

1 **POSTRETIREMENT REEMPLOYMENT REVISIONS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Jani Iwamoto**

5 House Sponsor: Lee B. Perry

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Postretirement Reemployment Restrictions Act by amending
10 provisions relating to postretirement reemployment for public safety service employees
11 and firefighter service employees.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
15 ▶ allows certain public safety service and firefighter service retirees to be reemployed

16 with a participating employer after a certain period from the retiree's retirement date
17 if the retiree:

- 18 • does not receive certain employer provided retirement benefits for the
19 reemployment; and
20 • is reemployed by a different participating employer than the participating
21 employer that employed the retiree at the time of retirement **Ŝ→ except in limited**

21a **circumstances ←Ŝ ;**

22 ▶ requires a participating employer to pay certain amounts for a reemployed retiree in
23 certain circumstances;

23a **Ŝ→ ▶ requires certain member certifications on the retirement application form; ←Ŝ**

24 ▶ requires the Utah State Retirement Office to report certain information to an interim
25 committee of the Legislature;

- 26 ▶ specifies penalties for violating the reemployment provisions; and
27 ▶ 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 percent 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) The office may not cancel the retirement allowance of a retiree who is
145 reemployed with a participating employer within one year of the retiree's retirement date if:

146 (i) the retiree:

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

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

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

153 (I) public safety service employee as defined in Section [49-14-102](#), [49-15-102](#), or
 154 [49-23-102](#); or

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

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

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

160 (A) the amortization rate; and

161 (B) the retiree surcharge.

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

165 (c) The office shall, on or before November 30, 2024, study, evaluate, and report on the
 166 actuarial costs and effectiveness of implementing the ~~§~~→ **[educator] public safety service and**
 166a **firefighter service** ←~~§~~ retiree reemployment exception
 167 authorized under this Subsection (4) to the Retirement and Independent Entities Committee of
 168 the Legislature.

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

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

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

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

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

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

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

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

185 ~~[(4)]~~ (6) (a) If a retiree is reemployed under the provisions of Subsection (1) ~~[or]~~, (3),
 186 or (4), the termination date of the reemployment, as confirmed in writing by the participating
 187 employer, is considered the retiree's retirement date for the purpose of calculating the
 188 separation requirement under Section [49-11-1204](#).

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

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

196 (8) Notwithstanding Subsections (4)(a)(i)(B) and (5)(b)(ii), a reemployed retiree that
 197 was employed by $\hat{S} \rightarrow$:

197a (a) $\leftarrow \hat{S}$ the state of Utah at the time of retirement may be reemployed by the state $\hat{S} \rightarrow$ ~~[of~~
 198 Utah] $\leftarrow \hat{S}$ under Subsection (4) or (5) if the reemployment is with a different agency or
 198a office $\hat{S} \rightarrow$ [;] ; or

198b (b) a participating employer located within a county of the fourth, fifth, or sixth class,
 198c as classified under Section [17-50-501](#), may be reemployed by that participating employer
 198d under Subsection (4) or (5) if before the retiree is reemployed:

198e (i) the participating employer certifies to the office, under penalty of fraud, the facts
 198f and circumstances of rehire, including any prearrangement for reemployment before the
 198g member's retirement date; and

198h (ii) the office performs a facts and circumstances review and determines there was a
 198i bona fide termination of employment with that participating employer, including the specific
 198j finding that there was not a prearrangement for reemployment before the member's
 198k retirement date. $\leftarrow \hat{S}$

199 Section 3. Section [49-11-1206](#) is amended to read:

200 **[49-11-1206. Notice of postretirement reemployment.](#)**

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

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

203 (b) whether the reemployment is subject to Section [49-11-1204](#) or Subsection

204 [49-11-1205](#)(1), (2), ~~[or]~~ (3), (4), or (5); and

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

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

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

209a **Ŝ→ (4) The retirement application form submitted to the office shall contain the retiring**
209b **member's certification, under penalty of fraud, of whether there was a prearrangement of**
209c **reemployment before the retiree's retirement date with the participating employer. ←Ŝ**

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

211 **49-11-1207. Postretirement reemployment -- Violations -- Penalties.**

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

- 214 (i) immediately cancel the retiree's retirement allowance;
- 215 (ii) keep the retiree's retirement allowance cancelled for the remainder of the calendar
216 year if the reemployment with a participating employer exceeded the limitation under
217 Subsection [49-11-1205](#)(1)(a)(iii)(A) or (3)(b); and
- 218 (iii) recover any overpayment resulting from the violation in accordance with the
219 provisions of Section [49-11-607](#) before the allowance may be reinstated.
- 220 (b) Reinstatement of an allowance following cancellation for a violation under this
221 section is subject to the procedures and provisions under Section [49-11-1204](#).
- 222 (2) If a retiree or participating employer failed to report reemployment in violation of
223 Section [49-11-1206](#), the retiree, participating employer, or both, who are found to be
224 responsible for the failure to report, are liable to the office for the amount of any overpayment
225 resulting from the violation.
- 226 (3) (a) A participating employer is liable to the office for a payment or failure to make
227 a payment in violation of this part.
- 228 (b) In addition to other penalties under this section, if the reemployment of a retiree is
229 in violation of Subsection [49-11-1205](#)(4), the participating employer shall pay the office any
230 delinquent retiree surcharge and amortization rate contributions, plus interest $\hat{S} \rightarrow , \leftarrow \hat{S}$ under
230a Section
231 [49-11-503](#).
- 232 (4) If a participating employer fails to notify the office in accordance with Section
233 [49-11-1206](#), the participating employer is immediately subject to a compliance audit by the
234 office.
- 235 Section 5. **Effective date.**
- 236 This bill takes effect on January 1, 2019.

Legislative Review Note
Office of Legislative Research and General Counsel