

Title 27: Personnel

Part 210: PERS, Regulations for Retirement Plans Administered by the Board of Trustees

Chapter 34: Reemployment after Retirement

100 Purpose

This regulation sets forth the terms and conditions under which a service retiree may be reemployed by a covered employer after retirement.

101 Background

1. Public Employees' Retirement System of Mississippi

In accordance with Miss. Code Ann. § 25-11-127 (1972, as amended), the Board of Trustees of the Public Employees' Retirement System of Mississippi (PERS) has adopted the following rules and regulations governing the provisions for reemployment of PERS service retirees who are reemployed after service retirement under the above-cited Section on or after the effective dates of the applicable provisions of this regulation.

2. Mississippi Highway Safety Patrol Retirement System

In accordance with Miss. Code Ann. § 25-13-25 (1972, as amended), the Administrative Board of the Mississippi Highway Safety Patrol Retirement System (MHSPRS) has adopted certain rules governing the provisions for reemployment of MHSPRS retirees who are reemployed after retirement. Those rules have been incorporated into sections 102 and 108 of this regulation.

102 Loss of Monthly Benefits upon Employment or Reemployment

1. Public Employees' Retirement System of Mississippi

No person who is being paid a retirement allowance or a pension after retirement under Article 3 of the Mississippi Code of 1972, as amended, shall be employed or paid for any service by the State of Mississippi or any of its departments, agencies, or subdivisions participating in PERS, including services as an employee, contract worker, contractual employee or independent contractor, until the retired person has been retired for not less than 90 consecutive days from his or her effective date of retirement. After the person has been retired for not less than 90 consecutive days from his or her effective date of retirement or such later date as established by the board in Section 106.2 of this regulation, he or she may be reemployed while being paid a retirement allowance under the terms and conditions provided in Section 103 of this regulation. **(See Sections 109 and 110 for work as an independent contractor or for work through a third party.)**

- a. Elected officials are deemed to be full-time for the purpose of creditable service. Therefore, retirees may not be employed or reemployed in a covered elected office under the provisions of Section 103 so as to receive both salary and retirement benefits concurrently as provided in that Section, except as provided in Section 103.2.b. of this regulation.

- b. Following a bona fide separation from service of at least 90-days, elected or appointed officials paid solely on a per diem basis as provided by statute are not considered employees for purposes of this regulation on reemployment and may continue receiving a retirement benefit while serving as an elected or appointed official.

2. Mississippi Highway Safety Patrol Retirement System

No person being paid a retirement allowance or a pension after retirement under Title 25, Chapter 13 of the Mississippi Code of 1972, as amended, shall be (i) employed in a law enforcement position with the Mississippi Highway Patrol (MHP) or the Mississippi Bureau of Narcotics (MBN) or (ii) paid from the MHP budget or the MBN budget while being paid a retirement allowance from MHSPRS, if such employment commences on or after December 1, 2013. An MHSPRS retiree may be employed in any capacity with an employer other than MHP or MBN and remain in compliance with this rule.

103 Exceptions under which a retiree may be reemployed while in receipt of a retirement allowance

1. Retirees reemployed in a covered position other than an Elected Position

PERS may not withhold a monthly benefit payment if the retiree is employed by a covered employer in the following instances:

- a. For a period of time not to exceed one-half of the normal working days or one-half of the equivalent number of hours for the position in any fiscal year during which the retiree will receive no more than one-half of the salary in effect for the position at the time of employment, or
- b. For a period of time in any fiscal year sufficient in length to permit a retiree to earn not in excess of 25 percent of the retiree's final average compensation used to calculate the retiree's monthly benefit.

“Fiscal year” shall mean the period beginning on July 1 of any year and ending on June 30 of the next succeeding year as provided by statute.

2. Retirees reemployed as a Municipal or County Elected Official

A member may retire and continue in covered municipal or county elective office provided that the member has reached age 59 ½ effective July 1, 2020 (or age 62 prior to July 1, 2020), or a retiree may, after incurring a bona fide separation from service of at least 90 days as set forth in Section 106, be elected to a covered municipal or county office, provided the retiree:

- a. Files annually in writing in the office of the employer and of PERS before he or she takes office or as soon as possible after retirement a waiver of all salary or compensation and elects to receive in lieu of that salary or compensation a retirement allowance, in which event no salary or compensation shall thereafter be due or payable for those services, or
- b. Files annually in writing in the office of the employer and of PERS an election to receive compensation for that municipal or county elective office in an amount not to exceed 25 percent of the retiree's average compensation, which shall be prorated over a 12-month time frame.

A retiree who continues in or is elected to covered municipal or county office under Section 103.2.a. or Section 103.2.b. may receive any office expense allowance, mileage or travel expense authorized by any applicable statute of the State of Mississippi.

3. Retirees employed in both a non-elective position and a Municipal or County Elected position

If at any point during the fiscal year, a retiree is reemployed in both a covered local elected position (and thus considered a full-time employee) and is also reemployed on a limited basis in a non-elective position, he/she must either:

- a. Begin or continue under the 25 percent of average compensation limitation and apply what has already been earned from any other position during the fiscal year to that limitation or
- b. Stay under an existing election to work no more than one-half of the normal working days or one-half of the equivalent number of hours and earn no more than one-half of the salary for a non-elected position and waive the salary for the local elected position.

4. Municipal or County Elected Positions

- a. For purposes of reemployment limitations under Miss. Code Ann. § 25-11-127(6) (1972, as amended), municipal or county elected office shall include:

Municipal: Mayor, Alderman (Councilman or Selectman), 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 official elected by popular vote and eligible for coverage in 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, or any other salaried official elected by popular vote and eligible for coverage in PERS.

- b. Municipal or 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, Election Commissioner, School Board Member, or other office not included in the municipal or county elected offices listed under this Section.

5. Senior or Special Judge

Miss. Code Ann. § 9-1-105 limits the amount of compensation that can be paid to any judge retired from the chancery, circuit, or county courts, from the Court of Appeals or from the Supreme Court who is appointed as a special judge and who continues to receive a retirement allowance. Such reemployed retired judge may receive no more than 50 percent of the current salary in effect for a chancery or circuit court judge.

104 Determination of Required Number of Working Days for the Position

For purposes of Section 103.1.a., the employer shall determine the required number of working days for the position on a full-time basis and the equivalent number of hours representing the full-time position. The retiree then may work up to one-half of the required number of working days or up to one-half of the equivalent number of hours and receive up to one-half of the salary for the position. In the case of employment with multiple employers or in multiple positions with the same employer, the limitation shall equal one-half of the number of days or hours for a single full-time position.

105 Notification Requirement and Failure to Comply with Regulation

To lawfully employ a PERS service retiree under Section 103, the employer must notify PERS in writing of the terms of the eligible employment within five days from the date of employment and also from the date of termination on a form prescribed by the Board. Failure by the employer to timely notify PERS may result in the assessment of a \$300 penalty per occurrence payable by the employer.

A service retiree reemployed under Section 103 shall make one election per fiscal year to either (i) limit the number of days/hours worked for all covered employers to that allowed under Section 103.1.a. or (ii) limit the amount of compensation that will be earned from all covered employers as provided under Section 103.1.b. of this regulation.

A retiree who continues in or is elected to covered municipal or county office (and who is not also reemployed in a non-elective position) shall make one election per fiscal year to either (i) waive his or her salary and continue to receive a retirement allowance under Section 103.2.a. or (ii) elect to receive an amount not to exceed 25 percent of the retiree's average compensation in Section 103.2.b. Note that such elected official does not have the option of limiting the number of days or hours worked.

106 Withdrawal from Service or Termination from Service

1. "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 in Miss. Code Ann. § 25-11-111 (1972, as amended). If the retired member is reemployed by the same or another covered employer in any capacity, including that of an independent contractor, within 90 days from the effective date of retirement, has entered into a pre-arranged agreement for reemployment with a covered employer, or the parties otherwise have a reasonable expectation that the retired member will return to work for a covered employer, the member shall be considered to have continued in the status of an employee and not to have separated from service. In the absence of a bona fide separation from service of at least 90-days, any retirement allowance payments received by the retired member shall be repaid to PERS and the retirement shall be negated. If such retiree is so employed or reemployed in a covered position without the requisite separation, such reemployed retiree's earnings shall continue to be reported to PERS.
2. In order to fall within one of the exceptions of Miss. Code Ann. § 25-11-127 (1972, as amended), as outlined in Section 103, or the provisions for waiver of compensation by retirees reemployed as a Municipal or County elected official where the retiree

elects to receive a retirement allowance in lieu of such salary, such complete severance shall mean the absence of any employment in any capacity, including service without pay, and without a prearranged agreement between a covered employer and the retiree for reemployment or a reasonable expectation of the parties that the retiree will return to work for a covered employer for a minimum of 90 consecutive calendar days beginning with the effective date of retirement. Provided, however, any employee of an educational institution employed on less than a 12-month basis who retires at the end of the school year and is reemployed the beginning of the next school year shall not have terminated his or her employment within the meaning of Miss. Code Ann. § 25-11-111 (1972, as amended). In order to fall within the exceptions of the reemployment provisions of Miss. Code Ann. § 25-11-127 (1972, as amended), such retiree retiring at the end of one school year may not be reemployed in an educational institution any earlier than 90 consecutive calendar days after the beginning of the next school year. Where such retiree is reemployed prior to the expiration of such 90-day time frame, any benefits received during the summer months prior to reemployment shall be recovered and the retirement shall be negated.

3. If a member is reemployed prior to the requisite bona fide separation from service of at least 90-days and continues employment in a noncovered position in accordance with PERS Board Regulation 36, *Eligibility for Membership in the Public Employees' Retirement System of Mississippi (PERS)*, the member will become eligible for service retirement benefits once a complete severance of employment has been made as provided herein.

107 Effect of Reemployment under the Exceptions of Miss. Code Ann. § 25-11-127 (1972, as amended) on Service Credit and Contributions

1. Employment of a retiree described in Section 103 does not entitle a retiree to additional service credit for such limited period of reemployment, and the retiree so employed shall not make contributions to PERS from compensation for that employment.
2. The employer of a PERS retiree reemployed in a position as an employee or as a contractual employee under the limited reemployment provisions of Section 103.1.a or 103.1.b. shall pay to the board the full amount of the employer's contribution, as is in effect at the time of employment, on the amount of compensation received by the retiree for his or her employment under the applicable section.
3. Whether a retiree holding a Municipality or County elective office chooses to waive his or her salary as described in Section 103.2.a. or receive limited compensation as described in Section 103.2.b, the employing municipality or county shall pay to the board the employer's contributions, as is in effect at the time of employment, on the full amount of the set salary for that elected position as if the position were filled by a covered employee. In the case of fee officials covered by a joinder agreement, the following shall apply:
 - a. For constables, the county shall pay the amount of the employer's contributions on the total direct payments that would otherwise have been issued to the constable for direct services to the county, which includes, but is not limited to, the allowance from the board of supervisors as provided in Miss. Code Ann. § 25-

- 7-27(1)(f) (1972, as amended), and bailiff fees, if applicable, as if the position was filled by a covered employee.
- b. For coroners and surveyors, the county shall pay the amount of the employer's contributions on the total direct payments that would otherwise have been issued to the coroner or surveyor for direct services to the county as if the position was filled by a covered employee.
 - c. For chancery and circuit clerks, the county shall pay the amount of the employer's contributions on the amount that would otherwise have been the clerk's total County Payroll Income, whether or not such income is subject to the salary limitation as provided in Miss. Code Ann. § 9-1-43 (1972, as amended), as reported on the Annual Financial Report filed by the clerk with the Office of the State Auditor and PERS, not to exceed any applicable employee compensation limits, as if the position was filled by a covered employee.
4. Compensation as used in this Section does not include office expense allowance, mileage or travel expense authorized by any applicable statute of the State of Mississippi.

108 Effect of Reemployment Outside the Exceptions of Miss. Code Ann. § 25-11-127 (1972, as amended) on Service Credit and Contributions

1. Where a retiree is reemployed after retirement in a covered position outside one of the exceptions in Section 103 of this regulation, such retiree shall have his or her benefits terminated, and he or she shall again become a contributing member with contributions paid by both the employer and the employee. The retiree shall not be entitled to benefits for any month in which covered reemployment commences and for which creditable service is awarded for such month. Where such reemployment as a contributing member continues for a period in excess of six full calendar months, the member shall have his or her benefit recomputed upon subsequent retirement, including service credit after again becoming a contributing member. However, persons who are reported under this provision and who do not complete the requisite reemployment period for recalculation of benefits shall have their contributions refunded to them by the employer after such contributions are refunded or credited to the employer. The original benefits will be reinstated prospectively the first of the month following termination from employment at an amount no less than the retirement allowance authorized before cancellation of benefits. The employer shall provide written notice to PERS of any such termination from employment upon subsequent retirement.
2. The recalculation of benefits at the member's subsequent retirement, where the member has completed the requisite reemployment period for recalculation of benefits, shall be based on the applicable benefit formula, average compensation definition, and actuarial factors in effect at the time of the subsequent retirement and the optional benefit payment plan selected by the member at the time of the subsequent retirement.
 - a. Where a member has selected Option 4-C during a previous retirement pending eligibility for receipt of Social Security benefits and to the extent PERS has not recovered all benefits advanced pursuant to such additional optional provision at the time of reemployment of the retiree, PERS may (i) reduce the retiree's benefit

upon his or her subsequent retirement over the retiree's actuarial life expectancy to recover such unrecovered advances, or (ii) recover such unrecovered advances in a lump sum by withholding part or all monthly benefit payments until such advances are recovered.

- b. Further, where a member has selected the Partial Lump Sum Option at initial retirement, the new maximum benefit as noted under Section 108.2 of this regulation shall, upon subsequent retirement, be reduced by the same dollar amount plus 1 percent of that amount for each month that the retiree's benefit was terminated due to the retiree's return to covered employment.
3. Upon a subsequent retirement effective after July 1 of a given year, the retiree's annual benefit adjustment shall resume immediately with the first benefit payment. When resumed, the annual benefit adjustment will be based on the current retirement allowance and the number of full fiscal years in retirement and shall be prorated and paid in equal monthly installments based on the number of months a retirement allowance is payable during the fiscal year. Beginning with the succeeding fiscal year, the annual benefit adjustment shall be paid in a lump sum or monthly installments in accordance with the election made by the retiree.

109 Reemployment as an Independent Contractor

A retiree must have incurred a bona fide separation from service with all covered employers after retirement for at least the 90-day separation period prior to being engaged to perform services as an independent contractor. For purposes of this regulation, this term shall mean any individual (or firm for which an individual performs substantially all the work) who contracts to do a piece of work according to his or her own methods without being subject to the control of his or her employer except as to the results of the work, and who has the right to employ and direct the outcome of the workers independent of the employer and who is free from any superior authority in the employer to say how the specified work shall be done or what the laborers shall do as the work progresses, or one who undertakes to produce a given result without being in any way controlled as to the methods by which he attains the result.

After the requisite 90-day separation period as defined in Section 106, a retiree may contract to provide such services as a true independent contractor outside the limitations of Section 103 while in receipt of a retirement allowance. However, prior to contracting for such services, such retiree must submit to PERS for its approval, documentation, including but not limited to, the following: the nature of the engagement, including services to be performed; how the services were performed previously, including whether they were performed by an employee and whether the independent contractor previously performed those services as an employee; nature of compensation and treatment of expenses; where the services are to be performed, i.e. on the service recipient's premises; who provides the equipment to perform the services; whether the service provider provides such services to other service recipients; whether such services are offered for other persons through advertising or other solicitation and if so; whether the service provider has provided such services to any other service recipient in the last year and if so to how many; whether there is a written contract for the performance of such services; and other information to substantiate that the service provider is a true independent

contractor and not an employee. In addition, PERS will utilize the IRS test as a factor in determining whether an individual is an employee versus an independent contractor in making this determination.

If, after a review of all pertinent information, PERS determines that the individual will be performing services as a true independent contractor, the retiree will be notified of same and contracting for such services shall not affect his or her retirement allowance. If, however, PERS determines that such individual is actually an employee, the retirement allowance will be terminated and benefits repaid unless such reemployment follows the guidelines and limitations of this regulation.

110 Employment through a Third Party

The limitations on reemployment while in receipt of a retirement allowance may not be circumvented by contracting to perform services through a third party (i.e., a placement or temporary employment agency). If an individual is performing services with a covered agency as an employee, the reemployment limitations will apply whether a particular retiree has been reemployed directly by the covered agency or through a third party. Whether a retiree has been reemployed with a PERS covered agency, directly or indirectly, is a question of fact to be determined by PERS. In making such determination, PERS will use the IRS factors to determine whether an individual is an employee along with other factors such as the extent to which control is exercised over details of the work by the individual; whether or not the retiree employed 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; whether the work involved is part of the “regular business” of the employer.

111 Recovery of Benefits Issued in Error Due to Noncompliance with Provisions of this Regulation

Should a retiree fail to comply with the provisions of this regulation resulting in the issuance of benefits in error, monthly benefits shall be canceled where necessary, and a demand shall be made for the return of any such benefits erroneously issued. The retiree shall be given 30 days to return any benefit overpayment without an interest penalty. If any overpayment is not returned within 30 days from the date that notification is issued, the retiree shall be liable for the return of the overpayment plus interest thereon at 10 percent per annum plus all costs of collection with a minimum interest assessment of \$50.

(History of PERS Board Regulation 34: Amended October 28, 1997 to be effective December 15, 1997, except as specifically otherwise provided; amended effective July 1, 2001; amended effective April 1, 2002; amended July 1, 2002; amended February 1, 2004; amended 6/21/2005 to be effective 8/1/2005; reformatted August 1, 2007; amended effective July 1, 2010; amended effective July 1, 2011; amended effective December 1, 2013; amended effective August 1, 2014; January 17, 2020; amended effective October 1, 2020)