

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

Our employer is considering hiring someone who is retired and receiving pension benefits from PSPRS, what is the responsibility of our local board?

A.R.S 38-849.D puts limitations on a retired member's pension benefit if they become reemployed. Local boards must review all reemployment decisions made by the employer to determine if the reemployment of the retired PSPRS member warrants suspension of their pension benefit.

Under what conditions is our local board required to suspend a retired PSPRS member's pension if they become reemployed?

A local board would be required to take action and suspend a retired member's pension when the retired member's reemployment occurred under the following conditions:

- The retired member was reemployed by the employer from which they retired within 60-days of the retired member's retirement. This reemployment is in any capacity, not strictly a PSPRS covered position.
- The retired member was reemployed by the employer from which they retired in the same position they had prior to retirement. Same position is defined as a position where the retired member would perform substantially similar duties that were performed and exercise substantially similar authority that was exercised by the retired member before retirement.

If our employer reemploys a retired PSPRS member, but that individual did not retire from our employer, is the local board still required to make a reemployment determination?

Yes. Local boards should review all reemployment of retired PSPRS members regardless of whether they retired from your employer group or not. In this situation, there probably would be no violation of return to work rules under A.R.S. 38-849.D and as such the retired member would continue to receive their pension benefit. However, if the member was retired and receiving a disability pension, please see the next question.

Our employer is considering employing a PSPRS retiree who is currently receiving disability benefits. What is the responsibility of our Local Board?

When making reemployment determinations of a retiree receiving disability benefits, the local board needs to consider the following:

- Is the PSPRS retiree receiving disability benefits from your employer group? Also, is the position that they are seeking to be reemployed in a PSPRS covered position? If the answer is **YES** to both, then the local board needs to complete a disability evaluation process to ensure that the individual is clear to return to work in a PSPRS covered position.
- If the retired disability pensioner is seeking employment from an employer that is not the employer from which they are receiving benefits, then the question that should be addressed is:
 - Is the retired member seeking a position covered under PSPRS?

If so, then the new employer's local board needs to ensure that the local board from which the member retired with a disability has cleared them to return to work in a PSPRS covered position.

Please note that A.R.S. 38-849.D reads in part:

"If a member who retired under disability is reemployed by an employer as an employee, that member shall be treated as if the member had been on an uncompensated leave of absence during the period of the member's disability retirement and shall be a contributing member of the system."

Does the System have specific requirements or documentation that a local board must provide, when making reemployment decisions?

Yes, statutes require that the System review all reemployment determinations made by a local board. In order to fully review those decisions, the system requires some key documents from local boards:

- If the reemployment determination concluded that the retired PSPRS member was not a retired member from their employer group, then the minutes submitted to the system need to clearly state to that fact. In this situation only the minutes would be required.
- If the employment determination resulted in determining that the retired PSPRS member was in fact a retiree from their employer group, then the system requires additional documentation to support the local board's final determination of suspension or continuation of pension benefits. Those documents include:
 1. Local board minutes regarding reemployment decision. Minutes need to clearly state effective date of reemployment and whether or not pension benefits need to be suspended based on criteria set in A.R.S 38-849.D.
 2. Job descriptions for the position held at retirement and for the new position member is reemployed into.
 3. Separate or a combined affidavit from the retired member and the employer stating that there was not a pre-existing agreement to return to work at the time of retirement.

Our Local Board reviewed a reemployment of a retired PSPRS member and determined that the rehire decision made by the employer is in compliance with statutes and does not require suspension of the retiree's pension. However, the PSPRS retiree is working in a covered PSPRS position. Will the Alternate Contribution be required?

Yes, if an employer rehires a PSPRS retiree into a covered PSPRS position that traditionally would be filled by an individual who would contribute to the plan, then the employer is required to pay the Alternate Contribution.

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.

Please submit any additional suggested questions you may have to Robert Ortega or Don Mineer and we will be glad to review them for inclusion at a future time.