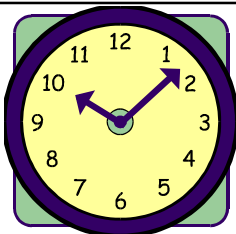
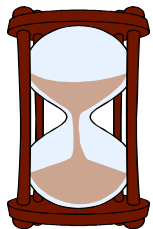


Public Employees' Retirement System of Mississippi
 Mailing Address:
 429 Mississippi Street
 Jackson, Mississippi 39201-1005
 (601) 359-3589 1-800-444-PERS (7377)
 www.pers.state.ms.us

PERS Employer Update September 2002



**The Clock is Running.....
and Time is Wasting!**



Register Now for the 2002 Annual Benefit Management Training Conferences

Sessions are provided to all agency personnel at the appropriate dates and locations listed below. Visit our website at www.pers.state.ms.us to register on-line and to obtain pertinent information about each seminar and lodging.

| <u>Date of Seminar</u> | <u>Agencies</u> | <u>Location</u> |
|------------------------|--|----------------------------------|
| September 24-25 | State Agencies | Hinds Community College Pearl |
| October 1-2 | Public Schools, Community Colleges, Libraries, IHL | Isle of Capri Biloxi |
| October 3-4 | Municipal & County Government & Other Agencies | Isle of Capri Biloxi |
| October 8-9 | Public Schools, Community Colleges, Libraries, IHL | Sam's Town Tunica |
| October 10-11 | Municipal & County Government & Other Agencies | Sam's Town Tunica |

This year's topics and presenters include:

- **“Understanding and Administering Workers’ Compensation Benefits”** — Lydia Quarles, Commissioner, and Denise Turner Lott, Administrative Judge, Workers’ Compensation Commission.
- **“Keeping Expenditures Legal”** — Rhuel Dickerson, Director of Technical Assistance Division, Office of the State Auditor
- **“PERS Wage & Contributions Reporting, Internet Reporting of Wages and the New Ret 5.0”** — PERS Staff
- **“PERS Benefits - What Your Employees Need to Know!”** — Jim Nettles, PERS Pre-Retirement Program Director
- **“Fundamentals of Deferred Compensation and the Economic Growth and Tax Relief and Reconciliation Act”** — Bobby Fortenberry, Marketing Manager, Mississippi Deferred Compensation Plan and Trust
- **“Know Your Benefits - Plan Updates”** — Sharon Kavorik, Special Projects Officer, Department of Finance and Administration, Office of Insurance (*State and School Employees Health & Life Insurance Plans*)
- **“Ins and Outs of Monthly Billing Reconciliation”** — Robin Pitts, Premium Reconciliation Manager, Department of Finance and Administration, Office of Insurance (*State and School Employees Health & Life Insurance Plans*)

If you have registered but have not received a confirmation, please contact our office at 1-800-444-7377 or 601-359-3589.

Summary of Pertinent Attorney General's Opinions

For complete copies of the opinions summarized below,
log on to the Attorney General's website at www.ago.state.ms.us

Personal and Sick Leave

Court Reporters

(May 26, 1998) Court reporters for chancery, circuit, or county court cannot accrue leave, whether personal leave or sick leave, which may be used as creditable service for the purpose of calculating retirement benefits.

Elected Officials

(February 16, 2001) An elected official is presumed available for official duties at all times and is not covered under a separate leave policy established for his or her employees. Elected officials do not accrue leave. There is no authority for an elected official to select the manner in which he or she obtains service credit for unused leave. The statutory provisions relating to leave for elected officials automatically apply.

Use of accumulated leave while collecting Workers' Compensation

(January 1, 2001) If a municipal policy entitles an employee to accrue sick leave or vacation time, and authorizes payment for such leave, the employee is entitled to receive this payment as a matter of right, if all other prerequisites are met. It is the employee's choice whether to supplement the Workers' Compensation payments with accrued sick or vacation pay. Once the accrued leave is exhausted, however, such payments cannot continue, and the employee would only be entitled to Workers' Compensation benefits.

(October 19, 2001) A municipality is not required to provide personal or sick leave benefits. If it does, it must comply with its own policies. There is no authority for a municipality to adopt a policy of awarding personal and sick leave only in the absence of unrelated contingencies, such as an employee receiving Workers' Compensation benefits, insurance or compensation from some other source. Thus, a municipal employee may receive pay which is earned for accumulated sick leave and/or personal leave at the same time he or she is receiving Workers' Compensation benefits, until the accrued leave is exhausted.

Payment of unused leave to school employees

(June 4, 1999) An employee can only receive payment for unused leave upon retirement from state service, which means separation from service and application for retirement benefits. An employee can be paid a total of 30 days accumulated sick and/or personal leave. *(Note: Section 37-7-307 provides that licensed employees will be paid for not more than 30 days of accumulated leave at a rate equal to the amount paid for substitute teachers. Non-licensed employees are paid at the federal minimum wage rate.)*

(May 1, 2002) A school district does not have the authority to pay a teacher who resigned in May 1992 and made application for retirement benefits in March 2000 for unused accumulated leave because statutes did not provide for payment for unused leave on the date the teacher resigned. And further, the teacher did not resign for purposes of retirement.

(July 14, 2000) A school board **cannot** pay a **retiring** licensed employee at the employee's daily rate of pay, rather than the substitute teacher rate of pay.

Transfer of Accumulated Unused Leave

(April 27, 2001) Prior to 1998, transfer of leave was only permitted between state agencies. Section 25-3-97 was amended in 1998 to allow transfer of leave between or among all state agencies, junior colleges and senior colleges, but this amendment was prospective only. Therefore, an employee who transferred between community colleges prior to July 1, 1998, is not entitled to transfer leave accumulated at the first community college.

Status as an Employee

Whether an Individual is an Employee is a Question of Fact

(January 18, 2002) Whether a particular retiree has become re-employed by the State of Mississippi or paid for any service by the state is a question of fact, to be determined by PERS pursuant to its regulations and the law, subject to review by a court of competent jurisdiction. PERS can use the IRS 20 factors and other factors to determine whether a particular worker is an employee or an independent contractor of a school district based on the right to or the degree of control which the school district exercises over the retiree.

Prohibition Against Employee Leasing

(March 30, 2001) The Board of Supervisors has authority to contract for services relating to record keeping, payroll preparation and report filing regarding county employees, but does not have authority to be co-employer with a personnel services firm. Such co-employment would be indistinguishable from employee leasing, which is not allowable under state law. *(Note: There is a long succession of opinions which prohibit employee leasing by cities, counties, and political subdivisions, as well as by the state itself.)*

Termination or Withdrawal from Service

(August 29, 2001) A school district may not enter into a contract of employment with a teacher who retires July 1 or at the end of a school year if the intent is to re-employ the retiree effective at the beginning of the subsequent school year. PERS law requires “withdrawal from service,” which has been defined by regulation as a period of separation of 45 days from the date of termination. For teachers, that 45-day period starts at the beginning of the next school year. Furthermore, a teacher may not serve in the classroom on a voluntary basis during the 45-day period.

Payment of Health Insurance Benefits by an Employer After Retirement

(October 16, 1998) Municipal employees who retire due to full medical disability or due to reaching the statutory retirement age may elect to remain a member of the municipality’s group plan for life insurance and other benefits by paying the entire cost. There is no authority for the municipality to assume or contribute to the cost of providing life insurance or other benefits.

(September 8, 2000) A county may not pay health insurance premiums for a member of the Board of Supervisors who is a retired school superintendent participating in the school’s health care plan who has waived his salary and compensation from the county in order to receive retirement benefits. *(See the June 7, 2002 opinion below concerning the new re-employment alternative, effective July 1, 2002, for local elected officials who are retired.)*

(June 7, 2002) Pursuant to the new re-employment provision allowing a retiree to hold county or municipal office and receive the retirement allowance in addition to up to 25% of average compensation, the city or county can pay health insurance premiums for retirees working under such a provision.

(April 23, 2001) There is no statutory authority to pay a per diem to a city council member who is a retiree of PERS and who has elected to waive his or her salary or compensation in order to continue receiving retirement benefits.

(July 6, 2001) County employees who retire under either medical retirement or age-related retirement may remain a member of the county’s group plan for life insurance and other benefits, with the approval of the insurance carrier, by paying the entire cost. There is no authority to extend health insurance coverage to any employee leaving county service for reasons other than retirement. In order to be eligible for inclusion in the county health insurance coverage, the retiree must have elected to remain covered at the time of retirement. Under Cobra, coverage must be available for a limited time for employees leaving for other reasons.

Limitations on Compensation for State Employees

(September 7, 2001) Educational benchmarks are limited to appointive state and district officers listed in Section 25-3-33. Section 25-3-34 does not authorize the award of educational benchmarks to employees of a state or district agency under the supervision of those positions listed in Section 25-3-33. Limitations apply to the statutorily established salaries for agency heads, and do not take into account any awards for educational benchmarks which may have been granted to an agency head. The salaries of agency or district employees may not exceed those salary limitations established by Section 25-3-33.

(July 26, 2002) Absent an applicable statutory exemption, an employee cannot be paid more than the executive head of his or her agency. Responsibility for enforcing this provision lies first with the agency. Responsibility also lies with the State Personnel Board and the State Auditor. The Department of Finance and Administration has responsibility for enforcement. PERS has the responsibility to inquire regarding contributions received which it believes are for a salary that is over and above that permitted by law. Upon making an inquiry, PERS must make a factual determination and take appropriate action.

Leave Policy for Employees Who Do Not Work 8-Hour Shifts

A recent (January 18, 2002) Opinion from the Attorney General's Office deals with the proper administration of leave policies as applied to employees whose regular work day is not 8 hours.

The Opinion resulted from the following inquiry:

Should a police officer normally assigned a 12-hour shift who takes a day of vacation or sick leave and misses 12 hours of work be charged with 8 or 12 hours for each day (shift) taken?

According to the Opinion, an employee working a 12-hour shift who chooses to take a full day of leave, should be charged with the entire 12 hours of leave. Charging only 8 hours would constitute an illegal donation in violation of Section 96 of the Mississippi Constitution.

This Opinion is in keeping with PERS instructions for reporting accumulated unused leave at retirement, i.e. the number of hours of accumulated unused leave should be divided by the number of hours in the employee's normal workday.

PERS Adopts a Completely Electronic Reporting System

In order to take advantage of advances in technology and to improve operational efficiency, PERS is implementing the newest release of its Wage & Contributions reporting system, RET 5.0. This new system will shift the process from a diskette and paper reporting system to a completely electronic system.

With implementation of this system,

there will no longer be a need for diskette or paper forms. The new system is Windows based and employers will be able to use the Internet to securely transfer the data files to PERS.

Features of the new system include edits that enhance data accuracy, as well as the ability to report information via the Internet. Additional details and a "Get Ready Checklist" that outlines the

technical requirements needed to use the new system will be presented during October 2002 Benefit Management Training (BMT) Conferences in Biloxi and Tunica.

For additional information about the BMT conferences, see Page 1 of this Employer Update or visit the PERS website at www.pers.state.ms.us and click on "PERS Seminars and Registration."

Pre-Retirement Education Seminars

PERS has scheduled nine full-day Pre-Retirement Seminars and nine half-day Mid-Career Seminars throughout the state for the first three months of 2003.

Pre-Retirement Seminars are offered to members within four years of retirement eligibility. To qualify, a member must have at least 21 years of

service credit or be at least age 56.

Mid-Career seminars, available to all PERS members, were added because many members attending the Pre-Retirement Seminars said they wished the information had been made available to them earlier in their careers. The Mid-Career Seminars provide an excellent opportunity for members to look “down

the road” at their future and obtain valuable information.

Members may register for Pre-Retirement and Mid-Career Seminars by visiting the PERS website at www.pers.state.ms.us. Registrants will receive a confirmation by mail, along with information concerning the seminar.

PRE-RETIREMENT SEMINARS

| Seminar Date | Location |
|--------------|-------------|
| January 7 | Tupelo |
| January 9 | Cleveland |
| January 14 | Grenada |
| January 30 | Pearl |
| February 4 | Hattiesburg |
| February 13 | Gulfport |
| February 20 | Summit |
| March 6 | Hattiesburg |
| March 25 | Pearl |

MID-CAREER SEMINARS

| Seminar Date | Location |
|--------------|-------------|
| January 8 | Tupelo |
| January 10 | Cleveland |
| January 15 | Grenada |
| January 31 | Pearl |
| February 5 | Hattiesburg |
| February 14 | Gulfport |
| February 21 | Summit |
| March 7 | Hattiesburg |
| March 26 | Pearl |

Frequently Asked Questions and Their Answers

Q *Can we re-employ a retiree as an independent contractor to avoid the 45-day separation provision?*

A Withdrawal from service or termination from service is defined by statute as the complete severance of employment in state service of any member by resignation, dismissal or discharge. Retirement benefits may not begin until the member has withdrawn from service as required under Section 25-11-111. Furthermore, a member may not be re-employed by the same or another covered employer in any capacity, **including that of an independent contractor**, within 45 days from the effective date of retirement, or within 45 days of the beginning of the subsequent school year for less-than-12-month employees of educational institutions who retire at the end of the school year. In summary, an employer cannot re-employ a retiree as an independent contractor to avoid the 45-day separation provision. Reference PERS Regulation 34, available on the PERS website at www.pers.state.ms.us.

Q *When did the law go into effect to allow employees to transfer unused leave time to PERS for extra service credit?*

A Any member who terminates employment, or who terminated employment on or after July 1, 1984, may have

his or her unused, uncompensated leave days transferred to PERS for retirement service credit. Unused, uncompensated leave days are transferred to PERS on PERS Form 18 for terminating employees, and PERS Form 9A for retiring employees. In order for an employer to certify unused, uncompensated leave days to PERS, the employer must have a lawfully adopted leave policy that **1)** provides for and authorizes the accumulation of leave days, and **2)** provides for unused, uncompensated leave days to be certified to PERS at termination from employment. At the time of retirement, we convert all certified unused, uncompensated leave days to service credit for purposes of retirement. Leave days are used to the extent that the certified leave does not exceed that which could have been accrued under the leave policy applicable for state employees.

Q *We have a regular employee who works part-time with us and full-time with another covered employer. Should we withhold retirement from her earnings?*

A If a member is covered through employment with one covered employer and is employed as a regular employee by a second covered employer, the additional wages earned with the second covered employer should be reported to PERS. Reference PERS Regulation 36, available on the website.

Deadline is September 27 for the Return of Municipal Election Ballots

Seven municipal employees have qualified to run for a position on the PERS Board of Trustees representing municipalities. Candidates, in alphabetical order, are:

| | |
|----------------------|--|
| Robert M. Coggins | Mayor of the City of Baldwin |
| David D'Aquila | Assistant Director of the Department of Leisure for the City of Gulfport |
| Doug Hague | Pascagoula Fire Department Captain |
| Tom Long | Chief of Police for the City of Southaven |
| William Gary Matlock | Human Resource Director for the City of Meridian |
| Louis Taunton | Mayor of the City of Louisville |
| Joseph C. Townsend | Chief Financial Officer/Comptroller for the City of Hattiesburg |

Only municipal employees who are PERS members will participate in the election. Ballots have been mailed to municipalities. The deadline for their return to PERS is 5 p.m. Friday, September 27, 2002. **Ballots received after the deadline will be excluded even if the postmark is prior to the deadline.** Although PERS has temporarily moved to the AmSouth Plaza Building at 210 East Capitol Street in Jackson, the mailing address remains: 429 Mississippi Street, Jackson, MS 39201.

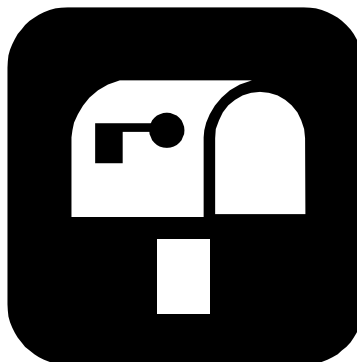
There will be a runoff among the top two votegetters if no candidate receives a majority of the votes in the first election. The election is for a six-year term, beginning January 1, 2003.

The incumbent, Madison Mayor Mary Hawkins Butler, is not seeking re-election to the PERS Board after 12 years as the Municipalities Representative.

Member Statements Will Be Mailed During September

PERS will mail annual member statements to active and inactive members on or around September 10, 2002. Statements are for the state's fiscal year that ended June 30, 2002.

Statements will be mailed to the home addresses of all members for whom PERS has an address. Information will include a member's account balance as of June 30, 2002. The account balance is equal to a member's contributions to the Retirement System, plus interest. Other information on all statements will include years of service credit under the Retirement System and the member's designated beneficiary or beneficiaries. For members within three years of retirement eligibility, statements will also show average compensation and



*Statements will be
mailed to members'
home addresses*

an estimate of future benefits under the Maximum Option. It is only an estimate; actual benefits will be determined at the time of retirement.

PERS members are eligible to retire and draw monthly benefits at age 60 with four years of membership service, or at any age with at least 25 years of creditable service.

All members are encouraged to examine their statements carefully. Statements will include instructions for correcting information, if necessary.

Any member who does not receive a statement by October 15, 2002, may contact the Retirement System to request a balance letter. PERS' toll-free telephone number is 1-800-444-7377. From the Jackson area, please call 359-3589.