

POSTRETIREMENT REEMPLOYMENT AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rich Cunningham

Senate Sponsor: _____

LONG TITLE

Committee Note:

The Retirement and Independent Entities Interim Committee recommended this bill.

General Description:

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

Highlighted Provisions:

This bill:

- ▶ amends the earnings limitation for reemployed retirees who return to work for a participating employer; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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



28 **49-11-505. Reemployment of a retiree -- Restrictions -- Penalties.**

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

30 (i) means a person who:

31 (A) retired from a participating employer; and

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

33 (ii) does not include a person:

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

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

36 (1)(a)(ii)(A) was dissolved, consolidated, merged, or structurally changed in accordance with
37 Section 49-11-621 after July 1, 2010; and38 (iii) does not include a person who is reemployed as an active senior judge or an active
39 senior justice court judge as described by Utah State Court Rules, appointed to hear cases by
40 the Utah Supreme Court in accordance with Article VIII, Section 4, Utah Constitution.41 (b) (i) This section does not apply to employment as an elected official if the elected
42 official's position is not full time as certified by the participating employer.43 (ii) The provisions of this section apply to an elected official whose elected position is
44 full time as certified by the participating employer.45 (c) (i) This section does not apply to employment as a part-time appointed board
46 member who does not receive any remuneration, stipend, or other benefit for the part-time
47 appointed board member's service.48 (ii) For purposes of this Subsection (1)(c), remuneration, stipend, or other benefit does
49 not include receipt of per diem and travel expenses up to the amounts established by the
50 Division of Finance in:

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

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

53 (C) rules made by the Division of Finance according to Sections 63A-3-106 and
54 63A-3-107.55 (d) (i) For purposes of this Subsection (1)(d), "affiliated emergency services worker"
56 means a person who:57 (A) is employed by a participating employer [~~and who~~];

58 (B) performs emergency services for another participating employer that is a different

59 agency [~~in which the person~~];

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 96 (a) (i) earn additional service credit; or
- 97 (ii) receive any retirement related contribution from a participating employer; and
- 98 (b) receive a retirement allowance.

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

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

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

106 (ii) upon reemployment after the break in service under Subsection (3)(b)(i), the retiree
107 does not receive any employer ~~provided~~ paid benefits, including:

108 (A) retirement service credit or retirement related contributions;

109 ~~[(A)]~~ (B) medical benefits;

110 ~~[(B)]~~ (C) dental benefits;

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

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

115 (iii) (A) the retiree does not earn in any calendar year of reemployment an amount in
116 excess of the lesser of ~~[\$15,000]~~ \$20,000 or one-half of the retiree's final average salary upon
117 which the retiree's retirement allowance is based; or

118 (B) the retiree is reemployed as a judge as defined under Section 78A-11-102.

119 (c) Beginning January 1, 2013, the board shall adjust the amounts under Subsection
120 (3)(b)(iii)(A) by the annual change in the Consumer Price Index during the previous calendar

121 year as measured by a United States Bureau of Labor Statistics Consumer Price Index average
122 as determined by the board.

123 (d) The office shall cancel the retirement allowance of a retiree for the remainder of the
124 calendar year if the reemployment with a participating employer exceeds the limitation under
125 Subsection (3)(b)(iii)(A).

126 (e) If a retiree is reemployed under the provisions of Subsection (3)(b), the termination
127 date of the reemployment, as confirmed in writing by the participating employer, is considered
128 the retiree's retirement date for the purpose of calculating the separation requirement under
129 Subsection (3)(a).

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

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

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

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

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

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

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

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

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

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

151 (c) A participating employer who reemploys a retiree in accordance with Subsection

152 (3)(b) is not required to contribute the amortization rate to the office.

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

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

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

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

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

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

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

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

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

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

167 (b) If the retiree is eligible for retirement coverage in the reemployed position, the
168 office shall cancel the allowance of a retiree who is subject to Subsection (7)(a), and reinstate
169 the retiree to active member status on the first day of the month following the date of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

198 (a) before retiring:

199 (i) was employed with a participating employer as a public safety service employee as
200 defined in Section [49-14-102](#), [49-15-102](#), or [49-23-102](#);

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

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

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

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

213 (11) If a retiree received a retirement allowance in error, due to reemployment in

214 violation of this section:

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

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

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

222 [~~11~~] (12) The board may make rules to implement this section.

Legislative Review Note
Office of Legislative Research and General Counsel