

FREQUENTLY ASKED QUESTIONS
RETURN TO WORK (PSPRS MEMBERS)
(REVISED DECEMBER 2011)

I plan on retiring soon and I know I want to return to work with my same employer in a different position. What is the return to work process?

In order to be able to return to work "in any capacity" with your same employer, you must be retired for 60 days. Your retirement is effective the first day of the month following your termination. Your local retirement board must determine your eligibility to return to work. Your local board and employer are responsible for informing PSPRS within 10 days of your re-employment date, and must submit to PSPRS the local board minutes in which the return to work determination was made, copies of your old and new job descriptions, and an affidavit signed by you and by the employer stating that there was not a "pre-existing" agreement for you to return to work at the time of your retirement. Failure to follow the return to work statutes 38-849, informing PSPRS within 10 days of the re-employment, and failure to provide the required documentation will result in suspension of your retirement pension.

Why is there a 60-day rule before a retiree can return to work to the employer they retired from?

The PSPRS is considered a tax-qualified plan under Section 401(a) of the Internal Revenue Code. In order to maintain its tax qualified status, benefits must be provided in accordance to PSPRS pension statutes as well as within the provisions of the IRS Code. The IRS requires a bona fide separation from service to occur for a member to be eligible to receive a pension. In order to comply with IRS requirements, enabling legislation requires members to serve a 60-day period before seeking reemployment with their employer they retired from in order to maintain pension payments.

When does the 60-day rule for return to work begin?

The statutes state that a member cannot be reemployed by the employer they retired from before 60 days after a member's date of retirement. Retirement is defined as being effective the 1st of the month following a member's last day of employment or authorized leave of absence. So, the 60 days begin the 1st of the month following a member's last day of employment or authorized leave of absence.

I am in DROP and "technically" retired, so does the 60 day rule still apply to me?

Yes, your retirement is not effective until you terminate employment and begin receiving pension payments. You are still required to wait until 60 days after your effective retirement date to seek employment with the employer from which you retired from. You will be required to sign an affidavit as well as the employer stating

that there was not a “pre-existing” agreement to return to work at the time of retirement.

Does the 60-day rule still apply if the employer hires their retiree in a part-time capacity?

Yes, the 60-day provisions still apply as the statutes state that a retired member who is employed in ANY CAPACITY, by their employer is subject to the provisions.

What happens if I take a non-PSPRS position with my former employer before the 60 day wait period?

Your local board is required by law to suspend your pension benefits until you terminate from that position and employer.

What happens if I take a non-PSPRS position with my employer and leave my PSPRS position when I am eligible to apply for normal retirement benefits?

In order to be eligible and apply for retirement benefits, you must terminate employment. If you “transfer” to another non-PSPRS position within the same employer, you will not be eligible to apply for and receive pension benefits until you have terminated from the new position. This applies to members in the DROP program as well. The DROP program has financial consequences if termination does not occur as previously agreed to.

Can I retire with a normal retirement as a police officer or fire fighter and work for another PSPRS employer doing the same job?

Yes, as long as it’s not the same employer from which you retired. You will not make contributions to the retirement system, however, your new employer will have to pay the Alternate Contribution Rate to the system, regardless of if you are eligible to participate in any other retirement plan.

Do the return to work rules apply to me if I am returning to a volunteer or reserve position with the same employer?

No, as long as the volunteer position is a “non-paid” position, the return to work rules do not apply.

Can I be re-hired by the same employer from which I retired into the same position after the 60 day wait period?

Yes, your former employer can rehire you into the same position from which you retired after the 60-day timeframe has passed. **However**, A.R.S. 38-849.D also states that a member who returns to the same position in which they retired must have their pension suspended until such time the member terminates their employment. So, while you can return to the same position you **CANNOT** receive pension payments during your reemployment.

Can an employer make a job offer to an employee prior to their retirement with the expectation that work will begin after 60-days have passed?

No, if the employer and member want to be in compliance with the statutes. Again, there must be a bona fide separation of service in order to be in compliance with statutes and IRS Code. US Tax Courts have consistently interpreted IRS Code's definition of "separation of service" as a severance of an employee's connection and employment relationship with their employer. In order for a severance to occur, there cannot be intent to resume the relationship at a later date.

Can an employee actively pursue reemployment opportunities with the employer they are retiring from prior to retirement?

No, if they are seeking compliance with statutory provisions. Again, there must be a bona fide separation of service in order to be in compliance with statutes and IRS Code. US Tax Courts have consistently interpreted IRS Code's definition of "separation of service" as a severance of an employee's connection and employment relationship with their employer. In order for a severance to occur, there cannot be intent to resume the relationship at a later date.