

Effective 5/10/2016

Part 12
Postretirement Reemployment Restrictions Act

49-11-1201 Title.

This part is known as the "Postretirement Reemployment Restrictions Act."

Enacted by Chapter 310, 2016 General Session

49-11-1202 Definitions.

As used in this part:

- (1)
 - (a) "Affiliated emergency services worker" means a person who:
 - (i) is employed by a participating employer;
 - (ii) performs emergency services for another participating employer that is a different agency;
 - (iii) is trained in techniques and skills required for the emergency service;
 - (iv) continues to receive regular training required for the service;
 - (v) is on the rolls as a trained affiliated emergency services worker of the participating employer; and
 - (vi) provides ongoing service for a participating employer, which service may include service as a volunteer firefighter, reserve law enforcement officer, search and rescue worker, emergency medical technician, ambulance worker, park ranger, or public utilities worker.
 - (b) "Affiliated emergency services worker" does not include a person who performs work or service but does not meet the requirements of Subsection (1)(a).
- (2) "Amortization rate" means the amortization rate, as defined in Section 49-11-102, to be applied to the system that would have covered the retiree if the retiree's reemployed position were deemed to be an eligible, full-time position within that system.
- (3) "Part-time appointed or elected board member" means an individual who:
 - (a) serves in a position:
 - (i) as a member of a board, commission, council, committee, panel, or other body of a participating employer; and
 - (ii) that is designated in the participating employer's governing statute, charter, creation document, or similar document;
 - (b) is appointed or elected to the position for a definite and fixed term of office by official and duly recorded action of the participating employer;
 - (c) except for the service in the position, does not perform other work or service for compensation for the participating employer, whether as an employee or under a contract; and
 - (d) retires from a participating employer that is different than the participating employer with the position in which the person serves.
- (4)
 - (a) "Reemployed," "reemploy," or "reemployment" means work or service performed for a participating employer after retirement, in exchange for compensation.
 - (b) Reemployment includes work or service performed on a contract for a participating employer if the retiree is:
 - (i) listed as the contractor; or
 - (ii) an owner, partner, or principal of the contractor.
- (5) "Retiree":

- (a) means a person who:
 - (i) retired from a participating employer; and
 - (ii) begins reemployment on or after July 1, 2010, with a participating employer; and
- (b) does not include a person:
 - (i)
 - (A) who was reemployed by a participating employer before July 1, 2010; and
 - (B) whose participating employer that reemployed the person under Subsection (5)(b)(i)(A) was dissolved, consolidated, merged, or structurally changed in accordance with Section 49-11-621 on or after July 1, 2010; or
 - (ii) who is working under a phased retirement agreement in accordance with Title 49, Chapter 11, Part 13, Phased Retirement.

Amended by Chapter 449, 2020 General Session

49-11-1203 Applicability.

- (1)
 - (a) This part 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.
 - (b) The provisions of this part apply to an elected official whose elected position is full time as certified by the participating employer.
- (2)
 - (a) This part 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.
 - (b) For purposes of this Subsection (2), 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:
 - (i) Section 63A-3-106;
 - (ii) Section 63A-3-107; and
 - (iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.
- (3) This part does not apply to 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.
- (4) An exemption under this section from the provisions of this part is available only for a member who, at the time of retirement, is at least:
 - (a) 50 years old, if the member is retiring from a public safety system or firefighter retirement system; or
 - (b) 55 years old.

Amended by Chapter 449, 2020 General Session

49-11-1204 General restrictions -- Election following one-year separation -- Amortization rate.

- (1) A retiree may not for the same period of reemployment:
 - (a)
 - (i) earn additional service credit; or
 - (ii) receive any retirement related contribution from a participating employer; and
 - (b) receive a retirement allowance.

- (2)
 - (a) Except as provided under Section 49-11-1205, the office shall cancel the retirement allowance of a retiree if the reemployment with a participating employer begins within one year of the retiree's retirement date.
 - (b) If the office cancels the retiree's retirement allowance under Subsection (2)(a), the retiree may be eligible to earn additional service credit in the reemployed position and receive an allowance in accordance with Subsections (4)(a) and (5) and other provisions of this title.
- (3) If a reemployed retiree, in accordance with Subsection (2)(a), is exempt from having the allowance cancelled, including for completing the one-year separation from employment with a participating employer, the retiree may elect to:
 - (a) cancel the retiree's retirement allowance and instead earn additional service credit in the reemployed position and receive an allowance in accordance with Subsections (4)(a) and (5) and other provisions of this title; or
 - (b) continue to receive the retiree's retirement allowance, forfeit earning additional service credit, and forfeit any retirement-related contribution from the participating employer that reemployed the retiree.
- (4)
 - (a) If a retiree's retirement allowance is cancelled and the retiree is eligible for retirement coverage in a reemployed position, the office shall reinstate the retiree to active member status on the first day of the month following the date of the employee's eligible reemployment.
 - (b) Except as provided under Subsection (4)(c), if the retiree is not otherwise eligible for retirement coverage in the reemployed position, the participating employer that reemploys the retiree shall contribute the amortization rate to the office on behalf of the retiree.
 - (c) A participating employer that reemploys a retiree in accordance with Subsection 49-11-1205(1) is not required to contribute the amortization rate to the office.
- (5)
 - (a) For a retiree reinstated to active member status under Subsection (4)(a) who retires within two years from the date of reemployment, the office:
 - (i) may not recalculate a retirement benefit for the retiree; and
 - (ii) shall resume the allowance that was being paid to the retiree at the time of the cancellation.
 - (b) Subject to Subsection (1), for a retiree who is reinstated to active membership under Subsection (4)(a) and retires two or more years after the date of reinstatement to active membership, the office shall:
 - (i) resume the allowance that was being paid at the time of cancellation; and
 - (ii) calculate an additional allowance for the retiree based on the formula in effect at the date of the subsequent retirement for all service credit accrued between the first and subsequent retirement dates.

Amended by Chapter 24, 2020 General Session

49-11-1205 Postretirement reemployment restriction exceptions.

- (1)
 - (a) The office may not cancel the retirement allowance of a retiree who is reemployed with a participating employer within one year of the retiree's retirement date if:
 - (i) the retiree is not reemployed by a participating employer for a period of at least 60 days from the retiree's retirement date;

- (ii) upon reemployment after the break in service under Subsection (1)(a)(i), the retiree does not receive any employer paid benefits, including:
 - (A) retirement service credit or retirement-related contributions;
 - (B) medical benefits;
 - (C) dental benefits;
 - (D) other insurance benefits except for workers' compensation as provided under Title 34A, Chapter 2, Workers' Compensation Act, Title 34A, Chapter 3, Utah Occupational Disease Act, and withholdings required by federal or state law for social security, Medicare, and unemployment insurance; or
 - (E) paid time off, including sick, annual, or other type of leave; and
- (iii)
 - (A) the retiree does not earn in any calendar year of reemployment an amount in excess of the lesser of \$15,000 or one-half of the retiree's final average salary upon which the retiree's retirement allowance is based; or
 - (B) the retiree is reemployed as a judge as defined under Section 78A-11-102.
- (b) The board shall adjust the amounts under Subsection (1)(a)(iii) by the annual change in the Consumer Price Index during the previous calendar year as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
- (2) A retiree shall be considered as having completed the one-year separation from employment with a participating employer required under Section 49-11-1204, if the retiree:
 - (a) before retiring:
 - (i) was employed with a participating employer as a public safety service employee as defined in Section 49-14-102, 49-15-102, or 49-23-102;
 - (ii) during the employment under Subsection (2)(a)(i), suffered a physical injury resulting from external force or violence while performing the duties of the employment, for which injury the retiree would have been approved for total disability in accordance with the provisions under Chapter 21, Public Employees' Long-Term Disability Act, if years of service are not considered;
 - (iii) had less than 30 years of service credit but had sufficient service credit to retire, with an unreduced allowance making the public safety service employee ineligible for long-term disability payments under Chapter 21, Public Employees' Long-Term Disability Act, or a substantially similar long-term disability program;
 - (iv) does not receive any long-term disability benefits from any participating employer; and
 - (v) is at least 50 years old; and
 - (b) is reemployed by a different participating employer.
- (3)
 - (a) The office may not cancel the retirement allowance of a retiree who is employed as an affiliated emergency services worker within one year of the retiree's retirement date if the affiliated emergency services worker does not receive any compensation, except for:
 - (i) a nominal fee, stipend, discount, tax credit, voucher, or other fixed sum of money or cash equivalent payment not tied to productivity and paid periodically for services;
 - (ii) a length-of-service award;
 - (iii) insurance policy premiums paid by the participating employer in the event of death of an affiliated emergency services worker or a line-of-duty accidental death or disability; or
 - (iv) reimbursement of expenses incurred in the performance of duties.
 - (b) For purposes of Subsections (3)(a)(i) and (ii), the total amount of any discounts, tax credits, vouchers, and payments to an affiliated emergency services worker may not exceed \$500 per month.

- (c) The board shall adjust the amount under Subsection (3)(b) by the annual change in the Consumer Price Index during the previous calendar year as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
- (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.
- (4)
 - (a) The office may not cancel the retirement allowance of a retiree employed as a part-time appointed or elected board member within one year after the retiree's retirement date if the part-time appointed or elected board member does not receive any compensation exceeding the amount described in this Subsection (4).
 - (b) A retiree who is a part-time appointed or elected board member for one or more boards, commissions, councils, committees, panels, or other bodies of participating employers:
 - (i) may receive an aggregate amount of compensation, remuneration, a stipend, or other benefit for service on a single or multiple boards, commissions, councils, committees, panels, or other bodies of no more than \$5,000 per year; and
 - (ii) may not receive an employer paid retirement service credit or retirement-related contribution.
 - (c) For purposes of Subsection (4)(b)(i):
 - (i) a part-time appointed or elected board member's compensation includes:
 - (A) an amount paid for the part-time appointed or elected board member's coverage in a group insurance plan provided by the participating employer; and
 - (B) the part-time appointed or elected board member's receipt of any other benefit provided by the participating employer; and
 - (ii) the part-time appointed or elected board member's compensation does not include:
 - (A) an amount the participating employer pays for employer-matching employment taxes, if the participating employer treats the part-time appointed or elected board member as an employee for federal tax purposes; or
 - (B) an amount that the part-time appointed or elected board member receives for per diem and travel expenses for up to 12 approved meetings or activities of the government board per year, if the per diem and travel expenses do not exceed the amounts established by the Division of Finance under Sections 63A-3-106 and 63A-3-107 or by rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.
 - (d) The board shall adjust the amount under Subsection (4)(b)(i) by the annual change in the Consumer Price Index during the previous calendar year as measured by a United States Bureau of Labor Statistics Consumer Price Index average, as determined by the board.
- (5)
 - (a) If a retiree is reemployed under the provisions of Subsection (1) or (4), the termination date of the reemployment, as confirmed in writing by the participating employer, is considered the retiree's retirement date for the purpose of calculating the separation requirement under Section 49-11-1204.
 - (b) The office shall cancel the retirement allowance of a retiree for the remainder of the calendar year if the reemployment with a participating employer exceeds the limitation under Subsection (1)(a)(iii), (3)(b), or (4)(b).

Amended by Chapter 193, 2021 General Session

49-11-1206 Notice of postretirement reemployment.

- (1) A participating employer shall immediately notify the office:
 - (a) if the participating employer reemploys a retiree;
 - (b) whether the reemployment is subject to Section 49-11-1204 or Subsection 49-11-1205(1), (2), or (3); and
 - (c) of any election by the retiree under Section 49-11-1204.
- (2) A participating employer shall certify to the office whether the position of an elected official is or is not full time.
- (3) A retiree subject to this part shall report to the office the status of the reemployment under Section 49-11-1204 or 49-11-1205.

Enacted by Chapter 310, 2016 General Session

Amended by Chapter 310, 2016 General Session, (Coordination Clause)

49-11-1207 Postretirement reemployment -- Violations -- Penalties.

- (1)
 - (a) If the office receives notice or learns of the reemployment of a retiree in violation of Section 49-11-1204 or 49-11-1205, the office shall:
 - (i) immediately cancel the retiree's retirement allowance;
 - (ii) keep the retiree's retirement allowance cancelled for the remainder of the calendar year if the reemployment with a participating employer exceeded the limitation under Subsection 49-11-1205(1)(a)(iii)(A), (3)(b), or (4)(b); and
 - (iii) recover any overpayment resulting from the violation in accordance with the provisions of Section 49-11-607 before the allowance may be reinstated.
 - (b) Reinstatement of an allowance following cancellation for a violation under this section is subject to the procedures and provisions under Section 49-11-1204.
- (2) If a retiree or participating employer failed to report reemployment in violation of Section 49-11-1206, the retiree, participating employer, or both, who are found to be responsible for the failure to report, are liable to the office for the amount of any overpayment resulting from the violation.
- (3) A participating employer is liable to the office for a payment or failure to make a payment in violation of this part.
- (4) If a participating employer fails to notify the office in accordance with Section 49-11-1206, the participating employer is immediately subject to a compliance audit by the office.

Amended by Chapter 171, 2022 General Session

49-11-1208 Rulemaking.

The board may make rules to implement this part.

Enacted by Chapter 310, 2016 General Session