

Public Employees' Retirement System of Mississippi  
Mailing Address:  
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# PERS Employer Update April 2003

## *Distribute to all Administrative, Payroll, and Human Resource Personnel*

### Provisions in Retirement Law if a Member is called to Military Duty

PERS has received questions regarding the impact on service credit if a member is called up to active military duty. Following are the provisions relating to military service:

- An employee with personal leave can elect to use the leave during any period of absence due to military service. If the employee does elect to use such leave and is paid the regular salary, retirement contributions will be made to PERS and service credit will continue to be credited until the leave is exhausted.

- PERS law and Mississippi Highway Safety Patrol Retirement System law both provide that up to four (4) years of **active duty** military service may be credited to the member at no cost, regardless of when the service is rendered. Military credit can only be awarded for periods in which no service credit has already been granted. To receive credit, the member must return to covered service after military duty and must provide

PERS with the DD214 form showing an honorable discharge.

- If the employee does not have personal leave, or elects not to use such leave, and thus is on a leave of absence without pay, no contributions will be made during the military service and no service credit will be accrued. If the member returns immediately to employment with the same employer upon release from military service, he or she may apply for free military service up to the four (4) year maximum.

- If the member already has credit for the maximum amount and qualifies for reemployment under the Uniformed Services Employment and Reemployment Rights Act, he or she can pay employee contributions missed during the leave of absence, based upon salary the member would have received. If the member does so, the employer must also pay its contribution, and PERS will provide service credit for the period.

### PERS has Begun Implementation of Ret 5.0

PERS has successfully completed a piloted testing of its new Wage & Contribution Reporting System, RET 5.0, and has begun a staged implementation for all agencies.

RET 5.0 is 1) Window-based, 2) contains enhanced editing features, and 3) allows for the secure transmission of monthly reports to PERS via the Internet. The current system, RET 3.1, will continue for agencies that do not meet minimum requirements to install RET 5.0 at this time.

PERS will convert 50 to 100 agencies per month to RET 5.0. The order for selection of agencies will be based on level of readiness. A letter of notification will be sent to each agency prior to implementation.

To utilize RET 5.0, the operating system must be Microsoft Windows 98 or later. The system will not run on Microsoft 95 or earlier.

Other requirements are a) a PC with a Pentium-class processor, b) 32 megabytes of RAM memory, c) a hard disk with 20 megabytes of available space, and d) a VGA or higher resolution monitor. Additional resources needed include an Internet connection, privileges of http (if behind a firewall), and an Internet browser for software downloads.

Agencies meeting minimum requirements to utilize RET 5.0 that would like to be included in the next stage of implementation should contact the PERS Wage & Contribution Reporting Department through the PERS web site at [www.pers.state.ms.us](http://www.pers.state.ms.us).

Agencies that have questions concerning RET 5.0 implementation, or needing additional information, should contact the Wage and Contribution Reporting Department at 1-800-444-7377 or the PERS Employer Hotline at 601-359-2090, Option 1.

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## PERS Board Regulation 36 Guidelines Determine Who is Reported to PERS

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PERS Board Regulation 36 clarifies covered positions for membership purposes. It requires that an individual must be a regular employee subject to the control of the covered employer, as defined in IRS guidelines, to participate in the Retirement System. If the employee meets the following requirements, he or she is mandatorily covered by PERS:

- a) Be properly classified as an employee.
- b) Have compensation properly reported on IRS Form W-2.
- c) Be paid regular periodic compensation.
- d) Be treated as an employee for all purposes, including but not limited to eligibility for fringe benefits, payment of employment related expenses, payroll tax withholding, etc.
- e) Must personally perform services and receive compensation for not less than 20 hours per week or not less than a total of 80 hours per month or, in the case of school personnel, must perform services and receive compensation for half-time or more for the academic year.

In addition, employment must be for a continuous period of at least four and one-half months in a state fiscal year, and if the employee meets the above guidelines, he or she is **mandatorily** covered by PERS. Coverage is mandatory under these guidelines even if the employee is in a probationary period. (See PERS Board Regulation 36 and Attorney General Opinion to Ronald M. Kirk dated January 3, 2003.)

**Sporadic or intermittent employment** - A **regular** full time employee who works at least 20 hours per week and is employed for a continuous period of at least four and one-half months in a state fiscal year would be covered by PERS. But if an examination of an employee's work schedule shows that the employment is sporadic or intermittent, without a regular or guaranteed work schedule and without a regular number of hours, the employee should be excluded from PERS coverage. When this occurs, the employer should file PERS Form 4A, Non-Covered Employment Acknowledgment, documenting that the employee is in a non-covered position. This form acknowledges the nature of the employment for the protection of both the employer and employee.

**Summer employment** - Persons whose employment is temporary in nature or intermittent and are not employed at least four and one-half months in a state fiscal year are not in a covered position, and thus are not covered by the Retirement System. Therefore, anyone employed **only** for summer employment should not be reported to PERS.

**Employment with a second covered employer** - If a member is a regular employee with a covered employer and is providing regular part-time services for a second covered employer, additional wages earned for regular employment with the second employer must be reported to PERS.

**Probationary employees must be reported** - Not reporting wages for retirement eligible employees during a probationary period is in direct violation of the law governing the Retirement System and the terms of an agency's Joinder Agreement with PERS. Miss. Code Ann. Section 25-11-105(a) provides that participation in PERS is a **condition of employment** for all persons hired in covered state service or those covered under a Joinder Agreement after the effective date of the agreement. Specifically, Board Regulation 36 provides that anyone whose employment meets the guidelines as set forth in statute and regulation and who is hired for a period of time that is anticipated to exceed four and one-half months must be covered **immediately**, whether the employee is considered probationary or not. This applies to all covered agencies participating in PERS.

The consequences of not reporting new employees during a probationary period can be serious. Not only are the required contributions not being made to PERS, but also individuals affected are being deprived of valuable service credit, which could significantly affect benefits, such as the availability of hurt on the job disability or death benefits during this period. In addition, losing the service credit during the probationary period could affect whether an employee later qualifies for survivor or disability benefits in the event of death or disability prior to retirement. Failure to properly report employees for retirement coverage does not relieve the employer of its responsibility or liability for doing so. Years from now, the agency could be held responsible for a reporting error relating to the failure to report probationary employees and might have to pay employer contributions, plus assessed interest. If any agencies are guilty of this oversight, they should immediately begin to report the wages for impacted employees eligible to participate in PERS who may still be considered as probationary employees. In addition, adjustments should be made to the records of all **current** employees who have not had all their appropriate service credit reported.

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## Answers to Important Questions

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### ***Q. What can be done after a member's retirement or death to establish service credit?***

A. The general rule is that the right to purchase service credit, repay a refund, or make payments on unreported income ends at death or retirement.

**Payment of a refund after the death of a member** - Miss. Code Ann. Section 25-11-105 provides that membership in the Retirement System ceases upon the withdrawal of accumulated contributions, by withdrawal from active service with a retirement allowance, or by the member's death. Also, Miss. Code Ann. Section 25-11-117 gives the right to pay a refund to the **member only**. On this basis, prior PERS Board of Trustees decisions have denied the request of the widow of a deceased member to repay withdrawn contributions in order to re-establish service credit for the deceased member. Thus, the right of a member to repay a refund ceases with the member's death.

**Adjustments of unreported and underreported income** - Miss. Code Ann. Section 25-11-105 gives the member the right to purchase membership service credit

for unreported income, but states that all rights to purchase retroactive service credit or repay a refund terminates upon retirement. Membership ceases upon the withdrawal of accumulated contributions, by withdrawal from active service with a retirement allowance, or by the member's death. Thus, the right to purchase membership service for unreported income also ceases with the member's death or retirement.

An Attorney General's Ruling dated April 9, 1992, stated that PERS cannot give service credit for any period if full contributions have not been paid. This would apply where contributions have been made on only a part of reportable income. Since membership rights terminate at death or retirement, all unpaid contributions and interest for underreported earnings must be received by PERS prior to the member's retirement or death if credit is to be awarded for such period.

### ***Q. If a retiree is elected District Attorney, would he or she qualify as a municipal or county official under the re-employment provisions approved by the Legislature last year?***

A. The Legislature amended Miss. Code Ann. Section 25-11-127 a year ago to provide two re-employment options that apply specifically to retirees who are elected to municipal or county elected positions.

However, District Attorneys, as well as Circuit and Chancery Court Judges, are not considered municipal or county elected positions. Therefore, any retiree elected as a District Attorney or a Chancery or Circuit Judge must again become a contributing member of PERS, with the retirement allowance stopped. If the retiree remains in the covered position for more than six months, retirement benefits will be recalculated upon subsequent retirement to include the additional service credit.

Municipal elected positions that **would** qualify under the 2002 legislation include the Mayor, Board of Aldermen, Councilmen or Selectmen, Police Chief or Marshall, Municipal Judge, Tax Collector, Tax Assessor and City or Town Clerk. County elected positions that **would** qualify include members of the Board of Supervisors, Chancery and Circuit Clerk, Tax Assessor, Tax Collector, Sheriff, Surveyor, Justice Court Judge, County or Family Court Judge, Constable, Coroner or Medical Examiner, Superintendent of Education, elected County Prosecutor and elected County Attorney. A

retiree elected to a county or municipal office must, as a condition precedent to receiving or continuing to receive a retirement benefit during the fiscal year, annually file **either**:

- 1) His or her election to waive all compensation; **or**
- 2) His or her election to receive an amount of compensation that does not exceed 25% of the retiree's Average Compensation at the time of retirement.

An election to receive up to 25% of Average Compensation establishes the maximum amount that can be earned over the course of the entire fiscal year on a prorated basis. Each month, the retiree could earn up to 1/12th of the amount earnable for the fiscal year. For the employer to pay more than 1/12th of the earnable amount in a month would constitute an advance payment of wages in violation of Article 4, Section 96 of the Mississippi Constitution.

If a retiree elected to county or municipal office chooses the second option above, he or she may be re-elected to the same office and continue to receive up to 25% of Average Compensation regardless of the number of times re-elected.

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## Summary of Recent Opinions from the Office of the Attorney General

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**August 9, 2002 (Kelly)** - AmeriCorps participants placed in schools to increase literacy are not considered employees of the local school district, do not receive salary or fringe benefits from the district, and are not subject to the additional qualifications that must be met by paraprofessionals of the school district.

**September 13, 2002 (Mayfield)** - Regarding Miss. Code Ann. Section 25-15-3, an employee is considered full time if he or she receives compensation from the employer, a portion of which is paid into the state retirement plan. The compensation may be payment for work performed or for medical or personal leave. If the employee does not receive compensation from one of these sources and is not making contributions to the retirement plan, the employer would not have the authority to pay the employees' health insurance premiums.

**October 4, 2002 (Lowery)** - Teaching experience in the Headstart program is not state service under Section 25-11-103 since Headstart is a federally funded program. Therefore, a Headstart teacher is not an employee of the state and cannot receive membership service credit under PERS for Headstart experience.

**October 4, 2002 (Adams)** - A public employee may receive pay for accumulated sick and/or personal leave while receiving workers' compensation benefit until the accrued leave is exhausted. However, payment of the regular salary for an employee disabled due to a job-related injury, or payment of the difference between salary and workers' compensation benefits after the employee has exhausted all accrued leave, would constitute an unauthorized donation.

**November 1, 2002 (Bryant)** - If a municipality does not have a policy allowing employees to accumulate leave from year to year, it does not have the authority to grant such a benefit retroactively to employees who did not use up all their entitled leave time in past years. To grant these employees additional compensation because they could have used the leave time, but did not, would violate the Mississippi Constitution.

**November 8, 2002 (Logan)** - Retroactive salary increases are legal **only** if it is shown that the pay was due, but unpaid, because of administrative error. In all other cases, salary may be adjusted prospectively, but not retroactively.

In a related opinion dated Dec. 13, 2002 (Varas), it was determined that a school district does not have the authority to allow additional retroactive pay for work that has been performed for an agreed upon compensation. Specifically, a retiree who performed services and was paid the agreed upon amount may not receive additional pay retroactively, even if it is shown that other employees received higher pay for the same services.

**January 10, 2003 (Fortier)** - An employer may provide additional compensation in the form of overtime pay or compensatory time **only** if the employer has a specific policy authorizing such payment in effect before the extra services are performed. Without such a specific policy, the payment would not be authorized.

**January 24, 2003 (Joseph)** - Effective July 1, 2002, the county or municipality can pay any portion or all of the premiums for a PERS service retiree elected to local office who elects to work under the compensation limit under Miss. Code Ann. Section 25-11-127, provided that the total compensation paid (salary plus insurance premiums) does not exceed 25% of Average Compensation. Conversely, if the PERS service retiree elected to local office elects to work under the waiver of salary provision under Miss. Code Ann. Section 25-11-127, the county or municipality would have no authority to pay any portion of the health insurance premiums.

**February 21, 2003 (Adams)** - Teacher salaries are governed by Sections 37-9-33 and 37-19-7, which prohibit districts from providing additional compensation to teachers in bonuses or incentive pay not authorized by statute. Specifically, a school district may not use federal funds to offer teachers incentive pay to accept a transfer to another school in the district.