS will cancel the member's retirement effective the date the member was reemployed.¶
  - (B) All retirement benefits received by the member must be repaid to PERS in a single payment.¶
  - (C) The member will reestablish active membership effective the date the member was reemployed.¶
  - (D) The member account will be rebuilt as of the date that PERS receives the single payment. The amount in the member account must be the same as the amount in the member account at the time of the member's retirement.¶
- (8) For purposes of determining period(s) of employment in section (2) of this rule:¶
  - (a) Hours of employment are hours on and after the retired member's effective retirement date for which the member receives wages, salary, paid leave, or other compensation.¶
  - (b) Hours of employment that are performed under the provisions of section (4) of this rule on or after the later of January 1, 2004, or the operative date of the applicable statutory provision, are not counted.¶
- (9) If a member has been retired for service for more than six calendar months and is reemployed in a qualifying position by a participating employer under the provisions of 238.078(1):¶
  - (a) PERS will cancel the member's retirement effective the date the member is reemployed.¶
  - (b) The member will reestablish active membership on the date the member is reemployed.¶
  - (c) If the member elected a benefit payment option other than a lump sum option under ORS 238.305(2) or (3), the last monthly service retirement allowance payment to which the member is entitled is for the month before the calendar month in which the member is reemployed. Upon subsequent retirement, the member may choose a different benefit payment option.¶
    - (A) The member's account will be rebuilt as required by ORS 238.078 effective the date active membership is reestablished.¶
    - (B) Amounts from the Benefits-In-Force Reserve (BIF) credited to the member's account under the provisions of paragraph (A) of this subsection will be credited with earnings at the BIF rate or the assumed rate, whichever is less, from the date of retirement to the date of active membership.¶
  - (d) If the member elected a partial lump sum option under ORS 238.305(2), the last monthly service retirement allowance payment to which the member is entitled is for the month before the calendar month in which the member is reemployed. The last lump sum or installment payment to which the member is entitled is the last payment due before the date the member is reemployed. Upon subsequent retirement, the member may not choose a different benefit payment option unless the member has repaid to PERS in a single payment an amount equal to the lump sum and installment benefits received and the earnings that would have accumulated on that amount.¶
    - (A) The member's account will be rebuilt as required by ORS 238.078 effective the date active membership is reestablished.¶
    - (B) Amounts from the BIF credited to the member's account under the provisions of paragraph (A) of this subsection, excluding any amounts attributable to repayment by the member, will be credited with earnings at the BIF rate or the assumed rate, whichever is less, from the date of retirement to the date of active membership.¶
  - (e) If the member elected the total lump sum option under ORS 238.305(3), the last lump sum or installment payment to which the member is entitled is the last payment due before the date the member is reemployed. Upon subsequent retirement, the member may not choose a different benefit payment option unless the member has repaid to PERS in a single payment an amount equal to the benefits received and the earnings that would have accumulated on that amount.¶
    - (A) If the member repays PERS as described in this subsection the member's account will be rebuilt as required by ORS 238.078 effective the date that PERS receives the single payment.¶
    - (B) If any amounts from the BIF are credited to the member's account under the provisions of paragraph (A) of this subsection, the amounts may not be credited with earnings for the period from the date of retirement to the date of active membership.¶
  - (f) If the member received a lump sum payment under ORS 238.315:¶
    - (A) If the payment was dated before the date the member is reemployed, the member is not required or permitted to repay the benefit amount. Upon subsequent retirement:¶
      - (i) The member may choose a different benefit payment option.¶
      - (ii) The member's retirement benefit will be calculated based on the member's periods of active membership after the member's initial effective retirement date.¶
    - (B) If the payment was dated on or after the date the member is reemployed, the member must repay the benefit amount. Upon subsequent retirement:¶

- (i) The member may choose a different benefit payment option.¶
- (ii) The member's retirement benefit will be calculated based on the member's periods of active membership before and after the member's initial effective retirement date.¶
- (iii) The member's account will be rebuilt as described in ORS 238.078(2).¶
- (g) A member who receives benefits to which he or she is not entitled must repay those benefits to PERS.¶
- (10) If a member has been retired for less than six calendar months and is reemployed in a qualifying position by a participating employer under the provisions of 238.078(2):¶
- (a) PERS will cancel the member's retirement effective the date the member is reemployed.¶
- (b) All retirement benefits received by the member must be repaid to PERS in a single payment.¶
- (c) The member will reestablish active membership effective the date the member is reemployed.¶
- (d) The member account will be rebuilt as of the date that PERS receives the single payment. The amount in the member account must be the same as the amount in the member account at the time of the member's retirement.¶
- (e) Upon subsequent retirement, the member may choose a different benefit payment option.¶
- (11) Upon the subsequent retirement of any member who reestablished active membership under ORS 238.078 and this rule, the retirement benefit of the member must be calculated using the actuarial equivalency factors in effect on the effective date of the subsequent retirement.¶
- (12) The provisions of paragraphs (9)(c)(B), (9)(d)(B), and (9)(e)(B) of this rule are applicable to retired members who reestablish active membership under ORS 238.078 and this rule and whose initial effective retirement date is on or after March 1, 2006.¶
- (13) A participating employer that employs a retired member must notify PERS in a format acceptable to PERS under which statute the retired member is employed.¶
- (a) Upon request by PERS, a participating employer must certify to PERS that a retired member has not exceeded the number of hours allowed under ORS 238.082 and section (2) of this rule.¶
- (b) Upon request by PERS a participating employer must provide PERS with business and employment records to substantiate the actual number of hours a retired member was employed.¶
- (c) Participating employers must provide information requested under this section within 30 days of the date of the request.¶
- (14) Accumulated unused sick leave reported by an employer to PERS upon a member's retirement, as provided in ORS 238.350, may not be made available to a retired member returning to employment under sections (2) or (9) of this rule.¶
- ~~(15) Subsections (4)(c) and (4)(d) of this rule are repealed effective January 2, 2026.¶~~
- ~~(16) Subsection (4)(e) of this rule is repealed effective June 30, 2023.¶~~
- ~~(17) A member who is retired for service maintains their status as a retired member of the system, and does not accrue additional benefits during the period of employment. A retired member may not participate in the pension program or the Individual Account Program as an active member, except as provided by ORS 238.092(1) or 237.650.¶~~
- ~~(18) For calendar years 2020 through 2024, a public employer employing a retired member shall apply the employer's contribution rate for its covered payroll to the wages paid to the retired member. The public employer shall make a payment to the Public Employees Retirement Fund in that amount. This payment is in addition to the employer's contribution required under ORS 238.225, and will be applied to the employer's liabilities, including pension benefit costs and retiree medical benefit costs. If the employer is a member of a pool established under ORS 238.227, the additional payment will be applied to the employer's rate pool's liabilities.¶~~
- ~~(19) For calendar years 2020 through 2024, the limitations on employment in section (2) of this rule do not apply to a retired member unless the member retired under the provisions of ORS 238.280(1), (2), or (3), and does not have a bona fide retirement.¶~~
- ~~(20) For calendar years 2020 through 2024, if the member retired under the provisions of ORS 238.280(1), (2), or (3), and does not have a bona fide retirement, the member is subject to the limitations on employment in section (2) of this rule.¶~~
- ~~(21) Sections (18), (19), (6) and (20) of this rule are repealed effective January 2, 2023.¶~~
- Statutory/Other Authority: ORS 238.650, ORS 238.630
- Statutes/Other Implemented: ORS 238.078, ORS 238.082, ORS 238.088, ORS 238.092, ORS 399.075, 2007 OL Ch. 499 & 774, 2015 OL Ch. 108 & 475, 2018 OL Ch. 48, 2019 OL Ch. 355, House Bill 2296 (2023)