Michigan Public School Employees’ Retirement System

A Pension and Other Postemployment Benefit Trust Fund of the State of Michigan

Archived Reporting Instruction Manual

Chapter 9 – Retirees Who Return to Work

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for historical reference by reporting units of the
Michigan Public School Employees' Retirement System

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Big Plans. Small Steps.

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9.00: Retirees Who Return to Work

Reporting units are required to submit retirement detail reports on a wage and service paid basis, including, but not limited to, retirees employed by a third party or as an independent contractor.

MPSERS retirees who return to work to a MPSERS reporting unit may have an impact on their pension and insurance premium subsidies. The retiree and the employing reporting unit have an important responsibility in this process.

- The retiree is responsible for understanding the working after retirement rules and how they affect their pension and insurance premium subsidy. Resources for retirees are available on the ORS member information website for retirees who return to work.
- The reporting unit is responsible for accurately reporting retirees to ensure the guidelines of the working after retirement rules are met.

The rules for reporting retirees are broken down into multiple categories which include the reporting unit type, the retiree's effective date of retirement, and the type of post-retirement employment.

In addition, you may need to determine whether the retiree is employed as a critical shortage position, core service position, instructional coach, school improvement facilitator, school renewal coach or high impact leadership facilitator, substitute teacher, national service member, at a school with a COVID-19 learning plan, or by a university that is considered a reporting unit as a former teacher or administrator who returned to work in a teaching or research capacity.

Reporting resources

ORS offers tools to help you report retirees employed by your reporting unit. For accurate reporting, you must review both tools for each retiree.

- The **Member Benefit Plans** section of the Employer Reporting website will verify that your new employee is a MPSERS retiree. In addition, the **Member Benefit Plans** link gives you the retirement effective date, years available in a critical shortage position, and information on employer and employee contribution rates when appropriate. This information will be specific to each employee.
- The Working after retirement - employer guide verifies the ORS Employment Class Code, if unfunded actuarial accrued liability (UAAL) is due, and if a Detail 4 record is required.

For instructions on how to report a retiree, see the following sections from Chapter 7: How to report retiree wages, How to report retirees on a Detail 2 (DTL2), and How to report retirees on a Detail 4 (DTL4) . Definitions

critical shortage: The critical shortage exemption applies to K-12 public school districts, charter schools, public school academies, and intermediate school districts only.

In some cases, you may have to determine if the retiree is hired under a critical shortage position. The critical shortage positions are defined by the Michigan Department of Education and updated periodically. See a list of critical shortage positions here.

Public Act 267 extended the critical shortage exemption until July 1, 2025 and removed the three-year maximum that a retiree can work in a critical shortage position.

instructional coach: As defined by the Michigan Department of Education, instructional coaches are hired by intermediate school districts (ISD) or educational service agencies (ESA) through the Regional Assistance Grant to provide support to Priority Schools depending on the needs identified by the school. These coaches can be provided in the areas of math, reading, writing, science, social studies, and a multi-tiered system of support.

school improvement facilitator: A school improvement facilitator works with and through an intermediate school district (ISD) or educational service agency (ESA) to provide services to Title I Priority Schools to help implement a formal school improvement plan as defined by the Michigan Department of Education.

school renewal coach or high impact leadership facilitator: These positions must be employed directly by the reporting unit as part of a program that supports teams of school principals and teacher leaders in elementary schools by doing all the following:

- Providing intense professional development, support, and money for renewal projects for teams of school leaders in a number of project schools that are implementing a set of new literacy essentials.
- Placing a trained team of school renewal coaches or high impact leadership facilitators in each project school.
- Providing a lower level of professional development support and funding for leaders in additional schools.
- Applying a set of proven school leadership practices for school renewal and sustainable implementation.
- Providing training, support, and oversight for the school renewal coaches or high impact leadership facilitators as a coordinator or supervisor of that work.

substitute teacher: A substitute teacher is an individual working under a permit issued by the Michigan Department of Education under Public Act 451 of 1976 MCL 380.1233 and 1233b, as well as Teacher Certification Code (Administrative Rules) Part 4: R 390.1141-1145. Michigan schools often use the term for any individual who is asked to step into a position and cover for the certified teacher who is reported or documented as the teacher of record. However, there are situations where the substitute is in fact the appropriate individual to be reported as the teacher of record.

national service member: An individual enrolled in a federally-funded national service program such as AmeriCorps State and National or VISTA and is placed at a service site that is a reporting unit.

COVID-19 learning plan: As defined in MCL 388.1698a of Public Act 94 of 1979.

9.01: Earnings of Retirees Who Return to Work

Retiree earnings are composed of all wages and payment for services performed by the employee, including but not limited to any amounts deferred or contributed to an annuity.

- If a retiree returns to work for the reporting unit they retired from, that reporting unit must report all payments for that retiree. This includes, but isn't limited to, bonuses, cash in lieu, and early retirement incentives. ORS may review whether the post-retirement payments are attributed to pre-retirement service (e.g., early retirement incentives, annual leave payouts, etc.).
- If a retiree does not return to work for the reporting unit they retired from, and that reporting unit makes a payment to the retiree for something other than wages, that reporting unit should not report those payments. This includes bonuses, cash in lieu, early retirement incentives, etc.

If a retiree returns to work for a reporting unit other than the reporting unit they retired from, that reporting unit must report all payments for that retiree. This includes bonuses, cash in lieu, etc.

9.02: OBSOLETE - Bona Fide Termination and Retiree Earnings

OBSOLETE section - MPSERS retirees who return to work to a MPSERS reporting unit may have an impact on their pension and insurance premium subsidy. The retiree and the employing reporting unit have an important responsibility in this process.

- The retiree is responsible for understanding the working after retirement rules and how they affect their pension and insurance premium subsidy. Resources for retirees are available on the ORS member information website for retirees that return to work.
- The reporting unit is responsible for accurately reporting retirees to ensure the guidelines of the working after retirement rules are met.

For that reason, this section no longer applies.

Effective May 19, 2010, Public Act 75 amended the Michigan Public School Employees Retirement Act, MCL 28.1301 et seq., with regard to retirement allowances effective July 1, 2010. Section 61(7) of 2010 PA 75 states the following:

> Notwithstanding any other provision of this Act to the contrary, for a retirant who retires on or after July 1, 2010, and following a bona fide termination, including not working in the month of the retirant's retirement effective date, and who becomes employed by a reporting unit and the retirant's amount of earnings in a calendar year exceeds 1/3 of the retirant's final average compensation, the retirant shall forfeit his or her retirement allowance and the retirement system subsidy for health care benefits from the retirement system for as long as the retirant is employed at the reporting unit unless the retirant is employed under subsection (5), (9), or (10). A retirant who has forfeited the retirement system subsidy for health care benefits under this subsection and who wants to retain health care benefits shall pay the retirant's and retirement system's costs for the health care benefits. Upon termination of employment at the reporting unit, the retirement allowance and health care benefits shall resume without recalculation.

The pension plan provided by MPSERS is a qualified governmental plan under the Internal Revenue Code 26 USC 401. Under MCL 38.1408(1) the Department of Technology Management and Budget (DTMB) is required to administer the pension plan to meet the IRS code. According to IRS Revenue Rulings, 56-693, 1956-2 CB 282, 74-254, 1974-1 CB 91, and IRS Information Letter 2000-0245 (September 6, 2000), a member must have a bona fide termination of employment before being reemployed by the entity from which he or she retires. That includes no promise of reemployment prior to retirement and a separation of employment for a significant time before reemployment, which is at least 30 days. A member's resignation of employment on one date followed by the rehiring of the retired member by the same school in less than 30 days would adversely impact the pension fund's tax qualified status under Internal Revenue Code.

Further, section 83(1) of the Michigan Public School Employees Retirement Act, Public Act 300 of 1980, MCL 38.1301 et seq, states the following:

> Each retirement allowance shall date from the first of the month following the month in which the applicant satisfies the age and service requirements of this act and terminated reporting unit service…if the applicant satisfies the legal requirements for the retirement allowance at the time the application is filed. [MCL 38.1391(1)]

Employees eligible to terminate employment with a reporting unit on June 30, for example, would be eligible for a retirement allowance effective date of July 1 or after of that year. An execution date of reemployment within 30 days, or before August 1 of that year, establishes that the termination was not bona fide as required by MCL 38.1361(8) because there has not been any significant break in employment and there is a promise of reemployment.

Finally, MCL 38.1307(4) defines "retirant" as "a member who retires with a retirement allowance payable from reserves of the retirement system." If a member resigns during one month, under MCL 38.1383(1), his or her retirement allowance effective date is the first day of the following month. Thus, under MCL 38.1307, the member becomes a retirant as of the first day of that following month, and MCL 38.1361(8) prohibits a retirant from working in the month of the retirant's retirement effective date. For example, a member who chooses to resign by June 30 has a retirement effective date of July 1; as a retirant effective July 1, he or she cannot begin working in July of that year and receive a retirement allowance.

MCL 38.1361(7) states the following regarding a retirant who retires on or after July 1, 2010, has a bona fide termination of employment, and becomes employed by a reporting unit:

> …and the retirant's amount of earnings in a calendar year exceeds 1/3 of the retirant's final average compensation, the retirant shall forfeit his or her retirement allowance and the retirement system subsidy for health care benefits from the retirement system for as long as the retirant is employed at the reporting unit unless the retirant is employed under subsection (5), (9), or (10). A retirant who has forfeited the retirement system subsidy for health care benefits under this subsection and who wants to retain health care benefits shall pay the retirant's and retirement system's costs for the health care benefits. Upon termination of employment at the reporting unit, the retirement allowance and health care benefits shall resume without recalculation.

With regard to earnings limitations, if an employee electing to resign has a bona fide termination, does not work the month of his or her retirement allowance but is rehired by a reporting unit, his or her earnings cannot total more than 1/3 of the retiree's Final Average Compensation (FAC) without forfeiture of the pension and healthcare subsidy. If the earnings total more than 1/3 of the retiree's FAC, he or she will forfeit their pension and health care subsidy until the retiree terminates employment.

"Earnings" include items to be reported on the retiree's W-2 or 1099R form as earnings for services performed for the reporting unit, including but not limited to, amounts deferred or contributed to an annuities. Section 125,132 (f) (4), 401(k), 403(b) and 457 of the Internal Revenue Code, 26 USC. This includes cash in lieu of payments. **Note:** Living allowance stipends are not pay and are not considered compensation.

Last updated: 07/01/2018

9.03: OBSOLETE - Retiree Earnings Limitations (retired before 7/1/2010)

OBSOLETE section - MPSERS retirees who return to work to a MPSERS reporting unit may have an impact on their pension and insurance premium subsidy. The retiree and the employing reporting unit have an important responsibility in this process.

- The retiree is responsible for understanding the working after retirement rules and how they affect their pension and insurance premium subsidy. Resources for retirees are available on the ORS member information website for retirees that return to work.
- The reporting unit is responsible for accurately reporting retirees to ensure the guidelines of the working after retirement rules are met.

For that reason, this section no longer applies.

When a retiree from this retirement system earns wages from a participating reporting unit, the retiree is subject to earnings limitations or a cessation of pension payments and insurance premium subsidies for the duration of the employment. This includes retirees who have elected an Optional Retirement Plan (ORP). Your reporting unit must report retiree wages to ORS; however, the responsibility for tracking wages to make sure that the earnings limit is not exceeded belongs to the retiree.

The retiree may earn the greater of the statutory limits listed below without affecting the pension:

- One-third of the final average compensation. For this purpose, the salary average is increased by 5 percent (compounded) for each calendar year the pension recipient has been retired. In the first year of retirement the earnings limitation is prorated.
- The Social Security income limit for that specific year. If one-third of a retiree's final average compensation is lower than that year's Social Security income limit, the retiree may make up to the higher amount. The Social Security income limit changes annually. Visit the Social Security Administration's website for more information about the Social Security income limit.

Eligibility for the group health and dental/vision insurance is not affected by earnings. However, if the retiree's pension is suspended because the earnings exceed the limit, the insurance will also be suspended. If this happens, the retiree may request a continuation of insurance, but will be responsible for the portion of the premiums previously withheld from the pension. This may be expensive.

For every dollar the retiree earns above the limit, he/she must return one dollar to the retirement system up to the annual pension amount.

See section 9.04: Exceptions to the Earnings Limitations for Members Who Retired Before 7/1/2010 for more information.

Last updated: 07/01/2018

9.04: OBSOLETE - Exceptions to the Earnings Limitations for Members Who Retired Before 7/1/2010

OBSOLETE section - MPSERS retirees who return to work to a MPSERS reporting unit may have an impact on their pension and insurance premium subsidy. The retiree and the employing reporting unit have an important responsibility in this process.

- The retiree is responsible for understanding the working after retirement rules and how they affect their pension and insurance premium subsidy. Resources for retirees are available on the ORS member information website for retirees that return to work.
- The reporting unit is responsible for accurately reporting retirees to ensure the guidelines of the working after retirement rules are met.

For that reason, this section no longer applies.

Critical Shortage

A retiree eligible to be reported in a critical shortage position (one who retired on any effective date, who has been retired for 12 months or more, is hired directly by the reporting unit, and has been reported in a critical shortage position for less than a total of 3 years) hired directly by the reporting unit for a critical shortage position, can work without earnings limitations for no more than 3 years in a critical shortage position or until July 1, 2018, whichever comes first.

Exceptions for retirees who return to work in a university

There is no earnings limit on postretirement earnings from:

- Employment of a former teacher or administrator who returned to work in a teaching or research capacity by a university that is considered a reporting unit. These include Central Michigan University, Eastern Michigan University, Ferris State University, Lake Superior State University, Michigan Technological University, Northern Michigan University, and Western Michigan University.

Social Security Full Retirement Age

For retirees who meet Social Security full retirement age, there is no earnings limit on how much a retiree can earn while working for a reporting unit.

Last updated: 07/01/2018

9.05.00: OBSOLETE - Retiree Earnings Limitations (retired on or after 7/1/2010)

OBSOLETE section - MPSERS retirees who return to work to a MPSERS reporting unit may have an impact on their pension and insurance premium subsidy. The retiree and the employing reporting unit have an important responsibility in this process.

- The retiree is responsible for understanding the working after retirement rules and how they affect their pension and insurance premium subsidy. Resources for retirees are available on the ORS member information website for retirees that return to work.
- The reporting unit is responsible for accurately reporting retirees to ensure the guidelines of the working after retirement rules are met.

For that reason, this section no longer applies.

Retirees Hired Directly by the Reporting Unit

As a rule, a member who retires on or after July 1, 2010, and returns to work as an employee of the reporting unit can earn up to one-third of their final average compensation in the calendar year (January - December) without penalty. However, if they exceed that amount, they will forfeit their pension and health insurance subsidy until their employment ceases. For exceptions see section 9.05.01: Exceptions to the Earnings Limitations for Members Who Retired 7/1/2010 or After.

Retirees Hired Through a Third Party or as an Independent Contractor

Most members who retired on or after July 1, 2010, who are hired through a third party or as independent contractors do not have earnings limits. For exceptions see section 9.05.01: Exceptions to the Earnings Limitations for Members Who Retired 7/1/2010 or After.

Last updated: 07/01/2018

9.05.01: OBSOLETE - Exceptions to Earnings Limitations for Members Who Retired 7/1/2010 or After

OBSOLETE section - MPSERS retirees who return to work to a MPSERS reporting unit may have an impact on their pension and insurance premium subsidy. The retiree and the employing reporting unit have an important responsibility in this process.

- The retiree is responsible for understanding the working after retirement rules and how they affect their pension and insurance premium subsidy. Resources for retirees are available on the ORS member information website for retirees that return to work.
- The reporting unit is responsible for accurately reporting retirees to ensure the guidelines of the working after retirement rules are met.

For that reason, this section no longer applies.

Critical Shortage

A retiree eligible to be reported in a critical shortage position (one who retired on any effective date, who has been retired for 12 months or more, is hired directly by the reporting unit and has been reported in a critical shortage position for less than a total of three years) could work without earnings limitations for no more than three years in a critical shortage position or until July 1, 2018, whichever came first.

Exceptions for retirees who retired on July 1, 2010 through October 1, 2010 and return to work in a university

There is no earnings limit on postretirement earnings from:

- Employment of a former teacher or administrator who becomes employed in a teaching or research capacity or in a program-department direction capacity by a university that is considered a reporting unit. These include Central Michigan University, Eastern Michigan University, Ferris Stare University, Lake Superior State University, Michigan Technological University, Northern Michigan University, and Western Michigan University.

Last updated: 07/01/2018

9.06: Core Services (only applies to retirees who retire on or after 7/1/2010)

The retirement system has determined that core services are those services that are important to the central purpose of a reporting unit. A list of core services can be downloaded here.

Retirees with a retirement date on or after July 1, 2010, who are employed by a third party or as an independent contractor, and who perform any core services for a participating Michigan public school (including any charter school), forfeit their pension and retiree healthcare subsidy until the core services employment ends.