

**RETIREMENT AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lee B. Perry**

Senate Sponsor: Don L. Ipson

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

▶ allows certain member 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;

- ▶ requires certain member certifications on the retirement application form;

- ▶ specifies penalties for violating the reemployment provisions; and

- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **49-11-1205**, as last amended by Laws of Utah 2017, Chapter 141

31 **49-11-1206**, as enacted by Laws of Utah 2016, Chapter 310 and last amended by

32 Coordination Clause, Laws of Utah 2016, Chapter 310

33 **49-11-1207**, as last amended by Laws of Utah 2017, Chapter 141



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

36 Section 1. Section **49-11-1205** is amended to read:

37 **49-11-1205. Postretirement reemployment restriction exceptions.**

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

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

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

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

45 (B) medical benefits;

46 (C) dental benefits;

47 (D) other insurance benefits except for workers' compensation as provided under Title  
48 34A, Chapter 2, Workers' Compensation Act, Title 34A, Chapter 3, Utah Occupational Disease  
49 Act, and withholdings required by federal or state law for social security, Medicare, and  
50 unemployment insurance; or

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

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

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

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

59 determined by the board.

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

62 (a) before retiring:

63 (i) was employed with a participating employer as a public safety service employee as  
64 defined in Section 49-14-102, 49-15-102, or 49-23-102;

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

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

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

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

77 (3) (a) The office may not cancel the retirement allowance of a retiree who is employed  
78 as 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 (i) a nominal fee, stipend, discount, tax credit, voucher, or other fixed sum of money or  
81 cash equivalent payment not tied to productivity and paid periodically for services;

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

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

86 (b) For purposes of Subsections (3)(a)(i) and (ii), the total amount of any discounts, tax  
87 credits, vouchers, and payments to an affiliated emergency services worker may not exceed  
88 \$500 per month.

89 (c) Beginning January 1, 2016, the board shall adjust the amount under Subsection

90 (3)(b) by the annual change in the Consumer Price Index during the previous calendar year as  
91 measured by a United States Bureau of Labor Statistics Consumer Price Index average as  
92 determined by the board.

93 (4) The office may not cancel the retirement allowance of a retiree if:

94 (a) the retiree retired from one of the following systems:

95 (i) Chapter 14, Public Safety Contributory Retirement Act;

96 (ii) Chapter 15, Public Safety Noncontributory Retirement Act; or

97 (iii) Chapter 16, Firefighters' Retirement Act;

98 (b) the retiree's reemployment with a participating employer:

99 (i) (A) begins 11 or more months after the retiree's retirement date; and

100 (B) the retiree retired with 21 or more years of service credit;

101 (ii) (A) begins 10 or months after the retiree's retirement date; and

102 (B) the retiree retired with 22 or more years of service credit;

103 (iii) (A) begins nine or more months after the retiree's retirement date; and

104 (B) the retiree retired with 23 or more years of service credit;

105 (iv) (A) begins eight or more months after the retiree's retirement date; and

106 (B) the retiree retired with 24 or more years of service credit;

107 (v) (A) begins seven or more months after the retiree's retirement date; and

108 (B) the retiree retired with 25 or more years of service credit;

109 (vi) (A) begins six or more months after the retiree's retirement date; and

110 (B) the retiree retired with 26 or more years of service credit;

111 (vii) (A) begins five or more months after the retiree's retirement date; and

112 (B) the retiree retired with 27 or more years of service credit;

113 (viii) (A) begins four or more months after the retiree's retirement date; and

114 (B) the retiree retired with 28 or more years of service credit;

115 (ix) (A) begins three or more months after the retiree's retirement date; and

116 (B) the retiree retired with 29 or more years of service credit;

117 (x) (A) begins 60 or more days after the retiree's retirement date; and

118 (B) the retiree retired with 30 or more years of service credit;

119 (c) except as provided in Subsection (10), the retiree is reemployed by a participating

120 employer that is a different participating employer than the participating employer the

121 reemployed retiree was employed by at the time of retirement;

122 (d) the retiree does not receive any employer paid retirement service credit or  
123 retirement related contributions from the participating employer; and

124 (e) the participating employer that reemploys the retiree pays to the office, on behalf of  
125 the retiree, the amortization rate.

126 (5) The office may not cancel the retirement allowance of a retiree if:

127 (a) the retiree retired from Chapter 23, New Public Safety and Firefighter Tier II  
128 Contributory Retirement Act;

129 (b) the retiree's reemployment with a participating employer:

130 (i) (A) begins 11 or more months after the retiree's retirement date; and

131 (B) the retiree retired with 26 or more years of service credit;

132 (ii) (A) begins 10 or more months after the retiree's retirement date; and

133 (B) the retiree retired with 27 or more years of service credit;

134 (iii) (A) begins nine or more months after the retiree's retirement date; and

135 (B) the retiree retired with 28 or more years of service credit;

136 (iv) (A) begins eight or more months after the retiree's retirement date; and

137 (B) the retiree retired with 29 or more years of service credit;

138 (v) (A) begins seven or more months after the retiree's retirement date; and

139 (B) the retiree retired with 30 or more years of service credit;

140 (vi) (A) begins six or more months after the retiree's retirement date; and

141 (B) the retiree retired with 31 or more years of service credit;

142 (vii) (A) begins five or more months after the retiree's retirement date; and

143 (B) the retiree retired with 32 or more years of service credit;

144 (viii) (A) begins four or more months after the retiree's retirement date; and

145 (B) the retiree retired with 33 or more years of service credit;

146 (ix) (A) begins three or more months after the retiree's retirement date; and

147 (B) the retiree retired with 34 or more years of service credit;

148 (x) (A) begins 60 or more days after the retiree's retirement date; and

149 (B) the retiree retired with 35 or more years of service credit;

150 (c) except as provided in Subsection (10), the retiree is reemployed by a participating  
151 employer that is a different participating employer than the participating employer the

152 reemployed retiree was employed by at the time of retirement;

153 (d) the retiree does not receive any employer paid retirement service credit or  
154 retirement related contributions from the participating employer; and

155 (e) the participating employer that reemploys the retiree pays to the office, on behalf of  
156 the retiree, the amortization rate.

157 (6) Any amortization rate paid to the office under Subsection (4)(e) or (5)(e) shall be  
158 applied to the system that would have covered the retiree if the retiree's reemployed position  
159 were considered to be an eligible, full-time position within that system.

160 (7) (a) (i) A retiree receiving a retirement allowance may be reemployed under the  
161 provisions of Subsection (1), (3), (4), or (5) in only one position for only one participating  
162 employer at a time following the retiree's retirement date.

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

165 (b) A retiree reemployed under the provisions of Subsection (1), (3), (4), or (5) may  
166 change reemployment to a new position under the provisions of Subsection (1), (3), (4), or (5)  
167 only if:

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

170 (ii) except as provided in Subsection (7)(b)(ii)(B) or (10), begins the subsequent  
171 reemployment with a participating employer that is a different participating employer than:

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

173 (B) the participating employer that employed the retiree at the retiree's original time of  
174 retirement; and

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

177 ~~[(4)]~~ (8) (a) If a retiree is reemployed under the provisions of Subsection (1) or (3), the  
178 termination date of the reemployment, as confirmed in writing by the participating employer, is  
179 considered the retiree's retirement date for the purpose of calculating the separation  
180 requirement under Section 49-11-1204.

181 (b) If a retiree changes reemployment to another position under the provisions of  
182 Subsection (1), (3), (4), (5), or (7) the final termination date of all reemployment, as confirmed

183 in writing by the last participating employer, is considered the retiree's retirement date for the  
 184 purpose of calculating the separation requirement under Subsection 49-11-505(3)(a).

185 [(b)] (9) The office shall cancel the retirement allowance of a retiree for the remainder  
 186 of the calendar year if the reemployment with a participating employer exceeds the limitation  
 187 under Subsection (1)(a)(iii) or (3)(b).

188 (10) Notwithstanding Subsections (4)(c) and (5)(c), a reemployed retiree that was  
 189 employed by:

190 (a) the state of Utah at the time of retirement may be reemployed by the state under  
 191 Subsection (4), (5), or (7) if the reemployment is with a different agency or office; or

192 (b) a participating employer located in a county with a population of less than 75,000  
 193 may be reemployed by that participating employer under Subsection (4) or (5) if, before the  
 194 retiree is reemployed:

195 (i) the participating employer certifies to the office, under penalty of fraud, the facts  
 196 and circumstances of rehire, including any prearrangement for reemployment before the  
 197 member's retirement date; and

198 (ii) the office performs a facts and circumstances review and determines there was a  
 199 bona fide termination of employment with that participating employer, including the specific  
 200 finding that there was not a prearrangement for reemployment before the member's retirement  
 201 date.

202 Section 2. Section 49-11-1206 is amended to read:

203 **49-11-1206. Notice of postretirement reemployment.**

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

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

206 (b) whether the reemployment is subject to Section 49-11-1204 or Subsection  
 207 49-11-1205(1), (2), [or] (3), (4), (5), or (7); and

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

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

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

213 (4) The retirement application form submitted to the office shall contain the retiring

214 member's certification, under penalty of fraud, of whether there was a prearrangement of  
215 reemployment before the retiree's retirement date with the participating employer.

216 Section 3. 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) or (5), the participating employer shall pay the office  
236 any delinquent amortization rate contributions, plus interest, under Section [49-11-503](#).

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

240 Section 4. **Effective date.**

241 This bill takes effect on January 1, 2019.