

POSTRETIREMENT EMPLOYMENT EXCEPTIONS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Don L. Ipson

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:

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

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

• is reemployed by a different agency;

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

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **49-11-505**, as last amended by Laws of Utah 2015, Chapters 243 and 256



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

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

33 **49-11-505. Reemployment of a retiree -- Restrictions -- Penalties.**

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

35 (i) means a person who:

36 (A) retired from a participating employer; and

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

38 (ii) does not include a person:

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

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

41 (1)(a)(ii)(A) was dissolved, consolidated, merged, or structurally changed in accordance with

42 Section **49-11-621** after July 1, 2010; and

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

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

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

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

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

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

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

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

59 63A-3-107.

60 (d) (i) For purposes of this Subsection (1)(d), "affiliated emergency services worker"
61 means a person who:

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

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

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

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

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

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

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

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

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

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

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

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

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

88 (v) Beginning January 1, 2016, the board shall adjust the amount under Subsection
89 (1)(d)(iv) by the annual change in the Consumer Price Index during the previous calendar year

90 as measured by a United States Bureau of Labor Statistics Consumer Price Index average as
91 determined by the board.

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

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

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

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

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

103 (b) receive a retirement allowance.

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

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

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

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

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

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

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

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

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

120 (iii) (A) the retiree does not earn in any calendar year of reemployment an amount in

121 excess of the lesser of \$15,000 or one-half of the retiree's final average salary upon which the
122 retiree's retirement allowance is based; or

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

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

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

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

133 (i) the retiree:

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

136 (B) is reemployed by a different agency;

137 (C) is reemployed by a participating employer as a:

138 (I) public safety service employee as defined in Section [49-14-102](#), [49-15-102](#), or
139 [49-23-102](#);

140 (II) firefighter service employee as defined in Section [49-16-102](#) or [49-23-102](#); or

141 (III) school district employee who is an educator as defined under Section [53A-6-103](#);

142 and

143 (D) does not receive any employer paid retirement service credit or retirement related
144 contributions from the participating employer; and

145 (ii) the participating employer pays the contribution rate to the office as if the retiree's
146 reemployed position were considered to be an eligible full-time position within that system but
147 the retiree does not earn additional service credit.

148 (f) Any contribution paid to the office under Subsection (3)(e)(ii) shall be applied to
149 the system that would have covered the retiree if the retiree's reemployed position were
150 considered to be an eligible full-time position within that system.

151 ~~[(d) The office shall cancel the retirement allowance of a retiree for the remainder of~~

152 ~~the calendar year if the reemployment with a participating employer exceeds the limitation~~
153 ~~under Subsection (3)(b)(iii)(A).]~~

154 ~~[(e)]~~ (g) If a retiree is reemployed under the provisions of Subsection (3)(b)[;] or (3)(e),
155 the termination date of the reemployment, as confirmed in writing by the participating
156 employer, is considered the retiree's retirement date for the purpose of calculating the
157 separation requirement under Subsection (3)(a).

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

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

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

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

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

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

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

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

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

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

179 (c) A participating employer who reemploys a retiree in accordance with Subsection
180 (3)(b) is not required to contribute the amortization rate to the office.

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

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

183 (ii) whether the reemployment is subject to Subsection (3)(b), (3)(e), or (4) of this
184 section; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

212 (b) Subject to Subsection (2), for a retiree who is reinstated to active membership
213 under Subsection (7) and who retires two or more years after the date of reinstatement to active

214 membership, the office shall:

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

216 and

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

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

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

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

227 (a) before retiring:

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

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

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

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

240 and

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

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

244 (i) the office shall cancel the retiree's retirement allowance; and

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

247 (b) If a retiree or participating employer failed to report reemployment in violation of
248 this section, the retiree, participating employer, or both who are found to be responsible for the
249 failure to report are liable to the office for the amount of any overpayment resulting from the
250 violation.

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

Legislative Review Note
Office of Legislative Research and General Counsel