



Employer Update

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

Employer Help Needed to Update Addresses

The Public Employees' Retirement System (PERS) of Mississippi maintains a database of more than 166,000 active member names and addresses. Keeping this information up to date is a never-ending task that requires PERS to seek assistance from employers.

Because PERS-covered employers provide us with active member names and addresses, we must rely on employers to keep that information up to date so members can receive statements, newsletters, and other vital correspondence. Adding to the complexity of updating addresses are recently updated National Change of Address (NCOA) requirements issued by the U.S. Postal Service.

Therefore, PERS requests that employers have all members with name and/or address changes fill out and submit to their respective employers a PERS Form 1C, *Change of Information*, as soon as possible. This form is found at

www.pers.state.ms.us/formslibrary.

Employers who report to PERS through WEB-ERS or SPAHRS should keep the 1C forms on file and submit name and address changes through the monthly wage and contribution reports. Any change other than to employee name and/or address (i.e., family information or marital status) should be submitted to PERS by the employer via a Form 1C.

Employers still with RET, should submit employee name and address changes to PERS via a Form 1C after updating their own records.

Mulholland Retires from State Personnel Board, PERS Board of Trustees

After more than 21 years of service to the state, John Mulholland of Brandon has retired as State Personnel Board deputy director and,



Mulholland

in turn, as one of the PERS Board of Trustees' two state employee representatives. During his years of service, Mulholland, a

retired sergeant major in the U.S. Army, served as interim State Personnel director. He was first elected to the PERS Board in February 2006, filling an unexpired term. He was re-elected in July 2008 and was a member through February 28.

See page 3 for more information on the special election to fill the now-vacant state employee representative position.

New Look/Logo for PERS

PERS has a new look. Along with updated colors, the agency has a new logo that illustrates the ying and yang of investing in the future and reaping the benefits of preparation. Beginning with this *Employer Update*, PERS is implementing the new look in various publications.



Summaries of Recent Attorney General Opinions

June 4, 2008 - Jay Gore, III

There is no authority for a community hospital covered under a Joinder Agreement to terminate PERS coverage unless it meets the specific requirements set forth in Section 25-11-105(j). The hospital has the authority to contract with a third party to provide services to the hospital. Contracts of local governmental entities are not subject to review by the Personal Services Contract Review Board. There is no statutory provision that requires contracts for hospital staff services to be advertised for bids. Retirement coverage under an existing joinder agreement with PERS is based on an individual's status as an employee of a covered employer.

In determining whether a person is an independent contractor or an employee, one must examine the relationship of the parties involved. The Mississippi Supreme Court has stated that contracts of service are not conclusive of the issue. Factors that may be considered in determining whether a particular worker is an employee of the state or an independent contractor include the extent to which control is exercised over details of the work by the state employer; whether or not the individual is engaged in a distinct occupational business; the skill required in the occupation; whether the employer supplies the tools and place of work; the length of time for which the person is employed; the method of payment; and, whether the work involved is a part of the "regular business" of the employer. The primary factor in determining whether a particular worker is an employee or an independent contractor is the right to or the degree of control which the employer exercises over the individual.

July 8, 2008 - Bryan E. Dye

Section 25-15-103 provides in part for employees covered by PERS who reach the "statutory age of retirement" to elect to remain a member of the group plan for life insurance and other benefits provided the retiring employee pays the entire cost of the insurance. The "statutory

age of retirement" as used in Section 25-15-103 would include any age at which a member accrues at least 25 years of creditable service or 60 years of age if the member has not accrued at least 25 years of creditable service provided

- a) the member who became a member of the system before July 1, 2007, has at least four years of membership service, or
- b) the member who became a member of the system on or after July 1, 2007, has at least eight years of membership service.

August 1, 2008 - Stacey E. Pickering

Section 25-11-127 authorizes the reemployment of retired persons who continue to receive a retirement allowance under limited circumstances. A violation of Section 25-11-127 occurs when a retired circuit or chancery clerk receives compensation, including fees and disallowed expenses, in excess of 25% of the retiree's average compensation. PERS Regulation 34 provides that, where a retiree is reemployed under PERS after retirement in a covered position outside one of the exceptions allowed by law, the retiree shall have his benefits terminated and he shall again become a member of the retirement system with contributions paid by both the employee and the employer. It is the primary responsibility of PERS to enforce the provisions of Section 25-11-127 by recovering overpayments of retirement allowances.

September 5, 2008 - Wade White

The office of county surveyor is an elected constitutional office. Where no one qualifies to run, the county board of supervisors is required to make an interim appointment and take such action required by law to fill the vacancy as with other vacancies in county elective offices. The office of county surveyor is fee paid; thus, the county is not responsible for the compensation of county surveyors. As a fee-paid official (the office has no salary), the county surveyor would be responsible for providing any compensation that is paid to his deputies and other subordinates as well as any employer's contributions to PERS.

September 5, 2008 - W. Dean Belk

Military leave is calculated on a calendar-year basis. Employees are allowed 15 days of military leave for each calendar year, even if the employee remained under the same military orders as the prior year. Subject to any limitations established under the Uniform Services Employment and Reemployment Rights Act, a municipal employee who is a military reservist called to an extended period of active duty is entitled to claim each calendar year the employee remains under military orders the 15 days of military leave described in Section 31-1-21.

October 3, 2008 - T. Michael Reed

The salary established in Section 37-6-13 (compensation for members of any school district) is subject to withholding for state income taxes. There is no authority to withhold for group insurance, retirement, or other fringe benefits, since school board members are not eligible for any state employee group insurance, retirement, or other fringe benefits. There is no authority for state income tax withholding to be waived by a school board member.

November 18, 2008 - Robert Brooks

Section 25-11-127 of the retirement law permits a retiree to be reemployed by a covered employer on a limited basis in certain instances and still receive a retirement allowance. However, Section 25-31-39 contains a prohibition against the employment of part-time legal assistants by district attorneys. Thus, Section 25-31-39 prohibits the employment of part-time legal assistants regardless of the individual's status under the state retirement system.

Board of Trustees Special Election

A special election is being held for one of the two PERS Board of Trustees state employee representative positions. The unexpired six-year term ends June 30, 2014. Any state employee who has been a PERS member for at least 10 years may qualify to run.

March 10

Notices and candidacy petitions mailed to state agencies

April 9, 5 p.m.

Deadline for receipt of candidacy petitions

April 28

Board approves ballot at regularly scheduled meeting

May 18

Ballots mailed to state employees

June 18, 5 p.m.

Deadline for receipt of ballots

June 23

Board certifies election results at regularly scheduled meeting

Runoff (if necessary)

July 13

Ballots mailed to state employees for runoff

August 12, 5 p.m.

Deadline for receipt of ballots

August 25

Board approves election results at regularly scheduled meeting

For more information, visit www.pers.state.ms.us.

Contact PERS

PERS of Mississippi:

1.800.444.7377

www.pers.state.ms.us

PERS Employer Hotline:

601.359.2090

PERS Board of Trustees

Regulatory Changes

The following amendments to existing regulations, new proposed regulations, and the Optional Retirement Plan Document have been recommended by Tax Counsel following a review of the retirement plans administered by PERS and in preparation for filing for updated IRS determination letters.

Regulation 49

Conditions for Existing Military Service at No Cost and Qualified Military Service Due to Interruption of Employment Available Upon Payment of Required Employer and Employee Contributions

To remove any possible ambiguity in the statutory language of Miss. Code Ann. Sections 25-11-109(7) and 25-13-17(3) by clarifying the regulation to reflect that an employee may receive qualifying active duty service credit at no cost for interrupting military service as well as pre-employment military service.

Regulation 50

Direct Rollover of Plan Distributions

To clarify that the regulation applies to all the defined benefit plans administered by the PERS Board of Trustees and not just PERS.

Regulation 58

Payment of Additional Benefit (COLA) to Retirees of the Mississippi Highway Safety Patrol Retirement System

To ensure that the plan meets the IRS requirements of providing benefits that are “definitely determinable.”

- The MHSPRS law currently provides that the compounding of the COLA begins at age 60. This age is to be reduced in phases to age 55 if and when the actuary certifies that implementation of a phase will not cause the unfunded accrued actuarial liability amortization period for the system to exceed 20 years.
- This regulation specifies the current age at which the compound COLA applies in order to address any potential issue that the plan’s benefits are “definitely determinable” because the time at which the compounding is reduced to age 55 has not yet been determined.

Regulation 59

Plan Assumptions

To ensure that the defined benefit plans administered by PERS meet the IRS requirement for providing “definitely determinable benefits” by specifying actuarial assumptions for calculating optional retirement benefits so as to preclude any employer discretion in determining such benefits.

- In 1992, PERS and MHSPRS laws were amended to provide “The actuarial assumptions used to convert a retirement allowance from the normal form of payment to an optional form of payment shall be an appendix

to Article 3 [this chapter] and subject to approval by the Board of Trustees based upon certification by the actuary.”

- PERS has been advised that because the actuarial assumptions are not actually set forth in the statutes, they should be included in the Board Regulations along with specific language that provides that whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, such assumptions will be specified in Board Regulations in a manner that precludes employer discretion.
- Plan assumptions are provided in the regulation for PERS, SLRP, and MHSPRS.

Regulation 60

Contribution Rates

To ensure that the contribution rates of PERS, SLRP, MHSPRS and ORP are clearly reflected in the plan (normally considered the Statute, the Regulations, and/or Plan Document).

- The PERS Board of Trustees has been given the authority, on the basis of actuarial certification, to periodically change the contribution rates of the various plans it administers. Current rates are not always reflected in the Statute. PERS has been advised that while the Board’s actions to increase contribution rates from time to time are reflected in the Board minutes, current rates should be set forth in Board Regulations so as to clearly be a part of the plan.

Regulation 61

Compliance with IRS Requirements

To clarify that the defined benefit plans administered by the PERS Board of Trustees clearly comply with IRS requirements regarding exclusive benefit rules, trust requirements, forfeiture restrictions, good faith compliance with IRS Code Section 401(a)(9), etc.

- Generally, the plans have some existing language reflecting PERS efforts to comply with these provisions. However, this language dates back many years in some cases. The updated language in the regulation reflects current wording expected by the IRS reviewers.

Optional Retirement Plan Document

To amend and restate the Optional Retirement Plan Document to reflect various statutory and regulatory changes as follows:

- Authorize mutual funds as authorized funding vehicles in the plan in accordance with 2005 statutory change.
- Include appropriate trust language required when funding vehicles other than annuities are used in the plan.
- Synchronize the definition of “compensation” to that used under PERS since the same contributions are required for each plan and to conform with certain IRS Code Section 415(c) limitations.
- Update the institution and participant contribution rates.
- Update the eligibility requirements for maintaining health insurance at retirement.

- Clarify compliance with IRS qualification requirements.
- Reflect certain administrative changes.

Regulation 54 was made to conform with the latest IRS guidance on the health insurance premium tax exclusion for retired public safety officers.

Regulation 54

Administration of Retired Public Safety Officer Retirement Distribution for Health Insurance

To provide for the implementation of the special tax exclusion made available by Section 845 of the Pension Protection Act of 2006 to “eligible retired public safety officers” for certain health insurance premiums. Since the adoption of the regulation, the IRS has clarified its position regarding which employer health plans qualify for the exclusion and how “eligible retired public safety officers” make the election for the exclusion.

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

PERS Welcomes New Agencies and Members

Bay Waveland

Housing Authority

Agency 8034-000

Social Security and Retirement
Coverage

Effective 12/31/2008, and
01/01/2009, respectively

Approved by PERS Board of Trustees
12/16/2008

Rankin-Hinds Pearl River Flood and Drainage Control District

Agency 0683-000

Retirement Coverage

Effective 01/01/2009

Approved by PERS Board of Trustees
12/16/2008

City of Crystal Springs

Agency 0021-000

Retirement Coverage for Elective
Positions

Effective 01/01/2009

Approved by PERS Board of Trustees
12/16/2008

Retirees Elected to Local Offices Required to Notify PERS

Leaving retirement to return to public service can affect more than routines and priorities. It can, for some, affect retiree compensation.

As provided in Miss. Code Ann. § 25-11-127 (5) (Rev. 2006), and as further clarified through PERS Regulation 34, retirees elected by popular vote to salaried municipal or county positions must choose one of three options.

Option one is to come out of retirement completely and stop receiving retirement benefits to take the full salary offered with the elected position. With this option, the person would once again become a contributing member of PERS and begin building additional service credit. Retirees who are elected to a municipal or county position and choose to come out of retirement need to notify PERS in writing.

With options two and three, the elected person maintains their retiree status and continues receiving retirement benefits. However, with option two, he or she waives the elected position salary entirely. With option three, on the other hand, the retiree may elect to receive an annual salary not to exceed 25% of his or her average compensation at retirement.

Within five days of taking office, retirees who choose option two or three must file a PERS Form 9C, *Local County or Municipal Elected Official Reemployment Acknowledgement and Election*, with their employer, who will complete the form and file it with PERS. Using Form 9C, a retiree denotes whether A) he or she will waive all salary or B) will accept a salary not to exceed 25% of his or her average compensation at retirement, prorated over a 12-month time frame.

A local elected official who decides to retire from a PERS-covered job while in office but who plans to continue serving as a local elected official should file a Form 9C when making application for retirement.

Covered employers who hire a PERS retiree are responsible for the ongoing reporting of wages. Using wage code RW12, employers are required to report post-retirement earnings paid to a retiree receiving a monthly retirement allowance from PERS. However, no employee or employer contribution to PERS is due on these wages, and service credit will not be awarded.

To read PERS Board Regulation 34, *Reemployment After Retirement*, in its entirety with a list of all elected positions covered by this regulation and the consequences of failing to comply with this regulation, visit PERS online at www.pers.state.ms.us/employerservices/selectedregulations.html.

To download a PDF of PERS Form 9C, *Local County or Municipal Elected Official Reemployment Acknowledgement and Election*, visit www.pers.state.ms.us/pdf/Forms/form9c_0305.pdf.

Reminders to Employers

PERS Employer Contribution Rate to Increase

Due to unfavorable actuarial experience for FY 2008, the PERS Employer Contribution Rate will increase July 1 from 11.85% to 12.00%.

While the 12.00% employer contribution rate is less than the 12.50% previously recommended by Cavanaugh Macdonald Consulting, LLC, as a part of a 2005 phased-implementation rate increase, employers should be aware that unless there is a significant market correction prior to June 30, contribution rates will be further impacted in future years.

Employer Contribution Rates

Fiscal Year Beginning	Percentage of Covered Payroll
July 1, 2005	10.75%
July 1, 2006	11.30%
July 1, 2007	11.85%
July 1, 2009	12.00%
July 1, 2010	TBD

Maximum Reportable Earned Compensation to Increase

The Maximum Reportable Earned Compensation for retirement purposes will increase from \$230,000 to \$245,000 per state fiscal year and proportionately for less than one year of service effective July 1. This increase coincides with the Internal Revenue Service limit.

From	Date	To	Employer Rate	Employee Rate	Maximum Covered Earnings
07/01/2007		06/30/2008	11.85%	7.25%	\$150,000
07/01/2008		06/30/2009	11.85%	7.25%	\$230,000
07/01/2009		06/30/2010	12.00%	7.25%	\$245,000
07/01/2010		06/30/2011	TBD	TBD	TBD

PERS Board of Trustees News

Lariviere Reelected, Paul Elected to Board

After two runoff elections, the PERS Board of Trustees welcomes one returning member and one new member.

Tom Lariviere, City of Madison fire chief, has been elected to a second term as the municipal employees' representative on the PERS Board of Trustees.



Lariviere

After a runoff election for the position, Lariviere defeated Jean Ishee, city clerk for Petal. Lariviere, who began this six-year term Jan. 1, was first elected to the Board in 2006

to complete an unexpired term.

In a second runoff election, Dr. Joseph Paul, vice president for Student Affairs at the University of Southern Mississippi, defeated Dr. Cecil Hill, assistant professor of accounting at Jackson State University, for the Board's Institutions of Higher Learning (IHL) representative position. The election is to complete an unexpired term through Dec. 31, 2010, created by the retirement of Dr. Richard Miller.



Paul

PERS Q&A

Q. Regarding Regulation 49, Section 103 “Military Service Credit for Public Service Interrupted by Qualified Military Service Upon Payment of Employer and Employee Contributions,” if an employee who is not vested meets all qualifications and purchases this military time, does it count toward the vesting requirement?

A. Yes, provided that the service meets all qualifications for purchase of service under the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the applicable employee and employer contributions are paid upon return to covered service within the specified time frame.

Q. According to PERS, “any member in a covered position who is also employed by another covered agency shall have the earnings of that additional employment reported to PERS regardless of whether the additional employment is sufficient in itself to be a covered position (unless the additional employment is specifically excluded by law or through joinder agreement).” This seems to conflict with PERS Form 4A, *Noncovered Employment Acknowledgment*. If an employee works full time with a PERS-covered employer but only works irregularly at a separate job for a different covered employer, would that employee’s wages be reported to PERS?

A. If an employee works full time with one covered employer but irregularly with a different covered employer, the wages for the services rendered at the second job should not be reported to PERS. A regular part-time position is one with a normal work schedule and an expected number of work hours.

PERS Board of Trustees

Board Chairman

Tate Reeves,
State Treasurer

County Employees

Representative
Bill Benson

Gubernatorial

Appointee
Paul Hurst

Municipal Employees

Representative
Tom Lariviere

Retirees

Representatives
Virgil F. Belue
Lester Herrington

Institutions of Higher

Learning Representative
Joseph Paul

State Employees

Representatives
Ed LeGrand
Vacant

Public Schools

Community/
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Lee Childress



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