

FACT SHEET

Separation Requirements for Retirement Eligibility - Certain Non-Elected Positions

The defined benefit plans administered by PERA are tax-qualified plans under the Internal Revenue Code (IRC) and PERA members receive favorable tax treatment of contributions made on their behalf by governmental employers.

It is important that employers' actions help to preserve the tax-qualified status of the retirement plans. One key condition for maintaining the qualified status is that benefits generally cannot be distributed to members unless there has been a complete severance of the employment relationship with the employer. This fact sheet summarizes the relevant laws that must be adhered to in order to assure that PERA pays retirement benefits only to eligible individuals.

Separation Requirements

PERA members are not entitled to receive retirement benefits until they have terminated public service as defined in Minn. Stat. Chapter 353. To qualify for retirement benefits, the public employee must fulfill a minimum 30-day break in service requirement. A member does not have a right to draw a retirement benefit if, within 30 days of the date the employment relationship ended, the person returns

to an employment position with a governmental subdivision.

Additionally, the termination of service must be considered a "bona fide separation" by the Internal Revenue Service (IRS). The separation is considered bona fide if there has been a good faith and complete termination of the employment relationship. A member is not considered to have a valid severance of the relationship if, before the effective date of the termination, the employee has an agreement (verbal or written) to provide services to any governmental subdivision as an employee, or to the same employer as an employee, an independent contractor, or an employee of an independent contractor.

In summary, to qualify for a retirement benefit, a PERA member **regardless of age** must:

- Terminate public service through a voluntary resignation or dismissal by the employer,
- Remain out of public employment, or refrain from providing services to a governmental subdivision, during the 30 calendar days following the date of termination, and
- Avoid making arrangements to work for any governmental

subdivision as an employee, or to work for the same employer as an employee, an independent contractor, or employee of an independent contractor, until after the 30-day separation period has passed.

A leave of absence, or other type of temporary leave or temporary layoff from employment, does not qualify as a termination of public service or as a bona fide separation in service. Similarly, a change in the status of a worker from an employee to a consultant, contractor, or a temporary or substitute worker **without a valid termination and break in service for at least 30 days** does not allow the person to draw PERA retirement benefits, while still providing services to that employer. Depending upon the situation, becoming a temporary consultant, a contractor, or employee of a contractor may mean that the individual can no longer contribute to PERA; however, it does not mean that the former employee qualifies to receive a pension from PERA before completely severing the employment relationship with the employing entity.

Separation Requirements for PERA Retirement Eligibility

There are three exceptions to this rule. First, those who terminate a non-elected position to move into an elected one do not need to have a 30-day break in employment before qualifying for benefits. (This exception is explained in the fact sheet covering the separation requirements relating to elected positions.)

The second exception is the Phased Retirement Option (PRO). Under the PRO, a Coordinated or Basic plan member who holds a non-elected position and who is age 62 or older, can begin receiving a PERA pension without formally resigning. However, the decision to make phased retirement available to members is strictly up to the employer, and participants must agree to substantially reduce the hours they work. For more information on specific rules and how to administer the PRO, refer to the Reporting Requirements section of our website under the Employers tab.

Third, an employee retiring from one governmental entity who also provides services as an independent contractor to another governmental entity does not need to terminate the contractor position nor have a 30-day break from that position. This is providing that the individual does not begin a contract within 30 days of the termination with the employer which the person is retiring from.

Employer Responsibilities

Participating employers have a duty to ensure that each employee that applies for a PERA retirement benefit has a valid termination of public service and a bona fide separation in the employment relationship.

As part of PERA's retirement application process, employers are asked to complete the Termination Verification form provided by PERA staff. The purpose of this form is

to substantiate that the retiring employee has had a complete termination of service and to confirm that prior to the member's termination date there are no arrangements in place to rehire the individual. When employers complete the Termination Verification form, they are, in essence, validating that the former employee has met the separation requirements needed to draw a retirement benefit.

The current PERA laws include specific separation requirements and restrictions relating to re-employment; however, these provisions do not prevent governmental employers from surveying their retiring workers about their interests in returning to employment after fully terminating public service as long as no agreement for reemployment is made. Further, employers are not restricted from using their survey information to establish a pool of retirees for future service as job openings arise.

Additionally, employers can hire a PERA retiree as an independent contractor after the person has terminated public service and had a complete separation period of at least 30 days. In these situations, it also must be clear that the person is not a common-law employee subject to post-retirement income limits set in statute. We require, therefore, that employers who change the status of a worker status from an employee to a consultant or a contractor provide a copy of the proposed or executed contract to PERA for review.

Finally, employers should be aware that there can be consequences to individuals and to their agencies if employees are reemployed with the same employer without a valid separation of service. If the individual does not effectively terminate public service, any retirement benefits paid by PERA will be discontinued and the person must repay any benefit payments paid by the retirement system. In certain instances, the retiree could be retroactively reinstated to active membership effective the first day of employment as a retired annuitant for the employer. In that situation, the employer and member would be required to pay omitted deductions and interest under Minn. Stat. § 353.27.