

EDUCATOR POSTRETIREMENT REEMPLOYMENT

REVISIONS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: LaVar Christensen

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Postretirement Reemployment Restrictions Act by amending provisions relating to postretirement reemployment for educators.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ allows certain educator 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 participating employer than the participating employer that employed the retiree at the time of retirement except in limited circumstances;
- ▶ requires a participating employer to pay certain amounts for a reemployed retiree in certain circumstances;
- ▶ requires the Utah State Retirement Office to report certain information to an interim committee of the Legislature;
- ▶ specifies penalties for violating the reemployment provisions; and
- ▶ makes technical changes.



28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 This bill provides a special effective date.

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **49-11-1202**, as enacted by Laws of Utah 2016, Chapter 310 and last amended by
35 Coordination Clause, Laws of Utah 2016, Chapter 310

36 **49-11-1205**, as last amended by Laws of Utah 2017, Chapter 141

37 **49-11-1206**, as enacted by Laws of Utah 2016, Chapter 310 and last amended by
38 Coordination Clause, Laws of Utah 2016, Chapter 310

39 **49-11-1207**, as last amended by Laws of Utah 2017, Chapter 141



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

42 Section 1. Section **49-11-1202** is amended to read:

43 **49-11-1202. Definitions.**

44 As used in this part:

45 (1) (a) "Affiliated emergency services worker" means a person who:

46 (i) is employed by a participating employer;

47 (ii) performs emergency services for another participating employer that is a different
48 agency;

49 (iii) is trained in techniques and skills required for the emergency service;

50 (iv) continues to receive regular training required for the service;

51 (v) is on the rolls as a trained affiliated emergency services worker of the participating
52 employer; and

53 (vi) provides ongoing service for a participating employer, which service may include
54 service as a volunteer firefighter, reserve law enforcement officer, search and rescue worker,
55 emergency medical technician, ambulance worker, park ranger, or public utilities worker.

56 (b) "Affiliated emergency services worker" does not include a person who performs
57 work or service but does not meet the requirements of Subsection (1)(a).

58 (2) "Amortization rate" means the amortization rate, as defined in Section **49-11-102**,

59 to be applied to the system that would have covered the retiree if the retiree's reemployed
60 position were deemed to be an eligible, full-time position within that system.

61 (3) (a) "Reemployed," "reemploy," or "reemployment" means work or service
62 performed for a participating employer after retirement, in exchange for compensation.

63 (b) Reemployment includes work or service performed on a contract for a participating
64 employer if the retiree is:

65 (i) listed as the contractor; or

66 (ii) an owner, partner, or principal of the contractor.

67 (4) "Retiree":

68 (a) means a person who:

69 (i) retired from a participating employer; and

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

71 (b) does not include a person:

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

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

74 (4)(b)(i)(A) was dissolved, consolidated, merged, or structurally changed in accordance with

75 Section [49-11-621](#) on or after July 1, 2010; or

76 (ii) who is working under a phased retirement agreement in accordance with Title 49,
77 Chapter 11, Part 13, Phased Retirement.

78 (5) "Retiree surcharge" means the board certified percentage of a reemployed retiree's
79 salary:

80 (a) paid on behalf of a reemployed retiree to the office;

81 (b) that is required to amortize the actuarial loss that would occur due to eligible
82 retirees being authorized to:

83 (i) commence their benefits at an earlier age; and

84 (ii) return to the workforce with a participating employer; and

85 (c) set in accordance with policies established by the board upon the advice of the
86 actuary.

87 Section 2. Section **49-11-1205** is amended to read:

88 **49-11-1205. Postretirement reemployment restriction exceptions.**

89 (1) (a) The office may not cancel the retirement allowance of a retiree who is

90 reemployed with a participating employer within one year of the retiree's retirement date if:

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

93 (ii) upon reemployment after the break in service under Subsection (1)(a)(i), the retiree
94 does not receive any employer paid benefits, including:

95 (A) retirement service credit or retirement-related contributions;

96 (B) medical benefits;

97 (C) dental benefits;

98 (D) other insurance benefits except for workers' compensation as provided under Title
99 34A, Chapter 2, Workers' Compensation Act, Title 34A, Chapter 3, Utah Occupational Disease
100 Act, and withholdings required by federal or state law for social security, Medicare, and
101 unemployment insurance; or

102 (E) paid time off, including sick, annual, or other type of leave; and

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

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

107 (b) Beginning January 1, 2013, the board shall adjust the amounts under Subsection
108 (1)(a)(iii) by the annual change in the Consumer Price Index during the previous calendar year
109 as measured by a United States Bureau of Labor Statistics Consumer Price Index average as
110 determined by the board.

111 (2) A retiree shall be considered as having completed the one-year separation from
112 employment with a participating employer required under Section [49-11-1204](#), if the retiree:

113 (a) before retiring:

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

116 (ii) and during the employment under Subsection (2)(a)(i), suffered a physical injury
117 resulting from external force or violence while performing the duties of the employment, and
118 for which injury the retiree would have been approved for total disability in accordance with
119 the provisions under Chapter 21, Public Employees' Long-Term Disability Act, if years of
120 service are not considered;

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

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

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

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

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

133 (ii) a length-of-service award;

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

136 (iv) reimbursement of expenses incurred in the performance of duties.

137 (b) For purposes of Subsections (3)(a)(i) and (ii), the total amount of any discounts, tax
 138 credits, vouchers, and payments to an affiliated emergency services worker may not exceed
 139 \$500 per month.

140 (c) Beginning January 1, 2016, the board shall adjust the amount under Subsection
 141 (3)(b) by the annual change in the Consumer Price Index during the previous calendar year as
 142 measured by a United States Bureau of Labor Statistics Consumer Price Index average as
 143 determined by the board.

144 (4) (a) If and to the extent a public education participating employer finds it necessary,
 145 beneficial, or in the best interest of the state's system of public education ~~It~~ ~~is~~ ~~and~~ ~~it~~
 145a finds that

146 reemploying a retiree would be beneficial in addressing an educator employment shortage, the
 147 office may not cancel the retirement allowance of a retiree who is reemployed with a
 148 participating employer within one year of the retiree's retirement date if:

149 (i) the retiree:

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

152 (B) except as provided in Subsection (8), is reemployed by a participating employer
153 that is a different participating employer than the participating employer the reemployed retiree
154 was employed by at the time of retirement;

155 (C) is reemployed by a public education participating employer in a position as an
156 educator as defined under Section 53E-6-102; and

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

159 (ii) the participating employer that reemploys the retiree pays to the office on behalf of
160 the retiree:

161 (A) the amortization rate; and

162 (B) the retiree surcharge.

163 (b) Any contribution paid to the office under Subsection (4)(a)(ii) shall be applied to
164 the system that would have covered the retiree if the retiree's reemployed position were
165 considered to be an eligible, full-time position within that system.

166 (c) The office shall, on or before November 30, 2024, study, evaluate, and report on the
167 actuarial costs and effectiveness of implementing the educator retiree reemployment exception
168 authorized under this Subsection (4) to the Retirement and Independent Entities Interim
169 Committee of the Legislature.

170 (5) (a) (i) A retiree receiving a retirement allowance may be reemployed under the
171 provisions of Subsections (1), (3), and (4) in only one position for only one participating
172 employer at a time following the retiree's retirement date.

173 (ii) The participating employer shall notify the office which postretirement
174 reemployment exception under this section will govern the retiree's reemployment.

175 (b) A retiree reemployed under the provisions of Subsection (1), (3), or (4) may change
176 reemployment to a new position under the provisions of Subsection (1), (3), or (4) only if:

177 (i) the retiree ceases actual work and is terminated from the current reemployed
178 position;

179 (ii) except as provided in Subsection (8), the retiree begins the subsequent
180 reemployment with a participating employer that is a different participating employer than:

181 (A) the participating employer for the retiree's current reemployment; and

182 (B) the participating employer that employed the retiree at the retiree's original time of

183 retirement; and

184 (iii) the participating employer or retiree notifies the office of the change in
 185 reemployment and provides evidence to the office of the termination and change.

186 ~~[(4)]~~ (6) (a) If a retiree is reemployed under the provisions of Subsection (1) [or] (3),
 187 or (4), the termination date of the reemployment, as confirmed in writing by the participating
 188 employer, is considered the retiree's retirement date for the purpose of calculating the
 189 separation requirement under Section 49-11-1204.

190 (b) If a retiree changes reemployment to another position under the provisions of
 191 Subsection (1), (3), or (4), the final termination date of all reemployment, as confirmed in
 192 writing by the last participating employer, is considered the retiree's retirement date for the
 193 purpose of calculating the separation requirement under Subsection 49-11-505(3)(a).

194 ~~[(b)]~~ (7) The office shall cancel the retirement allowance of a retiree for the remainder
 195 of the calendar year if the reemployment with a participating employer exceeds the limitation
 196 under Subsection (1)(a)(iii) or (3)(b).

197 (8) Notwithstanding Subsections (4)(a)(i)(B) and (5)(b)(ii), a reemployed retiree that
 198 was employed by:

199 (a) the state at the time of retirement may be reemployed by the state under Subsection
 200 (4) or (5) if the reemployment is with a different agency or office; or

201 (b) a participating employer located within a county of the fourth, fifth, or sixth class,
 202 as classified under Section 17-50-501, may be reemployed by that participating employer under
 203 Subsection (4) or (5) if and to the extent that the public education participating employer finds
 204 it necessary, beneficial, or in the best interest of the state's system of public education.

205 Section 3. Section **49-11-1206** is amended to read:

206 **49-11-1206. Notice of postretirement reemployment.**

207 (1) A participating employer shall immediately notify the office:

208 (a) if the participating employer reemploys a retiree;

209 (b) whether the reemployment is subject to Section 49-11-1204 or Subsection
 210 49-11-1205(1), (2), [or] (3), (4), or (5); and

211 (c) of any election by the retiree under Section 49-11-1204.

212 (2) A participating employer shall certify to the office whether the position of an
 213 elected official is or is not full time.

214 (3) A retiree subject to this part shall report to the office the status of the reemployment
215 under Section 49-11-1204 or 49-11-1205.

216 Section 4. Section 49-11-1207 is amended to read:

217 **49-11-1207. Postretirement reemployment -- Violations -- Penalties.**

218 (1) (a) If the office receives notice or learns of the reemployment of a retiree in
219 violation of Section 49-11-1204 or 49-11-1205, the office shall:

220 (i) immediately cancel the retiree's retirement allowance;

221 (ii) keep the retiree's retirement allowance cancelled for the remainder of the calendar
222 year if the reemployment with a participating employer exceeded the limitation under
223 Subsection 49-11-1205(1)(a)(iii)(A) or (3)(b); and

224 (iii) recover any overpayment resulting from the violation in accordance with the
225 provisions of Section 49-11-607 before the allowance may be reinstated.

226 (b) Reinstatement of an allowance following cancellation for a violation under this
227 section is subject to the procedures and provisions under Section 49-11-1204.

228 (2) If a retiree or participating employer failed to report reemployment in violation of
229 Section 49-11-1206, the retiree, participating employer, or both, who are found to be
230 responsible for the failure to report, are liable to the office for the amount of any overpayment
231 resulting from the violation.

232 (3) (a) A participating employer is liable to the office for a payment or failure to make
233 a payment in violation of this part.

234 (b) In addition to other penalties under this section, if the reemployment of a retiree is
235 in violation of Subsection 49-11-1205(4), the participating employer shall pay the office any
236 delinquent retiree surcharge and amortization rate contributions, plus interest, under Section
237 49-11-503.

238 (4) If a participating employer fails to notify the office in accordance with Section
239 49-11-1206, the participating employer is immediately subject to a compliance audit by the
240 office.

241 Section 5. **Effective date.**

242 This bill takes effect on January 1, 2019.

Legislative Review Note
Office of Legislative Research and General Counsel