



Employer Update

Quarterly Publication ♦ Fall 2009

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Distribute this Publication to all Administrative, Payroll, and Human Resource Personnel

Reemployment after Retirement

It Is Not too Late for Reemployed Retirees to File Forms 9C, 4B for FY 2010

Though the beginning of each new fiscal year, July 1, marks the usual time reemployed retirees submit to the Public Employees' Retirement System of Mississippi (PERS) their updated PERS forms 9C and/or 4B, it is still not too late to get this information to PERS.

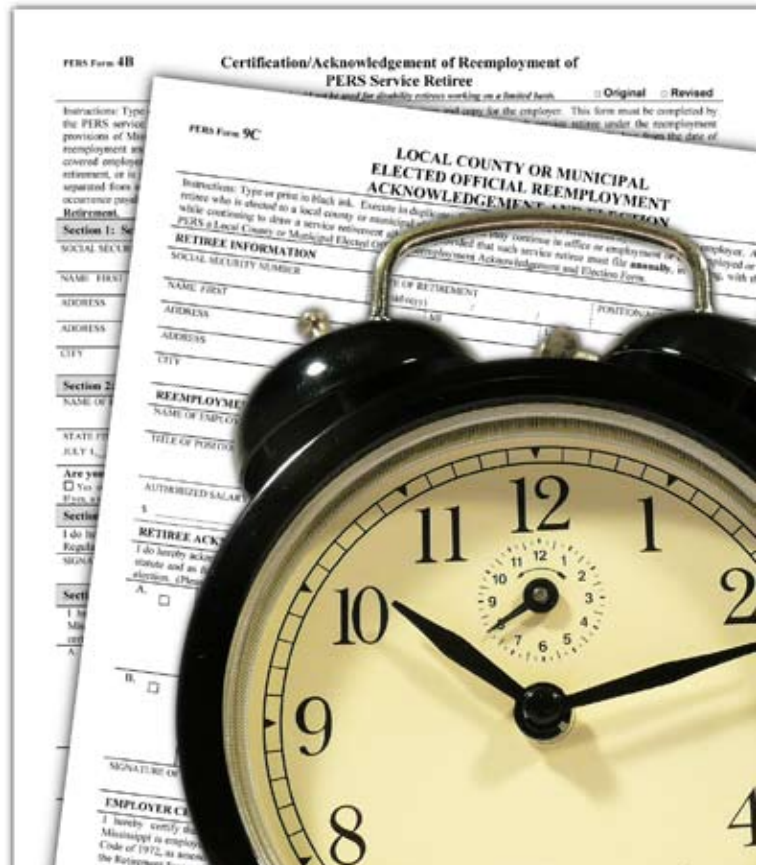
It is the responsibility of each employer to ensure that any employee who is hired after retiring from public service completes and submits to the employer the necessary forms. Employers are then responsible for submitting these forms to PERS.

Under PERS Board Regulation 34, *Reemployment After Retirement*, retirees working in non-elected positions must file a PERS Form 4B, *Certification/Acknowledgement of Reemployment of PERS Service Retiree*, each fiscal year. On this form, a retiree will elect either to a) work for a period of time not to exceed half of the normal working days and salary for the position in any fiscal year or b) receive compensation not to exceed 25% of his or her average compensation at retirement.

Also under Regulation 34, retirees elected to a municipal or county elected position are required to file PERS Form 9C, *Local County or Municipal Elected Official Reemployment Acknowledgement and Election*, each fiscal year. On this form, a retiree will elect either to a) waive the salary for the position or b) receive compensation not to exceed 25% of his or her average compensation at retirement.

For more information on reemployment after retirement or on any retirement question, please contact PERS Customer Service Center at 800-444-7377 or 601-359-3589 or call the Employer Hotline at 601-359-2090.

For related article on reemployment after retirement see page 5.





PERS Board of Trustees Regulatory Changes

These amendments to existing regulations and addition of new regulations were approved by the PERS Board of Trustees at their August meeting.

Regulation 37 (amended)

Student Employment

To clarify that students participating in a paid internship program with a state agency under which they are paid while completing undergraduate or graduate level coursework on a full-time basis are not eligible for participation in PERS pursuant to Miss. Code Ann. §25-11-105 II(b).

Regulation 42 (amended)

Rules of Hearing Practice and Procedure before the Board of Trustees

To establish a 90-day deadline for submitting additional medical evidence where such is requested by the Disability Appeals Committee. Previously, there was no specified deadline and this change will ensure that cases are processed timely. This change has a provision to have the deadline extended in the event the applicant can demonstrate that failure to comply with the deadline was due to circumstances beyond his or her control.

Regulation 62 (new)

Crediting of Interest on Member Accumulation Accounts

To formally establish interest rates set by the Board through regulation. By statute, interest is credited on member accumulation accounts in PERS, SLRP and MHSPRS at rates periodically set by the Board. This regulation sets forth the statutory authority under each plan to set the rate, outlines the historical and current rates, and serves as a ready reference for the credited rates going forward.

Regulation 63 (new)

Temporary Benefit Available to Eligible Inactive PERS and SLRP Members Who Apply for Disability Retirement Benefits

To formally establish the rules for administering the payment of temporary benefits to eligible inactive PERS and SLRP members who apply for disability retirement benefits. Previously, the administration of these benefits followed an administrative procedure adopted by the Board when this benefit was first allowed by law. While the administrative procedure serves as the basis for the regulation, the formalized regulation also incorporates current administrative practice and statutory guidance.

To see PERS Board of Trustees Regulations, visit PERS online at www.pers.state.ms.us/employerservices/selectedregulations.html.

Summary of Recent Attorney General Opinions



This is a Summary of Opinions affecting PERS issued since January 2009.

January 16, 2009 - Tucker

There is no authority for a local governmental employer (municipality) to pay any portion of a retiree's group insurance coverage. While municipalities have "home rule" authority pursuant to Miss. Code Ann. §21-17-5, payment of the costs of retiree group insurance coverage by the municipality would not be consistent with the provisions of Miss. Code Ann. §25-15-103, which requires that retirees under PERS must pay the entire cost of their coverage if they elect to continue in the group health plan after retirement. It is also inconsistent with the prohibitions against donations and bonuses contained in sections 66 and 96 of the Mississippi Constitution. Such payments would not be authorized under "home rule" authority.

January 16, 2009 - Pate

A reporting error involving a member of PERS may be corrected at any time prior to the member's retirement. A school district is authorized and obligated pursuant to Miss. Code Ann. §25-11-123(6) to pay employer contributions and interest to PERS for unreported service of an individual who previously served in a covered position.

April 13, 2009 - Arnold

The salary of a justice court judge of a county is the greater of a) the amount the supervisors are actually being paid or b) 103% of the salary authorized as of September 30, 2008.

April 13, 2009 - Sanders

Records containing gross salaries are subject to disclosure under Miss. Code Ann. §25-61-1 et seq., while records containing net salaries and tax exemption status of employees are exempt from public access pursuant to Miss. Code Ann. §27-3-77. The Supreme Court has determined that gross salaries, accrued leave time and compensatory leave time of public employees are subject to disclosure under the Public Records Request Act found at §25-61-1 et seq. Records containing hourly pay rate, biweekly gross pay and annual gross pay are public, while records containing net salaries and tax exemption status of public employees are exempt, pursuant to §27-3-77. Thus, any records containing salary information are not exempt and are subject to disclosure, except those containing net salaries and tax exemption status. Miss. Code Ann. §25-61-5(2) provides that when exempt information is contained with nonexempt information on a public record, the exempt information is to be redacted. Where a request for information is made of a hospital, while Miss. Code Ann. §41-9-68 references certain hospital records as being exempt, Miss. Code Ann. §41-9-61 provides that "hospital records" contemplated in such section does not include "ordinary business records" pertaining to the administration of the hospital. Thus, business records do not enjoy the exemption granted in §41-9-68.

May 22, 2009 - Jordan

An elected mayor does not accrue personal (vacation) or major medical (sick) leave. Therefore, any payment made for vacation pay would be unauthorized compensation that should be recovered by the municipality.

PERS Q&A

Q. Should an employee who works in my agency during the summer months but who also works full time year-round with another agency be reported to PERS?

A. Yes, an employee should be reported to PERS in this case where the employee works each summer and has a set number of working hours.

Q. I work for a PERS-covered educational institution where we have a basketball coach who has retired and returned to work half time. While employed, this coach had a full meal ticket worth \$2,200 per year. In calculating the coach's half-time pay, should we include the meal ticket allowance since it was reported to PERS? And, if we provide a meal ticket now, how does that impact his post-retirement salary?

A. Because the value of maintenance (subject to certain regulatory limits established by the PERS Board of Trustees) is included in earned compensation before retirement, we must include it in determining the earnings limit for post-retirement employment when it is provided after retirement.

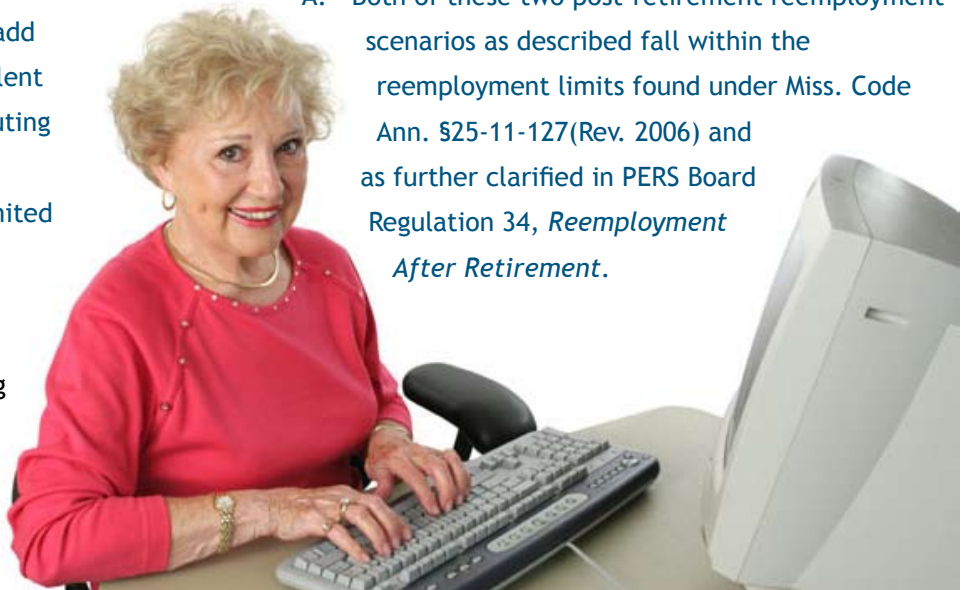
In this case, if meals will be provided to the part-time working retiree and if the value of a full meal ticket for an employee working on a full-time basis is \$2,200 per year, you would add that amount to the full-time equivalent salary for the position before computing the half-time earnings limit for the retiree who is working under the limited reemployment provisions.

Q. For a retiree working for a community college, do the following two post-retirement reemployment scenarios fall within PERS' reemployment limits?

Scenario 1 - A retiree returns to work as a program coordinator, a 225-day (7 hours per day) faculty position. The course load for a full-time employee would be the equivalent of five classes per semester/10 per academic year. Therefore, the retiree can work no more than 112.5 days (787.50 hours) and teach no more than the equivalent of five classes per year. The instructor could teach all five in one semester or three in one and two in the other. The program coordinator duties must be performed in these same 112.5 days or in the 787.5 hours. The retiree can make no more than half of the pay for the full-time employee in this same position.

Scenario 2 - A retiree returns to work in a 175-day (7 hours per day) faculty position. The course load for a full-time instructor is five classes per semester/10 per academic year. Therefore, the retiree can work no more than 87.5 days (612.5 hours per year) and teach no more than five classes per year. The instructor could teach all five classes in one semester or three in one and two in the other. The retiree can make no more than half of the pay of the full-time employee in this position.

A. Both of these two post-retirement reemployment scenarios as described fall within the reemployment limits found under Miss. Code Ann. §25-11-127(Rev. 2006) and as further clarified in PERS Board Regulation 34, *Reemployment After Retirement*.



Employee vs. Independent Contractor

Distinguishing between an employee and an independent contractor is vital for employers reporting to PERS, especially when those workers are PERS retirees.

PERS defines an independent contractor as an individual or firm who contracts to produce a given result without being controlled by an employer as to the methods used to attain the result. Conversely, an individual who performs services subject to the will and control of an employer, as to what must be done and how it must be done, is an employee.

Incorporating factors established by the Internal Revenue Service (IRS) Rev. Rule 87-41, PERS created the *Employee vs. Independent Contractor Determination Questionnaire* (see Forms Library at www.pers.state.ms.us). This questionnaire helps determine whether an individual is an employee under the common-law rules for purposes of mandatory coverage in PERS or is a reemployed PERS service retiree subject to the reemployment limitations as provided in Miss. Code Ann. §25-11-127.

The IRS summarizes the determining factors into three categories:

Behavioral control

Facts that show whether the business has a right to direct and control how the worker does the task for which the worker is hired include:

- Whether the business has retained the right to control the details of a worker's performance or instead has given up that right
- Whether training is given by the business to the worker to perform services in a particular manner (employee) or the worker ordinarily uses his or her own methods (independent contractors)

Financial control

Facts that show whether the business has a right to control the business aspects of the worker's job include:

- The extent to which the worker has unreimbursed business expenses. Independent contractors are more likely to have unreimbursed expenses.
- The extent of the worker's investment. Though not necessary for status as such, an independent contractor often has a significant investment in the facilities used in performing services for someone else.
- The extent to which the worker makes services available to the relevant market. An independent contractor is generally free to seek out business opportunities, often advertising and having a visible business location.
- How a business pays a worker. An employee is generally guaranteed a regular salary. Independent contractors are usually paid a flat fee.
- The extent to which the worker can realize a profit or loss. An independent contractor can make a profit or loss.

Type of relationship

Facts that show the parties' type of relationship include:

- Written contracts describing the relationship between the parties
- Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay or sick pay
- The permanency of the relationship. An employer-employee relationship is usually indicated when a worker is engaged with the expectation that the relationship will continue indefinitely.
- The extent to which a worker's services are key to a company's regular business. If a worker provides services key to regular business activity, an employer more likely will have the right to direct and control that worker's activities, thus indicating an employer-employee relationship.



PERS Board of Trustees

Herrington Elected New Board Chair



Lester Herrington of Brandon was elected June 23 as chairman of the PERS Board of Trustees for fiscal year 2010, succeeding Tate Reeves, Mississippi state treasurer.

A retired deputy commissioner from the Mississippi Tax Commission, Herrington was

initially a gubernatorial appointee to the Board from 1991 to 2001, during which time he first served as chairman (1995 to 1997). In 2005, he was elected by PERS retirees to serve on the Board as one of their representatives. The chairman presides at board meetings, appoints members of board committees and can call special meetings.

McMillan elected to Board of Trustees



H.S. "Butch" McMillan, Mississippi Department of Rehabilitation Services executive director, has been elected as the new state employee representative on the PERS Board of Trustees. The Board certified the results of the runoff election

at their Aug. 25 meeting. McMillan, of Madison, defeated Division of Medicaid Deputy Administrator Lynda Babin Dutton of Brandon. McMillan is filling an unexpired term through June 2014 left vacant by the retirement of John Mulholland of Brandon.

County Employees to Vote for PERS Board Representative

County employees who are members of PERS will cast their votes from Sept. 15 through Oct. 15 for representation on the PERS Board of Trustees. Candidates for this election are incumbent Bill Benson of Shannon and Joyce Mayberry of Macon. Benson is Lee County chancery clerk. Mayberry works as payroll administrator, county inventory control clerk and board

secretary for the Noxubee County Board of Supervisors. Ballots, biographical information and candidate statements for the election were mailed to county employees on Sept. 15. Deadline for voting is 5 p.m. Oct. 15. Additionally, information relative to the candidates and the election is posted on the PERS website www.pers.state.ms.us.



PERS Field Representative Jean Clark speaks at the Employer Training in Pearl.

Employer Training Overview

PERS successfully hosted six Employer Training workshops this summer in Pearl, Greenville, Tupelo, Meridian, Long Beach and Hattiesburg.

These trainings are held annually to provide information to personnel responsible for the administration of benefits and reporting of wage information for covered employees.

Topics included the recent contribution rate increase, regulatory changes, reemployment, changes to WEB-ERS, reporting issues and legislative updates. There also were presentations by the Mississippi Department of Finance and Administration Office of Insurance and Mississippi Deferred Compensation Plan & Trust.

Meeting notes are available to those who were not able to attend a workshop. For more information, call 800-444-7377 or 601-359-3589.

Coming Soon PERS Website to be Renovated

PERS revealed its new logo and look in the Spring 2009 *Employer Update* and will soon take that look online.

Little by little, the agency is implementing the new look in various publications, on forms, on letterhead and, within the next three to four months, on the agency's website.

The updated website will have the same functionality and basic layout as the agency's current website and will still feature the same helpful information and tools. However, PERS is working to enhance our customers' online experience by offering an updated look and streamlining the data provided.

The site renovation is anticipated to be up and running by the new year.

As always, PERS looks to its end users to provide feedback on how we can better serve you. With these updates to the site, we hope you will share with us how we can improve your online experience so that, as our site changes and grows, it can become an even more useful tool for you and other end users.

Send feedback
on the website to:
pmailaccount@pers.ms.gov





Byron King, PERS Customer Service Representative

PERS Is Here for You

PERS Customer Service Center is designed to quickly and efficiently deliver information to retirees and members in a friendly, timely and accurate manner.

Offering a positive one-stop service experience, our staff is able to answer questions about all retirement systems administered by PERS, provide general information, take requests for information and provide updates on the status of claims.

The Customer Service Center operates weekdays (with the exception of state holidays) from 8 a.m. - 5 p.m.

You may reach the Center at 800-444-7377 or 601-359-3589.

Contact PERS

601.359.3589 or 800.444.7377

www.pers.state.ms.us

PERS Employer Hotline

601.359.2090

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