

1 **POSTRETIREMENT EMPLOYMENT RESTRICTIONS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Rich Cunningham**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Utah State Retirement and Insurance Benefit Act by amending
10 postretirement reemployment provisions.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ allows a retiree to be reemployed with a participating employer after a certain
14 period from the retiree's retirement date if the retiree:

15 • does not receive certain employer provided retirement benefits for the
16 reemployment; and

17 • is reemployed by a different agency;

18 ▶ requires a participating employer to pay the contribution rate for a reemployed
19 retiree in certain circumstances; and

20 ▶ makes technical changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **49-11-505**, as last amended by Laws of Utah 2015, Chapters 243 and 256



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Be it enacted by the Legislature of the state of Utah:

Section 1. Section **49-11-505** is amended to read:

49-11-505. Reemployment of a retiree -- Restrictions -- Penalties.

(1) (a) For purposes of this section, "retiree":

(i) means a person who:

(A) retired from a participating employer; and

(B) begins reemployment on or after July 1, 2010, with a participating employer;

(ii) does not include a person:

(A) who was reemployed by a participating employer before July 1, 2010; and

(B) whose participating employer that reemployed the person under Subsection

(1)(a)(ii)(A) was dissolved, consolidated, merged, or structurally changed in accordance with Section **49-11-621** after July 1, 2010; and

(iii) does not include a person who is reemployed as an active senior judge or an active senior justice court judge as described by Utah State Court Rules, appointed to hear cases by the Utah Supreme Court in accordance with Article VIII, Section 4, Utah Constitution.

(b) (i) This section does not apply to employment as an elected official if the elected official's position is not full time as certified by the participating employer.

(ii) The provisions of this section apply to an elected official whose elected position is full time as certified by the participating employer.

(c) (i) This section does not apply to employment as a part-time appointed board member who does not receive any remuneration, stipend, or other benefit for the part-time appointed board member's service.

(ii) For purposes of this Subsection (1)(c), remuneration, stipend, or other benefit does not include receipt of per diem and travel expenses up to the amounts established by the Division of Finance in:

(A) Section **63A-3-106**;

(B) Section **63A-3-107**; and

(C) rules made by the Division of Finance according to Sections **63A-3-106** and **63A-3-107**.

(d) (i) For purposes of this Subsection (1)(d), "affiliated emergency services worker"

59 means a person who:

60 (A) is employed by a participating employer [~~and who~~];

61 (B) performs emergency services for another participating employer that is a different
62 agency [~~in which the person~~];

63 [~~(A)~~] (C) [~~has been~~] is trained in techniques and skills required for the service the
64 person provides to the participating employer;

65 [~~(B)~~] (D) continues to receive regular training required for the service;

66 [~~(C)~~] (E) is on the rolls as a trained affiliated emergency services worker of the
67 participating employer; and

68 [~~(D)~~] (F) provides ongoing service for a participating employer, which service may
69 include service as a volunteer firefighter, reserve law enforcement officer, search and rescue
70 personnel, emergency medical technician, ambulance personnel, park ranger, or public utilities
71 worker.

72 (ii) A person who performs work or service but does not meet the requirements of
73 Subsection (1)(d)(i) is not an affiliated emergency services worker for purposes of this
74 Subsection (1)(d).

75 (iii) The office may not cancel the retirement allowance of a retiree who is employed as
76 an affiliated emergency services worker within one year of the retiree's retirement date if the
77 affiliated emergency services worker does not receive any compensation, except for:

78 (A) a nominal fee, stipend, discount, tax credit, voucher, or other fixed sum of money
79 or cash equivalent payment not tied to productivity and paid periodically for services;

80 (B) a length-of-service award;

81 (C) insurance policy premiums paid by the participating employer in the event of death
82 of an affiliated emergency services worker or a line-of-duty accidental death or disability; or

83 (D) reimbursement of expenses incurred in the performance of duties.

84 (iv) For purposes of Subsections (1)(d)(iii)(A) and (B), the total amount of any
85 discounts, tax credits, vouchers, and payments to a volunteer may not exceed \$500 per month.

86 (v) Beginning January 1, 2016, the board shall adjust the amount under Subsection
87 (1)(d)(iv) by the annual change in the Consumer Price Index during the previous calendar year
88 as measured by a United States Bureau of Labor Statistics Consumer Price Index average as
89 determined by the board.

90 (vi) The office shall cancel the retirement allowance of a retiree for the remainder of
91 the calendar year if employment as an affiliated emergency services worker with a participating
92 employer exceeds the limitation under Subsection (1)(d)(iv).

93 (vii) If a retiree is employed as an affiliated emergency services worker under the
94 provisions of Subsection (1)(d), the termination date of the employment as an affiliated
95 emergency services worker, as confirmed in writing by the participating employer, is
96 considered the retiree's retirement date for the purpose of calculating the separation
97 requirement under Subsection (3)(a).

98 (2) A retiree may not for the same period of reemployment:

99 (a) (i) earn additional service credit; or

100 (ii) receive any retirement related contribution from a participating employer; and

101 (b) receive a retirement allowance.

102 (3) (a) Except as provided under Subsection (1)(d), (3)(b)₂, or (10), the office shall
103 cancel the retirement allowance of a retiree if the reemployment with a participating employer
104 begins within one year of the retiree's retirement date.

105 ~~[(b) The office may not cancel the retirement allowance of a retiree who is reemployed
106 with a participating employer within one year of the retiree's retirement date if:]~~

107 ~~[(i) the retiree is not reemployed by a participating employer for a period of at least 60
108 days from the retiree's retirement date;]~~

109 ~~[(ii) upon reemployment after the break in service under Subsection (3)(b)(i), the
110 retiree does not receive any employer provided benefits, including:]~~

111 ~~[(A) medical benefits;]~~

112 ~~[(B) dental benefits;]~~

113 ~~[(C) other insurance benefits except for workers' compensation as provided under Title
114 34A, Chapter 2, Workers' Compensation Act, and withholdings required by federal or state law
115 for Social Security, Medicare, and unemployment insurance; or]~~

116 ~~[(D) paid time off, including sick, annual, or other type of leave; and]~~

117 ~~[(iii) (A) the retiree does not earn in any calendar year of reemployment an amount in
118 excess of the lesser of \$15,000 or one-half of the retiree's final average salary upon which the
119 retiree's retirement allowance is based; or]~~

120 ~~[(B) the retiree is reemployed as a judge as defined under Section [78A-11-102](#).]~~

121 ~~[(c) Beginning January 1, 2013, the board shall adjust the amounts under Subsection~~
122 ~~(3)(b)(iii)(A) by the annual change in the Consumer Price Index during the previous calendar~~
123 ~~year as measured by a United States Bureau of Labor Statistics Consumer Price Index average~~
124 ~~as determined by the board.]~~

125 (b) The office may not cancel the retirement allowance of a retiree who is reemployed
126 with a participating employer within one year of the retiree's retirement date if:

127 (i) the retiree:

128 (A) is not reemployed by a participating employer for a period of at least 60 days from
129 the retiree's retirement date;

130 (B) is reemployed by a different agency; and

131 (C) does not receive any employer paid retirement service credit or retirement related
132 contributions from the participating employer; and

133 (ii) the participating employer pays the certified contribution rate to the office as if the
134 retiree's reemployed position were considered to be an eligible, full-time position within that
135 system but the retiree does not earn additional service credit or receive a retirement related
136 contribution.

137 (c) Any contribution paid to the office under Subsection (3)(b)(ii) shall be applied to
138 the system that would have covered the retiree if the retiree's reemployed position were
139 considered to be an eligible, full-time position within that system.

140 ~~[(d) The office shall cancel the retirement allowance of a retiree for the remainder of~~
141 ~~the calendar year if the reemployment with a participating employer exceeds the limitation~~
142 ~~under Subsection (3)(b)(iii)(A).]~~

143 ~~[(e)]~~ (d) If a retiree is reemployed under the provisions of Subsection (3)(b)[;] the
144 termination date of the reemployment, as confirmed in writing by the participating employer, is
145 considered the retiree's retirement date for the purpose of calculating the separation
146 requirement under Subsection (3)(a).

147 ~~[(f) If a retiree received a retirement allowance in error, due to reemployment in~~
148 ~~violation of this section:]~~

149 ~~[(i) the office shall cancel the retiree's retirement allowance; and]~~

150 ~~[(ii) if the retiree applies for a future benefit, the office shall recover any overpayment~~
151 ~~in accordance with the provisions of Section 49-11-607.]~~

152 (4) If a reemployed retiree has completed the one-year separation from employment
153 with a participating employer required under Subsection (3)(a), the retiree may elect to:

154 (a) earn additional service credit in accordance with this title and cancel the retiree's
155 retirement allowance; or

156 (b) continue to receive the retiree's retirement allowance and forfeit any retirement
157 related contribution from the participating employer who reemployed the retiree.

158 (5) (a) As used in this Subsection (5), "amortization rate" means the amortization rate,
159 as defined in Section 49-11-102, to be applied to the system that would have covered the retiree
160 if the retiree's reemployed position were deemed to be an eligible, full-time position within that
161 system.

162 (b) A participating employer who reemploys a retiree shall contribute to the office the
163 amortization rate if the reemployed retiree:

164 (i) has completed the one-year separation from employment with a participating
165 employer required under Subsection (3)(a); and

166 (ii) makes an election under Subsection (4)(b) to continue to receive a retirement
167 allowance while reemployed.

168 (6) (a) A participating employer shall immediately notify the office:

169 (i) if the participating employer reemploys a retiree;

170 (ii) whether the reemployment is subject to Subsection (3)(b) or (4) of this section; and

171 (iii) of any election by the retiree under Subsection (4).

172 (b) A participating employer shall certify to the office whether the position of an
173 elected official is or is not full time.

174 (c) A participating employer is liable to the office for a payment or failure to make a
175 payment in violation of this section.

176 (d) If a participating employer fails to notify the office in accordance with this section,
177 the participating employer is immediately subject to a compliance audit by the office.

178 (7) (a) The office shall immediately cancel the retirement allowance of a retiree in
179 accordance with Subsection (7)(b) if the office receives notice or learns of:

180 (i) the reemployment of a retiree in violation of Subsection (1)(d) or (3); or

181 (ii) the election of a reemployed retiree under Subsection (4)(a).

182 (b) If the retiree is eligible for retirement coverage in the reemployed position, the

183 office shall cancel the allowance of a retiree who is subject to Subsection (7)(a), and reinstate
184 the retiree to active member status on the first day of the month following the date of:

185 (i) reemployment if the retiree is subject to Subsection (3); or

186 (ii) an election by an employee under Subsection (4)(a).

187 (c) If the retiree is not otherwise eligible for retirement coverage in the reemployed
188 position:

189 (i) the office shall cancel the allowance of a retiree subject to Subsection (7)(a)(i); and

190 (ii) except as provided under Subsection (5)(c), the participating employer shall pay the
191 amortization rate to the office on behalf of the retiree.

192 (8) (a) [~~A~~] For a retiree subject to Subsection (7)(b) who retires within two years from
193 the date of reemployment, the office:

194 (i) [~~is not entitled to a recalculated~~] may not recalculate a retirement benefit for the
195 retiree; and

196 (ii) [~~will~~] shall resume the allowance that was being paid to the retiree at the time of
197 the cancellation.

198 (b) Subject to Subsection (2), for a retiree who is reinstated to active membership
199 under Subsection (7) and who retires two or more years after the date of reinstatement to active
200 membership, the office shall:

201 (i) resume [~~receiving~~] the allowance that was being paid at the time of cancellation;
202 and

203 (ii) [~~receive~~] calculate an additional allowance for the retiree based on the formula in
204 effect at the date of the subsequent retirement for all service credit accrued between the first
205 and subsequent retirement dates.

206 (9) (a) A retiree subject to this section shall report to the office the status of the
207 reemployment under Subsection (3) or (4).

208 (b) If the retiree fails to inform the office of an election under Subsection (4), the office
209 shall withhold one month's benefit for each month the retiree fails to inform the office under
210 Subsection (9)(a).

211 (10) A retiree shall be considered as having completed the one-year separation from
212 employment with a participating employer required under Subsection (3)(a), if the retiree:

213 (a) before retiring:

214 (i) was employed with a participating employer as a public safety service employee as
215 defined in Section 49-14-102, 49-15-102, or 49-23-102;

216 (ii) and during the employment under Subsection (10)(a)(i), suffered a physical injury
217 resulting from external force or violence while performing the duties of the employment, and
218 for which injury the retiree would have been approved for total disability in accordance with
219 the provisions under Title 49, Chapter 21, Public Employees' Long-Term Disability Act, if
220 years of service are not considered;

221 (iii) had less than 30 years of service credit but had sufficient service credit to retire,
222 with an unreduced allowance making the public safety service employee ineligible for
223 long-term disability payments under Title 49, Chapter 21, Public Employees' Long-Term
224 Disability Act, or a substantially similar long-term disability program; and

225 (iv) does not receive any long-term disability benefits from any participating employer;
226 and

227 (b) is reemployed by a different participating employer.

228 (11) If a retiree received a retirement allowance in error, due to reemployment in
229 violation of this section:

230 (a) the office shall cancel the retiree's retirement allowance;

231 (b) if the retiree applies for a future benefit, the office shall recover any overpayment in
232 accordance with the provisions of Section 49-11-607; and

233 (c) if a retiree or participating employer failed to report reemployment in violation of
234 this section, the retiree, participating employer, or both that are found to be responsible for the
235 failure to report are liable to the office for the amount of any overpayment resulting from the
236 violation.

237 [~~(11)~~] (12) The board may make rules to implement this section.

Legislative Review Note
Office of Legislative Research and General Counsel