



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

**Department of
Administration**

DIVISION OF RETIREMENT AND BENEFITS

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Retiree Return to Work Policy

Effective Date: October 1, 2017

Last Revised: August 7, 2017

External Requirement for Review: Department of Law

IRS Compliance Reporting: Department of Law

Policy Owner: Division of Retirement and Benefits

Policy Contact: Kathy Lea, Chief Pension Officer

Systems Affected: All Pension and Annuity Plans Administered by the Division

1. Background

The PERS and TRS plans require cessation of pension benefits during re-employment in a position covered by the same retirement system (AS 39.35.152; AS 14.25.043). Now, federal law similarly restricts re-employment into positions which are not covered by the retirement systems, such as temporary, nonpermanent positions or independent contractors if the positions are with the same employer from which the person retired. This policy is being adopted to protect the retirement systems and members by placing restrictions of retiree re-employment with the same employer into non-covered positions.

Federal Treasury Regulations require employers and employees to be able to prove the returning retiree actually terminated employment by showing there was no pre-arrangement to return to work prior to the employee's retirement and by showing a period of separation from employment.

In 2016, the IRS and Treasury Department released proposed regulations for different requirements for governmental plans which allow for in-service distributions before retirement and governmental plans which do not. Although the proposed regulations have not been finalized, governmental plan sponsors may rely on them until the issuance of final regulations.

2. Reason for Policy

Failure to follow the requirements under Code Section 401(a)(36) and the proposed normal retirement age regulations regarding in-service distributions raises qualification issues for a plan and potential early distribution tax penalties for the individual.

Importantly for purposes of this Policy, the pension and annuity plans administered by this Division (PERS, TRS and JRS) are qualified, governmental plans. Maintaining the qualified status of each plan is the top priority of the Division and it is of paramount importance to each plan and all their respective members, retirees and beneficiaries. Accordingly, the Division must take all steps necessary to preserve the qualified status of the plans.

The PERS, TRS and JRS do not allow in-service distributions of tax qualified funds (AS 14.25.220(37) (TRS), AS 22.25.010 (JRS) and AS 39.35.370 (PERS)). The Division has conferred with its outside tax counsel, Ice Miller LLP, and confirmed that in order to avoid potential early distribution tax penalties for our members and to avoid a risk of disqualification of our plans, retirees must clearly demonstrate a valid severance from employment with their participating employer so that the retiree does not receive an in-service distribution in violation of the terms of the plans (the IRS refers to the valid severance from employment with the employer as a "bona fide separation from service"). To have a bona fide separation from service, a member cannot retire from service with his/her employer, but also have a prearranged agreement to be rehired by the same employer.

For the past year, the Division has required the member's attestation that there is no pre-arrangement with the employer for the member to return to work after retirement on the retirement application form. The Division does not have to collect evidence to prove compliance or noncompliance, but it does need to have a policy regarding reemployment in compliance with federal law requirements for a qualified, governmental pension plan. Based upon experiences over this time, the Division has determined the plans' current requirement for only a 60-day break in employment is insufficient to ensure retirees only are receiving their retirement benefits after a bona fide separation from service.

Therefore, the purpose of this policy is to establish a required 6-month break in service before a member can return to employment with the same employer. In consultation with its outside counsel, the Division believes that a 6-month break in service requirement for reemployment of a retiree who is receiving retirement benefits from the plans is sufficient to establish that the retiree has had a bona fide separation from service. Once a policy is adopted, the division will work with the Dept. of Law to draft regulations.

3. Scope

The Division has implemented the certification of no pre-arrangement for employment by adding a check box to the retirement applications for retirees to indicate whether there is a pre-arrangement for reemployment with the same employer.

Indication of Pre-arrangement on Application for Retirement

Our proposed action with retirees who are under age 62, who indicate there is a pre-arrangement, will be to contact them and suspend their retirement until the Division is assured both the retiree and his/her employer will actually have a separation.

Re-employment Within Less Than 6 Months.

Retired members under age 59½ who return to employment with the same employer on or after July 1, 2017 with less than a 6-month break will have their 1099-R changed to an early distribution (without a known exception). The member may then have to establish with the IRS that a bona fide separation from service occurred at the time of the member's retirement for the member to avoid an early distribution tax penalty.

Re-employment Within Less Than 6 Months, Evidence of Pre-arrangement

If the Division discovers a pre-arrangement for reemployment with the same employer existed prior to the member’s retirement, this will constitute a sham retirement and the member will be required to repay all retirement benefits received plus interest back to the retirement system.

Re-Employment After 60 days, Age 62 years or Older

Members who are age 62 or older at retirement may return to work with the same employer after 60 days but must show no pre-arrangement to return to work.
(AS 39.35.152; AS 14.25.043)

4. Definitions

Terms specific to this policy

Sham termination	A situation where a member and his/her employer agree to a break in service for the member to commence his/her retirement benefits, but with a pre-arrangement for the member to return to employment with the same employer once retirement benefits have begun.
Same Employer	All branches, departments, divisions and sections with a single employer are under the umbrella of that employer. Reemployment with a different branch, department, division or section is deemed to be reemployment with the same employer.
Early Distribution	Under Code Section 72(t), an early distribution of retirement funds, without satisfying one of the stated exceptions, results in a 10% tax penalty levied by the IRS on the member’s benefit. This is particularly relevant to members who are less than age 59½.

5. Procedures

5.1 Employers	
Notification	Formal notice of the policy adoption will be sent to the manager or superintendent for each employer in the form of a letter with an email to the employer payroll contacts. Advance notice will be sent to larger employers to assist them in communicating the new rules across all branches, departments, divisions or sections.

Education	The Division will partner with all employers to help educate section or department leaders regarding the new policy by hosting Web-Ex meetings, providing information in the employer newsletter and on the Division website.
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5.2 Employees

Notification	A full explanation of the rehire policy requirements will be placed on a flyer that will be attached to each application and marked as important information. The explanation will also be part of the instruction guide in the retirement packet, as well as communicated in seminars, one-on-one counseling, brochures and on the Division web site. A one-time mailing will be sent to all active employees advising them about the rehire rule.
Education	The rehire policy will be communicated in the instruction guide in retirement packets, seminars, one-on-one counseling, brochures and on the Division web site.
Enforcement	If a rehire is detected or reported with the same employer within less than 6 months from the member's retirement and the member is under age 62, the Division will contact the employer and the member for confirmation that no prearrangement existed at the time of termination. Depending on the member's age, the member's 1099-R will be coded as an early distribution (without a known exception) as of the date of retirement. Any member who is contemplating re-employment with his/her same employer in violation of this policy should consult with his/her tax advisor regarding the effect of this enforcement action upon him/her.

6. Forms

Links to any forms needed to meet the policy's requirements. Use of links recommended, however, forms can also be uploaded directly to the policy page, if necessary.

Title	Link
PERS Retirement Application	http://doa.alaska.gov/drb/pers/employee/resources/retirementApplication.html#.WPT29vkrJEY
TRS Retirement Application	http://doa.alaska.gov/drb/trs/employee/resources/retirementApplication.html#.WPT3E_krJEY
JRS Retirement Application	http://doa.alaska.gov/drb/pdf/jrs/JRSRetirementPacket2016.pdf

Return to Work Web site	http://doa.alaska.gov/drb/pers/retiree/plan/workingafterretirement.html#.WPT2ufkrJEY
New letter to employees and employers	Will be developed.

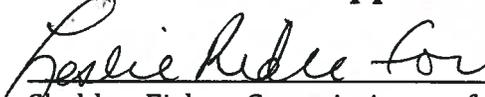
7. Enforcement

After adoption of the policy and promulgation of regulations, members found in violation of this Policy will be reported to the IRS as receiving an in-service distribution.

8. Policy History

Revision Date	Author	Description

9. Authorized Approval



Sheldon Fisher, Commissioner of Administration
Plan Administrator

8.14.17
Date