

Summary of Items in Draft Legislation, “Utah Retirement Systems Amendments”

9/11/2020

- This draft bill represents the administrative and technical amendments to Title 49 recommended annually to the Legislature by the Utah Retirement Systems (URS).
- These changes are not substantive benefit modifications nor is it anticipated that the bill will have any fiscal impact.
- In recognition of the nature of these changes, the bill has an effective date of July 1, 2021.
- After presentation, URS requests a favorable vote for this legislation to be a recommended committee bill for the 2021 General Session.

Key changes include:

1. Service credit and contributions.

- Clarifies that an employee does not receive service credit until required contributions are paid to URS.
- Section 49-11-401 (*Lines 63-64*):
“(ii) the person may not receive service credit for a term of employment until all required contributions related to that service credit have been paid to the office.”
- Current law conditions service credit upon payment of required contributions. This clarification is added to remove all doubt about the condition.

2. Fraud and criminal offenses relating to benefit payments.

- Provides that additional acts relating to unlawfully obtaining or appropriating benefit payments are criminal violations. These include theft of lost, mislaid, or mistakenly delivered property and wrongful appropriation.
- Section 49-11-608 (*Lines 107-112*):
“(3) A person who obtains a benefit payment, including a direct deposit or electronic benefit payment, to which that person is not entitled and who fails to take reasonable measures to return the benefit payment to the office is in violation of Section 76-6-407. (4) A person who appropriates property or a benefit of another person, including a direct deposit or electronic benefit payment, by obtaining or exercising unauthorized control over the property or the benefit is in violation of Section 76-6-404.5.”
- Current Subsection 49-11-608(2) provides that it is a violation when “A person cashing a benefit check to which that person is not entitled.” Since electronic deposits are typically made today instead of paper checks, this new language provides additional criminal offenses against property that may occur with benefit administration.

3. Appeal procedures.

- Amends the procedures for making an appeal related to a benefit, right, obligation, or employment right.
- Sections 49-11-613 and 49-11-613.5 (*Lines 117-186*). The key provisions are in Lines 163-175:

“(7) (a) A party aggrieved by the board's final decision under Subsection (6) may obtain judicial review by complying with the procedures and requirements of:
(i) this title;
(ii) rules adopted by the board in accordance with Subsection (9); and
(iii) Title 63G, Chapter 4, Administrative Procedures Act, except as specifically modified under this title or the rules adopted by the board in accordance with Subsection (9).

(8) The program shall provide an appeals process for medical claims that complies with federal law.

(9) (a) The board [~~may~~] shall make rules to implement this section and to establish procedures and requirements for adjudicative proceedings.
(b) The rules shall be substantially similar to or incorporate provisions of the Utah Rules of Civil Procedure, the Utah Rules of Evidence, and Title 63G, Chapter 4, Administrative Procedures Act.”
- These changes update the statutory provisions and require the Utah State Retirement Board to make rules to establish procedures and requirements for adjudicative proceedings. The rules must be substantially similar to or incorporate provisions of the Utah Rules of Civil Procedure, the Utah Rules of Evidence, and Title 63G, Chapter 4, Administrative Procedures Act.

4. Age restrictions for certain in-service distributions.

- Imposes minimum age requirements on certain retirees who will receive in-service defined benefit retirement distributions.
- Section 49-11-1205 and 49-11-1303 (*Lines 255, 273-278, and 325-329*). For example, Lines 273-278:

“(d) A retiree is eligible for an exemption from the requirement to cease service without cancellation of a retirement allowance under this Subsection (3) only if the retiree, at the time of retirement, is at least:
(i) 50 years old, if the retiree is retiring from a public safety system or a firefighter system; or
(ii) 55 years old.”
- These age restrictions conform with the federal guidance safe harbor ages for in-service distributions and help ensure system and plan compliance with federal law.

5. Forfeiture of retirement benefits for employment-related felony convictions.

- Clarifies that a person is still convicted of an employment related offense if the person pleads guilty, even if a charge is reduced or dismissed under a plea agreement.
- Section 49-11-1401 (*Line 391*):
“(a) "Convicted" means a conviction by plea or by verdict, including a plea of guilty or a plea of no contest that is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, regardless of whether the charge was, or is, subsequently reduced in accordance with the plea agreement or reduced or dismissed in accordance with the plea agreement or the plea in abeyance agreement.”
- This change clarifies that reduced charges in accordance with all plea or plea in abeyance agreements may be considered as convictions.

6. New participating employers' purchases of employee service prior to admission.

- Amends certain provisions that govern a participating employer's purchase of service credit on behalf of an employee for years of service provided before the participating employer's admission to URS.
- Sections 49-12-202, 49-13-202, 49-15-202, and 49-23-202. For example, Lines 511-518):
“(5) (a) If a participating employer purchases service credit on behalf of a regular full-time ~~employees~~ employee for service rendered prior to the participating employer's admission to this system, the participating employer shall:
(i) purchase service credit [shall be purchased] in a nondiscriminatory manner on behalf of all current and former regular full-time employees who were eligible for service credit at the time service was rendered[-]; and
(ii) comply with the provisions of Section 49-11-403, except for the requirement described in Subsection 49-11-403(2)(a).”
- Purchase requirements currently exist for different retirement systems and plans. The update is being made in several chapters to make these requirements uniform and consistent across all systems and plans and to expressly incorporate the purchase rules under Section 49-11-403 in chapters that don't currently have that reference.

7. Justice Court Judges with multiple employers.

- Amends the process for establishing the service status of justice court judges with multiple employers.
- Sections 49-12-406 and 49-13-406. For example, Lines 543-552 and 560-563:
“(3)(a) A justice court judge who has service with more than one participating employer shall be considered full-time by the office for a period of service in which the

judge

is certified as full-time by:

(i) a participating employer; [or]

(ii) a group of participating employers where the judge's part-time work for each employer, when aggregated, amounts to full-time service; or

~~[(ii)]~~ (iii) the Administrative Office of the Courts beginning on or after January 1, 2009, based on the judge's aggregate caseload of the multiple employers as determined by the judge's caseloads of the individual courts of each employer in accordance with Subsection 78A-7-206(1)(b)(ii).

...

(d) If there is a dispute between the office and a participating employer, a group of participating employers, or a justice court judge over whether service is full-time or part-time for any employment period, the disputed service shall be submitted by the office to the Administrative Office of the Courts for determination."

- URS is currently required to determine if a justice court judge's service is part-time or full-time to compute retirement benefits. This change follows up on 2015 and 2019 legislation to add that in cases of employment with a group of participating employers if there is a dispute over whether a justice court judge's service is full-time or part-time for any employment period, the disputed service shall be submitted to the Administrative Office of the Courts for determination.
- URS and the Administrative Office of the Courts have agreed to this change.

8. Makes technical and conforming changes.