



Utah Postretirement Employment Restrictions

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HIGHLIGHTS

- Postretirement employment restrictions for public employees are in place in retirement systems in Utah and in the 49 other states.
- A retirement system will be more expensive if it allows retirees to return to work for a covered employer immediately after retirement because it encourages members to retire immediately upon reaching eligibility instead of waiting until the retiree is ready to quit working permanently.
- Current postretirement employment restrictions were included as a key component of the broader 2010 retirement reforms following the great recession of 2008. These reforms were effective at reducing the common practice of employees returning to work after retirement, which is believed to have helped control retirement costs.
- A timeline for Utah postretirement employment restrictions reveals a gradual but consistent reduction in restrictions before 2010 thus encouraging reemployment of retirees by URS covered employers.
- While in general, a reduced level of restrictions will increase costs to state and local government and school districts in higher retirement contributions rates, the Legislature may find justification for change in some instances.

Purpose of Employment Restrictions

Like retirement systems in 49 other states, Utah places limitations on employment (reemployment) for a retiree of the Utah Retirement Systems (URS) if the retiree returns to work for a participating employer of URS. To avoid “double-dipping,” a retiree may not collect a retirement allowance while at the same time:

1. receiving any retirement-related employer contribution; or
2. earning additional service credit.

These restrictions are designed to save overall retirement costs to the Utah State Retirement Investment Fund. A retirement system that assumes that retirees will work up until the time they are ready to quit working permanently is cheaper to fund than a retirement system that assumes that employees will retire immediately upon reaching eligibility and then be allowed to keep working for a URS covered employer.

(a) "Reemployed," "reemploy," or "reemployment" means work or service performed after retirement in exchange for compensation.

(b) Reemployment includes work or service performed on a contract...if the retiree is:

- (i) listed as the contractor; or
- (ii) an owner, partner, or principle of the contractor.

Utah Code Section 49-11-102

“Actuarial Soundness” refers to a rational pattern of funding needed to accumulate sufficient assets in a plan to make pension payments when they come due.

By statute, URS board members are trustees of the IRS Investment Fund, and are specifically required to maintain the fund “on an actuarially sound basis” (see *Utah Code Subsection 49-11-203(1)(g)*). All expenses, including extra expenses to the retirement systems, have to be covered through employer contributions, employee contributions, or higher investment returns.

Less strict postretirement employment restrictions, similar to an enhanced retiree benefits, simply must be funded. A higher level of postretirement employment restrictions help control costs. The legislature decides what level of postretirement employment restrictions are appropriate for URS and must weigh benefits vs. costs of greater or lesser restrictions.

Postemployment Restrictions

Background:

In 2006 and again in 2009, legislative audits recommended stricter postretirement employment restrictions particularly to cover abuses identified with public safety retirees. Current postretirement employment restrictions were included as a key component of the broader 2010 retirement reforms following the great recession of 2008. With URS and employers facing tremendous contribution increases over several years, the reforms did not lower benefits to existing employees with the exception of adding stricter postretirement restrictions. In 2010, S.B. 43, “Post-Retirement Employment Amendments” passed as part of the 2010 retirement reforms and is the basis of Utah’s current restrictions. Utah Code Section 49-11-505 is the primary statute governing postretirement employment.



Separation Requirement:

After retirement, an employee may not work for a URS-covered entity within one year of retirement. After the one-year separation, a retiree who returns to work on a full-time basis may elect to:

1. keep receiving the monthly retirement allowance and forfeit any new retirement contribution (in which case the employer pays an amortization rate¹ to URS); or
2. cancel the allowance and earn additional service credit, if applicable in which case the employer pays retirement contributions to URS, the same as for other employees (a minimum of two-years of service is required for additional service credit to be counted for the retiree).

Except for limited service as described below, if a retiree returns to work with any URS-covered entity before completing the one-year separation requirement, the retirement allowance is canceled as provided in option 2 above.

Limited Service Exception:

A retiree may be reemployed after 60 days of separation after retirement if the retiree does not:

1. receive any employer-paid benefits; and
2. earn, for any calendar year, more than the lesser of: (a) \$15,000; or (b) one-half of the retiree's final average salary, unless the retiree is reemployed as a judge.

If a retiree is reemployed within one year, the one-year separation period restarts on the termination date of the reemployment.

Applicability:

Reemployment restrictions apply to a person who:

1. is a URS retiree; and
2. begins reemployment with a URS-participating employer on or after July 1, 2010.

Reemployment restrictions do not apply to a person who is:

1. a URS retiree but who is employed by any other non-URS covered employer including a private sector employer or the federal government;
2. not a URS retiree;
3. a URS retiree who was reemployed before July 1, 2010, and remains employed with the same employer; (Separate restrictions apply. See Utah Code Section 49-11-504.)
4. an elected official whose position is not full time;
5. a part-time appointed board member who does not receive any remuneration or other benefit; or
6. reemployed as an active senior judge or an active senior justice court judge.

Under a 2014 amendment to the statute, the one-year separation requirement is now considered complete, if the retiree:

1. suffered an injury from external force or violence while performing the duties of employment as a public safety service employee, which injury would have qualified the retiree for total disability if years of service credit are not considered;
2. has less than 30 years of service credit but had sufficient service credit to retire;
3. does not receive any long-term disability benefits; and
4. is reemployed by a different participating employer.

Reporting Requirements:

- A URS-participating employer must notify URS if a retiree is reemployed.
- A URS retiree must notify URS if reemployed by a URS-participating employer

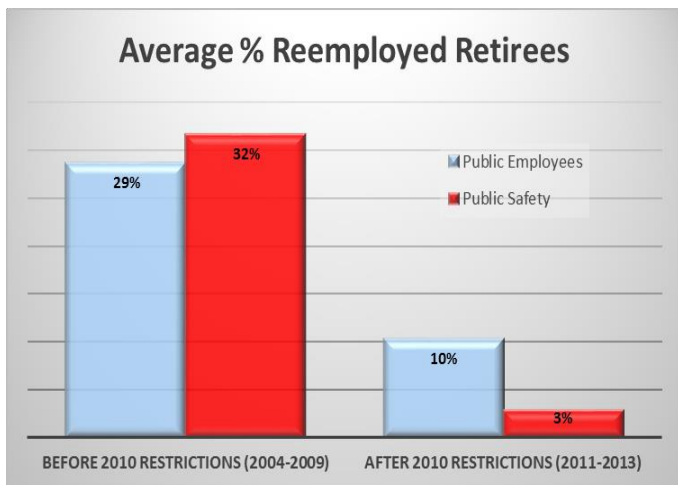
Why Postretirement Restrictions

A postretirement employment restriction is designed to prevent additional costs to the retirement system by discouraging earlier than normal retirement or at least eliminate incentives to retire earlier than normal (i.e., when the retiree is done working). In general, an employee who is eligible to retire will weigh several individual and family factors to determine when to actually begin retirement. Not every employee retires immediately upon reaching eligibility. Actual and projected retirement patterns are included in actuarial assumptions for maintaining the actuarial soundness of the retirement system. Policies that allow or incent eligible employees to retire earlier than they otherwise would, will result in revisions to actuarial assumptions and increase the retirement benefits paid out of the fund, which in turn results in the need for higher contribution rates to fund the retirement systems. The URS Investment Retirement Fund pays out more when employees retire earlier than they otherwise would. Retiring earlier decreases the pay-in period in which contributions are made to the fund on behalf of an employee. Early pay-outs decrease the interest earnings and extends the payout period during which the fund pays a retirement allowance.

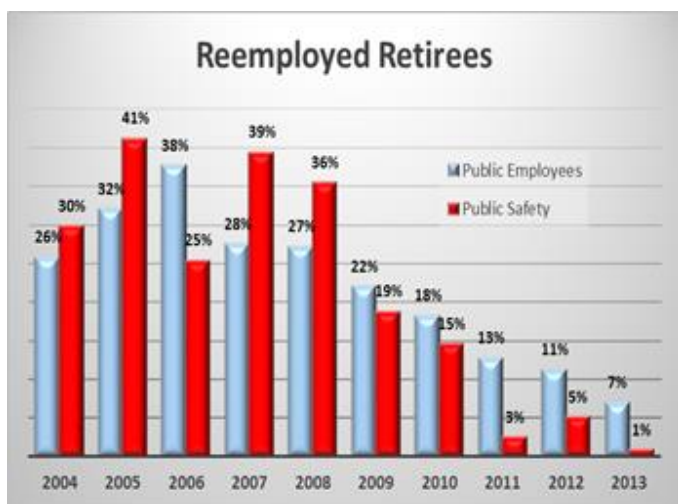
Prevalence of Postretirement Employment

Postretirement restrictions enacted in 2010 have significantly curtailed the number of retirees returning to work for a participating employer. One-in-three retirees returned to work before the reforms and one-in-ten have returned to work since.

Based on data provided by the URS actuary, in the six years leading up to 2010 and before postemployment restrictions were tightened, an average of 29% of the number of retirees each year in the Public Employees Noncontributory System returned to employment (2004-2009). During the same period, 32% of retirees in the Public Safety Systems returned to employment. In the three years subsequent to the 2010 reforms (2011-2013), those numbers were reduced to an average of 10% for public employee retirees and 3% for public safety retirees.



This reduction in postretirement employment was designed as a cost-cutting measure for the retirement systems in response to the 2008 recession.



Costs of Postretirement Employment

In the December 2009 Legislative Audit “A

Performance Audit of Postretirement Re-employment,” an analysis for public employees

“The post-retirement provisions have created costly effects on URS...The result of public employees retiring earlier than they would have, and then receiving their pension while continuing to work in public employment increases benefits for some employees at the expense of the URS system and all members of the system. It is a very expensive benefit for a limited number of employees.” -- Legislative Auditor General, November 2009

concluded: “...an employee who retires at 30 years of service and works postretired for six years receives, and URS has to pay, about \$74,000 more (net present value), than if the employee worked the 36 years before retiring.” The audit also found: “According to URS's actuary, URS incurred an accumulated impact of rehired retirees from 2000 to 2008 to be \$401.3 million due to postretirement reemployment provisions. OLAG auditors estimate that if the current [2009] trend of reemployed retirees continues, URS will incur additional liabilities of at least \$897 million between 2009 and 2018.”

One example analysis provided by the URS actuary at the September 10, 2014, Retirement and Independent Entities Interim Committee meeting illustrated the savings. A public safety employee who is age 50 and eligible to retire but who waits to retire until age 55 will save the retirement system a net present value liability of \$156,468 or 22% compared to the same employee who retires at age 50 but then returns to work.²

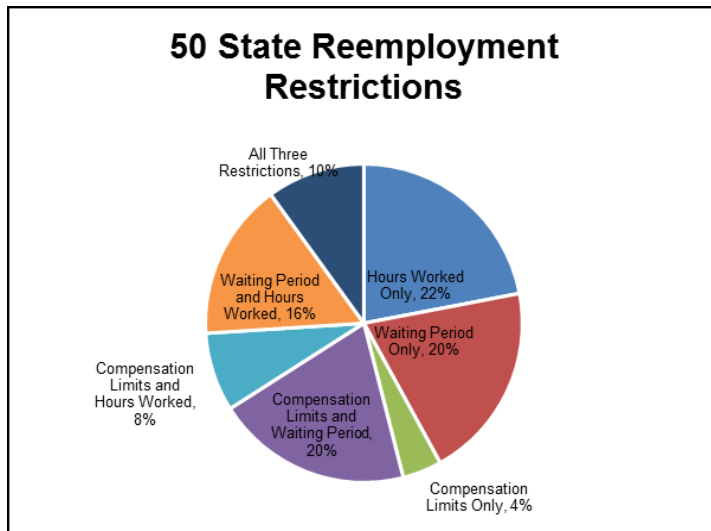
The effect of the 2010 postretirement employment restrictions have not been calculated. However, according to URS, in the actuarial experience study for the five-years ending December 31, 2013³, the actuary noted: “The experience shows that members are continuing to retire at a later age. The change in the working retiree rules in 2010 contributed to the behavior change during the observation period.” What we don't know at this point is how much the postretirement restrictions has saved the retirement

systems. A model and analysis of data from the actuary will be needed to estimate savings information in the future.

Other States' Provisions

According to an NCSL study updated January 2014, retirement systems in all 50 states place limitations on reemployment after retirement for public workers. The restrictions can be placed into three different categories:

1. a waiting period before returning to work after retirement (31 states);
2. a limit on the number of hours a retiree can work after retirement (19 states); and
3. a limit on compensation a reemployed worker can receive (12 states).



Some states like Utah impose all three, others impose a combination of two. Each retirement system in the states have different provisions but each provision is intended to reduce earlier than normal retirement and thus reduce expenses to existing public employee retirement systems.

Timeline for Utah Postretirement Employment Restrictions

Between 1999 and 2014, the Legislature passed 10 substantive changes to postretirement employment

restrictions. In the years leading up to the 2010 reforms, the changes reduced the restrictions. Since 2010, when significantly stricter postretirement employment provisions were put in place, the changes have also reduced the restrictions but to a lesser extent than in the pre-2010 years. The substantive changes include:

- 1999—H.B. 365, Public Safety Retirement Exceptions—Allows an elected sheriff in the Public Safety Noncontributory System to retire, receive a pension, and continue in the elected position.
- 2000—H.B. 272, Retirement Office Amendments—Requires an employer to contribute the same percentage of the member's salary to a defined contribution plan if a member may not accrue additional service credit as a reemployed retiree.
- 2001—H.B. 36, Retirement Office Amendments—Requires an employer to contribute the same percentage of the member's salary to a defined contribution plan if the employer does not participate in the defined contribution plan administered by the board.
- 2001—S.B. 85, Public Safety Retirement Exception—Allows an elected sheriff in the Public Safety Contributory System to retire, receive a pension, and continue in the elected position.
- 2002—H.B. 230, Retirement of Public Safety Officials—Allows an appointed chief of police in the Public Safety Retirement System to retire, receive a pension, and continue in the elected or appointed position.
- 2005—H.B. 217, Public Safety Retirement, Exemption of Certain Employees—Allows an eligible Commissioner of Public Safety in the Public Safety Contributory or Noncontributory Retirement System to retire, receive a pension, and continue in the appointed position.



- 2010—*S.B. 43, Post-retirement Employment Amendments
 - Prevents the Commissioner of Public Safety, an elected or appointed sheriff, or a chief of police from retiring in place on or after July 1, 2010 (see 1999, 2000, 2001, 2002, and 2005).
 - Repeals a requirement that a participating employer who hires a retiree contribute the same percentage of the member's salary to a defined contribution plan (see 2001).
 - Establishes framework for current postretirement restrictions including:
 - A one-year separation requirement; and
 - Prohibiting a retiree from collecting an allowance while at the same time receiving any retirement related employer contribution or earning additional service credit.
- 2011—S.B. 127, Post Retirement Employment Amendments—Allows a retiree who begins reemployment on or after July 1, 2010, to be reemployed within one year if the retiree is not reemployed for at least 60 days, the retiree does not receive any employer paid benefits, and does not earn more than a certain amount.
- 2013—S.B. 10, Retirement Eligibility Amendments—Provides that a member who is retiring and who is an elected official does not have to leave the elected office to retire, and provides that a member who is retiring and is a member of a part-time board does not have to leave the board to retire.
- 2014—H.B. 126, Retirement Amendments—Allows a reemployed public safety service retiree to be considered as having completed the one-year separation if the retiree suffered an injury, that resulted in the retiree's inability to perform the duties of employment. Exempts an active senior justice court judge and a part-time appointed board member from postretirement employment restrictions.

Arguments Against Postretirement Restrictions

Despite opposition from some groups, the 2010 reforms tighten postretirement employment restrictions in Utah. However, members of the Retirement and Independent Entities Committee and other legislators continue to hear arguments against the restrictions. Although reducing postretirement restrictions has costs, reasonable policy arguments exist to pay the extra costs and reduce restrictions in some circumstances. Arguments have included:

- once eligible to retire, a retiree should be able to retire without regard for what the retiree does next (however, it will cost more to provide this level of freedom to the retirees who take advantage of it);
- as long as there are no sweetheart deals within and among agencies, the state and local governments should take advantage of the retirees loyalties, expertise, and experience that are needed and should be used within the state. And any expense to the retirement system to make that work is money well spent;
- a little part-time work for a URS covered employer will not result in any significant costs to the retirement system;
- public safety officer and firefighter are young persons' professions—as a result these highly trained professionals are retirement eligible after just 20 years (25 years for Tier II) and retirees will be forced to find a second career (an encore career) – shouldn't the state be more accommodating to those who have put their life on the line over their best working years?
- out-of-state retirees have no such reemployment restrictions and they should not have an advantage over in-state retirees; and
- a retiree must compete for any job like everyone else in order to be reemployed and thus double dip.

Conclusion

In the last several years, no other Utah retirement issue has had more interest than postretirement reemployment. Since the 2010 reforms, legislators have received a constant flow of stories from constituents about how Utah's postretirement restrictions have adversely affected their plans to retire and continue working. Indications are that the 2010 reforms are effective at reducing the common practice of employees returning to work after retirement, which in turn has helped control retirement costs.

In the final analysis, the legislature must decide whether and when to change the current level of postretirement reemployment restrictions. While a reduced level of restrictions will increase costs to state and local government and school districts (and ultimately taxpayers) by inducing higher retirement contributions rates, the Legislature may find justification for change in some instances. However, when incentives to retire earlier than normal exist, the resulting additional expense of funding the retirement system should not be a surprise given the data provided in the sections above.

¹ "Amortization rate" means the board certified percent of salary required to amortize the unfunded actuarial accrued liability in accordance with policies established by the board upon the advice of the actuary. (Utah Code Section 49-11-102)

² This example is based on data provided by the URS actuary assuming a police chief or sheriff with a salary of \$109,457 at 20 years, annual salary increases of 3.5%, a 2.5% COLA during retirement, a 7.5% present value interest rate, receiving a retirement allowance until age 85, and a normal cost rate of 21.17% for Public Safety Noncontributory Division A.

³ Utah Retirement Systems, Actuarial Experience Study for the five-year period ending Dec. 31, 2013, Gabriel Roeder Smith & Company, Consultants & Actuaries p. 5