

Public Employees' Retirement System of Mississippi
Mailing Address:
429 Mississippi Street
Jackson, Mississippi 39201-1005
(601) 359-3589 or 1-800-444-PERS (7377)
Employer Hotline: (601) 359-2090
Web Address: www.pers.state.ms.us

PERS

**Employer Update
January 2004**

Distribute to all Administrative, Payroll, and Human Resource Personnel
Email comments, questions, or suggestions to mspemail@pers.state.ms.us

PERS Board Regulation 51 – Administration of Leave

The PERS Board of Trustees took final action on December 16, 2003, to adopt **PERS Board Regulation 51, Administration of Certification of Accumulated Unused Leave for Service Credit and Lump Sum Payments of Leave at Termination/Retirement**. This Regulation confirms and reaffirms prior construction of law, practice, and procedure in the administration of service credit for lawfully accumulated unused personal and major medical leave and for the payment of unused leave for retirement purposes. The fundamental requirements for certifying leave to PERS have been incorporated into the Regulation.

The effective date of Senate Bill 2475 authorizing the use of accumulated unused leave certified to PERS upon termination of employment was May 15, 1984. Thus, leave may be certified to PERS only where:

- The employee terminated employment on or after May 15, 1984 (July 1, 1984, for former State and University employees);
- The personal and major medical leave was **accumulated by the employee and available for use by the employee** under a lawfully adopted leave policy where such policy was not adopted or applied retroactively and where such leave was not awarded retroactively;
- **Records exist** with the employer at the time of certification to support such accumulated leave;
- The accumulated leave did not exceed the personal and major medical leave which could have been accrued under the state's leave law as provided under Miss. Code Ann. §§ 25-3-93 and 25-3-95.

The **PERS Form 18, Employer Certification of Termination and Accumulated Unused Personal and Major Medical Leave**, has been revised. An original of the revised form is included along with this Employer Update and may also be printed from the Forms Library on our web site. The full text of PERS Board Regulation 51 is also included with this Employer Update and is also available on our web site.

When certifying accumulated unused personal and major medical leave to PERS upon an employee's termination from employment, employers should not certify leave:

- For which the employee has been compensated;
- For which there are no records maintained by the employer;
- That will or has been transferred to another employer;
- Other than personal and major medical leave;
- Donated to one employee from another employee; or
- Which expired and was not actually available for use by the employee.

Note that lawfully accumulated unused, uncompensated personal and major medical leave may only be certified to PERS upon termination from employment.

PERS Board Regulation 34 – Reemployment after Retirement

The PERS Board of Trustees took final action on December 16, 2003, to adopt amendments to **PERS Board Regulation 34, Reemployment After Retirement**, to clarify the statutory provision that allows retirees to be elected to municipal and county offices and to receive compensation in an amount not to exceed twenty-five percent (25%) of the retiree's average compensation. The first amendment clarifies that the twenty-five percent (25%) of average compensation shall be prorated over a twelve-month time frame. The second amendment clarifies that, for purposes of the reemployment limitations under Miss. Code Ann. § 25-11-127 (5), municipal or county elected positions shall include:

Municipal: Mayor, Board of Aldermen (Councilmen/Selectmen), Police Chief or Marshal, Municipal Judge, Tax Collector, Tax Assessor, City or Town Clerk, unless any such position is made appointive pursuant to Miss. Code Ann. § 21-3-3, or any other salaried municipal official elected by popular vote and eligible for coverage under PERS. **County:** County Supervisor, Chancery Clerk, Circuit Clerk, Tax Assessor, Tax Collector (if separate from Tax Assessor), Sheriff, County Surveyor, Justice Court Judge, County Judge/Family Court Judge, Constable, County Coroner or Medical Examiner, Elected County Prosecutor/Elected County Attorney, Elected Superintendent of Education, or any other salaried county official elected by popular vote and eligible for coverage under PERS.

Municipal and county elected positions shall not include: Governor, Lieutenant Governor, Secretary of State, Attorney General, State Auditor, State Treasurer, Commissioner of Agriculture and Commerce, Commissioner of Insurance, Public Service Commissioner, Transportation Commissioner, State Senator, State Representative, Supreme Court Justice, Court of Appeals Judge, Chancery Court Judge, Circuit Court Judge, District Attorney, or any other office not included in the municipal or county elected offices.

Schedule of Upcoming Employer Seminars

Training sessions for administrative, payroll, and human resource personnel will be held from **08:30 a.m. until noon** on the following dates at the following locations: *Pre-registration is not required.*

Date	City	Location
Wednesday, February 4, 2004	Cleveland	Bolivar County Expo Center, 601 First Street
Thursday, February 5, 2004	Senatobia	Coliseum Hall of Fame Room, Northwest Community College, Northwest Drive
Friday, February 6, 2004	Grenada	Industrial Technical Complex, Holmes Community College, 1060 Avent Drive
Thursday, February 12, 2004	Tupelo	University of Miss. Advanced Education Center, 2716 South Eason Boulevard
Friday, February 13, 2004	Starkville	Best Extension Center Theater, Mississippi State University, Extension Drive
Thursday, February 19, 2004	Hattiesburg	MSU Extension Service Facility, 952 Sullivan Drive
Friday, February 20, 2004	Summit	New Student Union Cafeteria, Southwest Community College, 1169 College Drive
Thursday, February 26, 2004	Gulfport	Building U, Room 202, Gulf Coast Community College, 2226 Switzer Road
Wednesday, March 3, 2004	Meridian	Multi Purpose Room, Mississippi State University, 1000 Highway 19 North
Thursday, March 4, 2004	Pearl	Lecture Hall, Hinds Community College, 3805 Highway 80 East

Topics will include, but may not be limited to, the following:

- PERS Board Regulation 51, Administration of Leave
- PERS Board Regulation 34, Reemployment After Retirement
- PERS Legislative Agenda

Summary of Recent Opinions from the Office of the Attorney General

July 7, 2003 (James Spinks) A city clerk who accumulated annual and/or sick leave while working full-time may use that leave while working part-time as city clerk. Miss. Code Ann. § 21-3-5 authorizes the board of aldermen of a code charter municipality to employ city clerks and other officers and employees, set the compensation and establish their duties. A city clerk who was working full-time and who accumulated annual and/or sick leave with the approval of the employer may use that leave while working in a part-time capacity subject to any restrictions on use of leave contained in the city's leave policies.

July 18, 2003 (John Horhn) Miss. Code Ann. § 25-3-95(8)(l) requires that for an employee to be eligible to receive donated leave, an employee must: (i) have been employed for a total of at least twelve (12) months by the employer on the date on which the leave is donated; and (ii) have been employed for at least one thousand two hundred and fifty (1,250) hours of service with such employer during the previous twelve-month period from the date on which the leave is donated. With regard to determining an employee's eligibility to receive donated leave, the phrase "hours of service" as used in § 25-3-95(8)(l)(ii) includes actual hours worked in addition to any paid-time off using accrued vacation or medical leave. "Hours of service" does not include any unpaid leave.

July 25, 2003 (Henry Palmer) Contract workers are considered to be employees and thus are subject to the re-employment provisions of Miss. Code Ann. § 25-11-127.

July 25, 2003 (Amanda A. Scott) Under Miss. Code Ann. § 25-11-105, municipalities, counties and other juristic entities are allowed to offer Social Security and Retirement Coverage to their employees by way of a Joinder Agreement. The Agreement may exclude certain positions from coverage. Contributions should not be withheld on positions excluded from coverage in the Retirement System through the Joinder Agreement.

Election of Board Representative for Public Schools & Community Colleges

An election is being conducted this year to fill the position of the Public School and Community Colleges Representative on the PERS Board of Trustees. The election is for a six-year term beginning May 1, 2004, and ending April 30, 2010. All PERS members employed by a public school district or community college are eligible to vote. The incumbent is Dr. Lee Childress, Superintendent of the Corinth Public School District.

The deadline for public school and community college employees to submit petitions was December 31, 2003. **The remaining schedule is:**

January 15, 2004	Mail ballots to employers
February 17, 2004	Deadline for receipt of ballots (5:00 p.m.)
February 19, 2004	Ballots counted
February 24, 2004	Board certifies election results

Run-off Schedule (if no candidate receives a majority in the first election)

March 1, 2004	Mail run-off ballots
March 31, 2004	Deadline for receipt of runoff ballots (5:00 p.m.)
April 2, 2004	Ballots counted
April 27, 2004	Board certifies election results

Ballots will be mailed to the human resource or personnel offices of the employer. It is the responsibility of human resource/personnel officials to distribute ballots in accordance with instructions and to return the ballots to PERS prior to the deadlines.

Answers to Important Questions

Q If we have employees who work part-time, as needed, with an irregular number of hours each month, how do we know when to report these employees to PERS?

A The general rule is that if a regular employee is employed and regularly works at least half of the equivalent number of hours representing a full-time position and is paid at least half the compensation for the position, that individual must be covered in the Retirement System. This requirement has been further defined as stating that an employee who is regularly employed on a work schedule of at least 20 hours or more per week or 80 hours or more per month and who is employed for a continuous period of 4 ½ months or more should be reported to PERS. Conversely, an employee on a work schedule of less than 20 hours per week or 80 hours per month, regardless of the duration of employment, would not be covered. Persons whose employment is temporary in nature and whose employment is not expected to last at least 4 ½ months do not qualify for retirement coverage.

Coverage eligibility is more difficult to determine in cases where there is no regular or guaranteed work schedule or number of hours to be worked and where the employee is called to work only as needed and only does so if he/she wants to work and is available to work. The more intermittent nature of this work and the manner in which the services are secured results in the employer's inability to predict the actual number of hours such part-time workers will work in any given month as these employees do not fill regular positions.

It is our suggestion that the employer carefully examine the actual nature of the employment of these individuals to determine if each is a regular employee filling a covered position. In determining that a position is covered or not, the employer should look at the expected work hours and the anticipated duration of employment. If the employer determines that the individuals are eligible for retirement coverage, retirement contributions should be withheld from the earnings of those employees.

On the contrary, if the employer determines based on the applicable work schedule that these individuals are not eligible for retirement coverage due to intermittent or sporadic employment, they should be excluded from coverage and this decision acknowledged by both the employer and the employee on the PERS Form 4A, Acknowledgement of Employment in a Non-covered Position. Should the relationship later change where the employee regularly works on average more than 20 hours per week or 80 hours per month, the retirement coverage status should be reevaluated and the employee reported for retirement purposes.

Q Upon application, how quickly can an employee receive a refund of his or her accumulated contributions and then return to employment?

A Refunds of accumulated contributions are processed after the receipt of a properly completed PERS Form 5, Application for Refund of Accumulated Contributions to Member, but no sooner than forty-five (45) days from the termination date certified by the authorized employer representative. If it is the intent of the employee to immediately reapply for employment with the employer following receipt of the refund, the employer should not certify the Application. While it is within the employer's prerogative to reemploy a former employee, it is clearly unlawful for the employer to collaborate with an employee to allow him or her to receive a refund of contributions without a complete severance of employment. A complete severance of employment is not achieved if there is an express or implicit understanding between the parties that the employee will be certified as terminated for the express purpose of getting the refund with the promise or agreement to rehire the employee once that has been accomplished.