

MODEL

OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM



Model Hiring Policy for PERS Retirees

JUNE 2020

Last reviewed by LOC Attorneys May 2023

FOREWORD

In deciding whether to hire or rehire a PERS retiree, a public employer must navigate a complex regulatory field with the retiree. These regulations became even more complex in 2019 with the enactment of Senate Bill (SB) 1049. Effective in 2020, this law makes it easier in some ways and harder in others for cities to employ PERS retirees. On one hand, SB 1049 makes it possible for PERS retirees to work unlimited hours under state law (certain federal limits still apply). On the other hand, SB 1049 requires that cities now pay PERS contributions for every PERS retiree that they employ.

SB 1049 is temporary, running only through calendar year 2024. During this time, cities should develop a policy to manage their hiring practices. Cities can use this policy to inform staff and prospective employees about state law and to set the appropriate local standards.

DISCLAIMER

Any model document provided by the LOC is intended to be used as a starting point in an individual city's development of its own documents. Each city is unique, and any adopted document or policy should be individually tailored to meet a city's unique needs. Furthermore, this model is not intended to be a substitute for legal advice. Cities should consult with their city attorney and/or the CIS Pre-Loss Legal department before adopting a PERS retiree hiring policy to ensure that the policy complies with all aspects of federal, state, and local law.

CITY OF _____

Administrative Policy: [Number & section title where applicable]

Adopted: _____

Auth. Ordinance / Resolution: [cite authority for policy]

Reviewed: _____

Employment of PERS Retirees

PURPOSE: The purpose of this policy is to establish local procedures through which the City of _____ (“City”) may hire individuals who have retired from the Public Employees’ Retirement System (“PERS”) or Oregon Public Service Retirement Plan (“OPSRP”).

SCOPE: This policy applies to all City employees.

GENERAL POLICY: A retiree who is receiving a PERS pension benefit or a lump-sum payment under OPSRSP or Tier One or Tier Two of PERS (“PERS retiree”) may be employed by the City subject to the provisions outlined below.

PROCEDURE:

1) Employment Eligibility

- a) Certain Retirees. This procedure applies only for the following categories of PERS retirees (“Eligible PERS retiree/s”):
 - i) A PERS retiree who retired at the “normal retirement age” under ORS 238.280 or ORS 238A.160;
 - ii) A PERS retiree who retired after 30 years of service under ORS 238.280(4) or ORS 238A.160; and
 - iii) A PERS retiree who retired early under ORS 238.280 or ORS 238.185, but who has not worked for any PERS-participating employer for six (6) or more months.
- b) Request Subject to Approval. Any effort by the City to hire an Eligible PERS retiree described in section 1(a) is subject to the city’s recruitment policies and must first be approved in writing by the city manager or their designee.
- c) Public Interest Finding. The city manager or their designee must demonstrate in writing that the Eligible PERS retiree will meet one of the following needs of the City:¹
 - i) The Eligible PERS retiree is an existing employee, serving in a director-level position or above, and a critical component of a documented succession plan; or
 - ii) The Eligible PERS retiree works in a field where there currently is a hiring shortage, as documented by two or more recruitment failures within a six-month period.

¹ Whatever criteria that cities choose to adopt, they must be specific and objective enough to avoid claims of employment discrimination (e.g., that decisions are being made on the basis of a protected class).

- d) Existing Employees. Eligible PERS retirees may be considered for reemployment if, at the time of retirement, they were not on a work improvement plan and were not the subject of any written disciplinary actions within 12 months preceding retirement.

2) Conditions of Employment

- a) Hours. Subject to the following condition, an Eligible PERS retiree may be hired to work any number of hours up to a full-time basis through December 31, 2024.
 - i) SSA Earnings Limit: An Eligible PERS retiree who is receiving Social Security Act (“SSA”) benefits, and who as such is subject to an annual earnings limit, must be limited to an hour amount for which the salary does not exceed the earnings limit.²
 - b) PERS Benefits. Pursuant to state law, an Eligible PERS retiree and city employee is entitled to receive their retirement benefits through December 31, 2024. Additional retirement benefits will not accrue for the Eligible PERS retiree during this time.
 - c) Employment Status.³
 - i) At-will employment. Length of Employment of an Eligible PERS retiree is at the city’s discretion.
 - ii) Health insurance. An Eligible PERS retiree is entitled to receive health insurance in accordance with state and federal law.⁴
 - iii) Leave. An Eligible PERS retiree is entitled to receive medical leave, sick leave, family leave and other leave in accordance with state and federal law.
 - iv) Other employment rights. An Eligible PERS retiree will have no recall rights, seniority rights, bumping rights, or any rights derived by city employees through collective bargaining agreements, except as is required by state and federal law.
 - d) Existing Employees. Upon retirement, and in accordance with applicable City policies,⁵ federal law, and state law, an employee will be compensated by the City for any accrued, unused leave and compensatory time. Reemployment of an existing employee under Section 1(d) will constitute a new employment relationship. No accrued leave will carry over from pre-retirement employment. An existing employee cannot return until on or after their PERS retirement date.

² See Senate Bill 1049, Sec. 35(3). For 2020, the Social Security Administration has set an annual compensation limit of \$18,240 on individuals who have not reached the full federal retirement age. The limit increases to \$48,600 for the calendar year in which the retired member will reach full retirement age.

³ Collective bargaining agreements might affect the employment status of certain PERS retirees. LOC recommends that cities consult their attorney or the Local Government Personnel Services division of the Lane Council of Governments on this issue.

⁴ Additional guidance is available to CIS Benefits members at (855) 763-3829 or EmployeeBenefits@cisoregon.org.

⁵ Rehiring policies might apply to PERS retirees. LOC recommends consulting with a city attorney or the Local Government Personnel Services division of the Lane Council of Governments.

3) PERS Contributions and Benefits

- a) City Contribution. For each calendar year through 2024, the City will apply the net Employer Contribution Rate set for its active PERS members to the wages earned by all PERS retirees employed by the City.⁶ Thereafter, the City will make a PERS contribution in that amount, in accordance with OAR 459-075-0300(7).

4) Exceptions

- a) Exceptions to this policy may be granted only by the city manager or their designee, and only as otherwise permitted by law.

5) Periodic Review

- a) This policy will be reviewed by the city manager at least once every three (3) years, or more often if needed, and updated as necessary.

⁶ See SB 1049 Sec. 35(2). Please note that this requirement applies to all PERS retirees employed by the city, even those who are hired to work within the 600-hour or 1040-hour limits.

APPENDIX A

Additional Resources on Senate Bill 1049

Cities with specific questions may consult the following resources on Senate Bill (SB) 1049.

1) Enrolled SB 1049:

<https://olis.oregonlegislature.gov/liz/2019R1/Downloads/MeasureDocument/SB1049/Enrolled>

2) Oregon Revised Statutes (ORS)

a) Public Employees Retirement System, Chapter 238

https://www.oregonlegislature.gov/bills_laws/ors/ors238.html

b) Oregon Public Service Retirement Plan, Chapter 238A

https://www.oregonlegislature.gov/bills_laws/ors/ors238a.html

3) Oregon Administrative Rules (OARs)

a) Reemployment of Retired Members, Rule 459-017-0060

https://oregon.public.law/rules/oar_459-017-0060

4) PERS Agency Guidance

a) For PERS employers:

<https://www.oregon.gov/pers/EMP/Pages/SB1049.aspx>

b) For PERS retirees:

<https://www.oregon.gov/pers/RET/Pages/SB1049-Changes-Work-After-Retirement.aspx>