

Representative Kera Birkeland proposes the following substitute bill:

POSTRETIREMENT REEMPLOYMENT AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kera Birkeland

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the postretirement reemployment restrictions for a retiree who was a public safety service employee or a teacher.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides the circumstances under which a retiree who was a public safety service employee or a teacher immediately before retirement may be reemployed with a participating employer within the one-year separation period without cancellation of the retiree's retirement allowance; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

49-11-1202, as last amended by Laws of Utah 2020, Chapter 449



26 [49-11-1205](#), as last amended by Laws of Utah 2021, Chapter 193
27 [49-11-1206](#), as enacted by Laws of Utah 2016, Chapter 310 and last amended by
28 Coordination Clause, Laws of Utah 2016, Chapter 310
29 [49-11-1207](#), as last amended by Laws of Utah 2017, Chapter 141

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

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

33 **49-11-1202. Definitions.**

34 As used in this part:

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

36 (i) is employed by a participating employer;

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

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

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

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

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

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

48 (2) "Amortization rate" means the amortization rate, as defined in Section [49-11-102](#),
49 to be applied to the system that would have covered the retiree if the retiree's reemployed
50 position were deemed to be an eligible, full-time position within that system.

51 (3) "Part-time appointed or elected board member" means an individual who:

52 (a) serves in a position:

53 (i) as a member of a board, commission, council, committee, panel, or other body of a
54 participating employer; and

55 (ii) that is designated in the participating employer's governing statute, charter, creation
56 document, or similar document;

57 (b) is appointed or elected to the position for a definite and fixed term of office by
58 official and duly recorded action of the participating employer;

59 (c) except for the service in the position, does not perform other work or service for
60 compensation for the participating employer, whether as an employee or under a contract; and

61 (d) retires from a participating employer that is different than the participating
62 employer with the position in which the person serves.

63 (4) "Qualifying retiree" means a retiree who:

64 (a) retires before July 1, 2022;

65 (b) is, at the time of retirement, a public safety service employee as defined in Section
66 49-14-102 and retires from the system described in Chapter 14, Public Safety Contributory
67 Retirement Act;

68 (c) is, at the time of retirement, a public safety service employee as defined in Section
69 49-15-102 and retires from the system described in Chapter 15, Public Safety Noncontributory
70 Retirement Act;

71 (d) is, at the time of retirement, a public safety service employee as defined in Section
72 49-23-102 and retires from the system described in Chapter 23, New Public Safety and
73 Firefighter Tier II Contributory Retirement Act; or

74 (e) is, at the time of retirement, a teacher and retires from one of the following
75 retirement systems:

76 (i) Chapter 12, Public Employees' Contributory Retirement Act;

77 (ii) Chapter 13, Public Employees' Noncontributory Retirement Act; or

78 (iii) Chapter 22, New Public Employees' Tier II Contributory Retirement Act.

79 ~~[(4)]~~ (5) (a) "Reemployed," "reemploy," or "reemployment" means work or service
80 performed for a participating employer after retirement, in exchange for compensation.

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

83 (i) listed as the contractor; or

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

85 ~~[(5)]~~ (6) "Retiree":

86 (a) means a person who:

87 (i) retired from a participating employer; and

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

89 (b) does not include a person:

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

91 (B) whose participating employer that reemployed the person under Subsection [(5)]

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

93 Section 49-11-621 on or after July 1, 2010; or

94 (ii) who is working under a phased retirement agreement in accordance with [Title 49,]

95 Chapter 11, Part 13, Phased Retirement.

96 (7) "Teacher" means an individual employed by a school district or charter school who

97 is required to hold an educator license issued by the state board and who has an assignment to

98 teach in a classroom.

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

100 **49-11-1205. Postretirement reemployment restriction exceptions.**

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

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

103 (i) the retiree is not reemployed by a participating employer for a period of at least 60

104 days from the retiree's retirement date;

105 (ii) upon reemployment after the break in service under Subsection (1)(a)(i), the retiree

106 does not receive any employer paid benefits, including:

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

108 (B) medical benefits;

109 (C) dental benefits;

110 (D) other insurance benefits except for workers' compensation as provided under Title

111 34A, Chapter 2, Workers' Compensation Act, Title 34A, Chapter 3, Utah Occupational Disease

112 Act, and withholdings required by federal or state law for social security, Medicare, and

113 unemployment insurance; or

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

115 (iii) (A) the retiree ~~does not earn~~ earns, in any calendar year of reemployment an

116 amount ~~[in excess of]~~ that is no more than the lesser of \$15,000 or one-half of the retiree's final

117 average salary upon 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 (b) The board shall adjust the amounts under Subsection (1)(a)(iii) by the annual
120 change in the Consumer Price Index during the previous calendar year as measured by a United
121 States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

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

124 (a) before retiring:

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

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

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

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

138 (v) is at least 50 years old; and

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

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

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

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

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

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

149 (b) For purposes of Subsections (3)(a)(i) and (ii), the total amount of any discounts, tax

150 credits, vouchers, and payments to an affiliated emergency services worker may not exceed
151 \$500 per month.

152 (c) The board shall adjust the amount under Subsection (3)(b) by the annual change in
153 the Consumer Price Index during the previous calendar year as measured by a United States
154 Bureau of Labor Statistics Consumer Price Index average as determined by the board.

155 (d) A retiree is eligible for an exemption from the requirement to cease service without
156 cancellation of a retirement allowance under this Subsection (3) only if the retiree, at the time
157 of retirement, is at least:

158 (i) 50 years old, if the retiree is retiring from a public safety system or a firefighter
159 system; or

160 (ii) 55 years old.

161 (4) (a) The office may not cancel the retirement allowance of a retiree employed as a
162 part-time appointed or elected board member within one year after the retiree's retirement date
163 if the part-time appointed or elected board member does not receive any compensation
164 exceeding the amount described in this Subsection (4).

165 (b) A retiree who is a part-time appointed or elected board member for one or more
166 boards, commissions, councils, committees, panels, or other bodies of participating employers:

167 (i) may receive an aggregate amount of compensation, remuneration, a stipend, or other
168 benefit for service on a single or multiple boards, commissions, councils, committees, panels,
169 or other bodies of no more than \$5,000 per year; and

170 (ii) may not receive an employer paid retirement service credit or retirement-related
171 contribution.

172 (c) For purposes of Subsection (4)(b)(i):

173 (i) a part-time appointed or elected board member's compensation includes:

174 (A) an amount paid for the part-time appointed or elected board member's coverage in
175 a group insurance plan provided by the participating employer; and

176 (B) the part-time appointed or elected board member's receipt of any other benefit
177 provided by the participating employer; and

178 (ii) the part-time appointed or elected board member's compensation does not include:

179 (A) an amount the participating employer pays for employer-matching employment
180 taxes, if the participating employer treats the part-time appointed or elected board member as

181 an employee for federal tax purposes; or

182 (B) an amount that the part-time appointed or elected board member receives for per
183 diem and travel expenses for up to 12 approved meetings or activities of the government board
184 per year, if the per diem and travel expenses do not exceed the amounts established by the
185 Division of Finance under Sections 63A-3-106 and 63A-3-107 or by rules made by the
186 Division of Finance according to Sections 63A-3-106 and 63A-3-107.

187 (d) The board shall adjust the amount under Subsection (4)(b)(i) by the annual change
188 in the Consumer Price Index during the previous calendar year as measured by a United States
189 Bureau of Labor Statistics Consumer Price Index average, as determined by the board.

190 (5) The office may not cancel the retirement allowance of a qualifying retiree who is
191 reemployed with a participating employer within one year of the qualifying retiree's retirement
192 date if:

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

195 (b) upon reemployment after the break in service under Subsection (5)(a), the
196 qualifying retiree does not receive any employer paid benefits, including:

197 (i) retirement service credit or retirement-related contributions;

198 (ii) medical benefits;

199 (iii) dental benefits;

200 (iv) other insurance benefits except for workers' compensation as provided under Title
201 34A, Chapter 2, Workers' Compensation Act, Title 34A, Chapter 3, Utah Occupational Disease
202 Act, and withholdings required by federal or state law for social security, Medicare, and
203 unemployment insurance; or

204 (v) paid time off, including sick, annual, or other types of leave; and

205 (c) the qualifying retiree is reemployed under one of the following circumstances:

206 (i) as a teacher who teaches less than half time during a school year;

207 (ii) as a firefighter service employee who works fewer than 1,040 hours of regularly
208 scheduled firefighter service per year;

209 (iii) as a public safety service employee who works fewer than 1,040 hours of regularly
210 scheduled public safety service per year; or

211 (iv) as an employee in any other position who works fewer than 20 hours per week.

212 ~~[(5)]~~ (6) (a) If a retiree is reemployed under the provisions of Subsection (1) ~~[\or]~~, (4),
213 or (5), the termination date of the reemployment, as confirmed in writing by the participating
214 employer, is considered the retiree's retirement date for the purpose of calculating the
215 separation requirement under Section [49-11-1204](#).

216 (b) The office shall cancel the retirement allowance of a retiree for the remainder of the
217 calendar year if the reemployment with a participating employer exceeds the dollar limitation
218 under Subsection (1)(a)(iii), (3)(b), or (4)(b) or the hour limitation under Subsection (5)(c).

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

220 **49-11-1206. Notice of postretirement reemployment.**

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

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

223 (b) whether the reemployment is subject to Section [49-11-1204](#) or Subsection
224 [49-11-1205](#)(1), (2), ~~[\or]~~ (3), or (5); and

225 (c) of any election by the retiree under Section [49-11-1204](#).

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

228 (3) A retiree subject to this part shall report to the office the status of the reemployment
229 under Section [49-11-1204](#) or [49-11-1205](#).

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

231 **49-11-1207. Postretirement reemployment -- Violations -- Penalties.**

232 (1) (a) If the office receives notice or learns of the reemployment of a retiree in
233 violation of Section [49-11-1204](#) or [49-11-1205](#), the office shall:

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

235 (ii) keep the retiree's retirement allowance cancelled for the remainder of the calendar
236 year if the reemployment with a participating employer exceeded the dollar limitation under
237 Subsection [49-11-1205](#)(1)(a)(iii)(A) or (3)(b) or the hour limitation under Subsection (5)(c);
238 and

239 (iii) recover any overpayment resulting from the violation in accordance with the
240 provisions of Section [49-11-607](#) before the allowance may be reinstated.

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

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

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

249 (4) If a participating employer fails to notify the office in accordance with Section
250 49-11-1206, the participating employer is immediately subject to a compliance audit by the
251 office.