

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I and II and amendment of) PROPOSED ADOPTION AND
ARM 2.43.2608 pertaining to the) AMENDMENT
return of PERS retirees to PERS-)
covered employment)

TO: All Concerned Persons

1. On October 19, 2011, at 9:00 a.m., the Public Employees' Retirement Board (PER Board) will hold a public hearing in the board room at 100 North Park Avenue, Suite 200, at Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The PER Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Public Employees' Retirement Board no later than 5:00 p.m. on October 17, 2011, to advise us of the nature of the accommodation that you need. Please contact Dena Helman, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana, 59620; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail dhelman@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I RETURN TO COVERED EMPLOYMENT BY PERS RETIREE – LESS THAN 90 DAYS SINCE TERMINATION OF EMPLOYMENT (1) A retired PERS member who returns to PERS-covered employment of any type less than 90 days following termination of employment is no longer a retired PERS member and is no longer eligible to receive a retirement benefit.

(a) The member's retirement benefit will be stopped effective the month the member returns to PERS-covered employment.

(b) The member will become an active PERS member, ineligible to receive a PERS retirement benefit.

AUTH: 19-2-403, MCA

IMP: 19-3-1106, MCA

REASON: House Bill 122 requires that a PERS retiree not return to PERS-covered employment until at least 90 days following termination of employment. The Bill does not provide a method of enforcement. If a PERS retiree returns to PERS-covered employment prior to becoming eligible to be a working retiree, there is no recourse other than to return the retiree to active PERS membership. The rule is also necessary to clarify that the retirement benefit is stopped, not prorated.

NEW RULE II RETURN TO COVERED EMPLOYMENT BY PERS RETIREE – EARNINGS LIMITATIONS (1) If a retired PERS member returns to a position covered by PERS and is also currently employed by the same employer in one or more positions not covered by PERS, the earnings attributable to all positions with the employer must be used to determine whether the retired member's retirement benefit must be reduced pursuant to 19-3-1106, MCA.

(2) The PERS retirement benefit of a working retiree under 65 years of age who exceeds 960 hours of PERS-covered employment in a calendar year must be reduced by earnings attributable to all positions with the employer.

(3) The PERS retirement benefit of a working retiree 65 years of age and older but less than 70 1/2 years of age, who either exceeds 960 hours of PERS-covered employment or whose benefit and all earnings listed in (1) exceed the member's highest average compensation, whichever provides the higher compensation, must be reduced by earnings attributable to all positions with the employer.

AUTH: 19-2-403, MCA

IMP: 19-3-1106, MCA

REASON: House Bill 122 requires that all earnings of a retired PERS member employed by an employer in a position reportable to PERS and in a position not reportable to PERS count against the earnings limit applicable to PERS working retirees. Earnings are treated differently for working retirees depending on whether they are over or under 65 years of age. New Rule II is necessary to explain how the earnings attributable to a non-PERS position will impact the various working retiree limits.

4. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

2.43.2608 RETURN TO COVERED EMPLOYMENT BY PERS, SRS, OR FURS RETIREE – REPORT (1) An employer who employs a retired PERS member in a position covered by PERS or in "employment covered by the retirement system" as specified in 19-3-1106, MCA, must submit a certification report to MPERA for each payroll period during which a retired PERS member is employed.

(a) This certification requirement does not apply to a PERS retiree who is elected to a state or local public office and chooses to not become an active member of PERS.

(b) The PERS certification report must contain information for every position held by the PERS retiree, whether the position is covered by PERS or not.

(2) through (6) remain the same.

AUTH: 19-2-403, MCA

IMP: 19-3-1104, 19-3-1106, 19-7-1101, 19-13-301, MCA

REASON: House Bill 122 requires that all earnings of a retired PERS member employed by an employer in a position reportable to PERS and in a position not

reportable to PERS count against the earnings limit applicable to PERS working retirees. The amendments to ARM 2.43.2608 are necessary to ensure that employers report all earnings of their PERS working retirees, not just those attributable to PERS-covered employment.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Roxanne M. Minnehan, Executive Director, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana, 59620; telephone (406) 444-5459; fax (406) 444-5428; or e-mail rminnehan@mt.gov, and must be received no later than 5:00 p.m., October 21, 2011.

6. Dena Helman, Montana Public Employee Retirement Administration, has been designated to preside over and conduct this hearing.

7. The PER Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the board.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Melanie A. Symons
Melanie A. Symons
Chief Legal Counsel
and Rule Reviewer

/s/ John Nielsen
John Nielsen
President
Public Employees' Retirement Board

Certified to the Secretary of State September 12, 2011.