



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.oregon.gov/pers

July 25, 2008

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Adoption of Employer Participation Rules
OAR 459-070-0050, *Participation of Public Employers* and
OAR 459-075-0010, *Eligibility and Membership*

MEETING DATE	07/25/08
AGENDA ITEM	B.3. Employer Participation

OVERVIEW

- Action: Adoption of Employer Participation rules.
- Reason: To provide newly participating employers clearer guidance on participation in the PERS Plan for employees who are already members of PERS programs at the time of hire.
- Subject: Participation of public employers in all programs in the PERS Plan.
- Policy Issue: Should participating employers be required to participate in all programs in the PERS Plan?

BACKGROUND

When the 2003 PERS Reform legislation created the OPSRP Pension Program and the IAP, the interplay of those programs with the PERS Chapter 238 retirement program was complicated. Concepts such as “Break in Service” and shifting member contributions to the IAP made discerning membership eligibility for existing, returning, and retiring members difficult. Still, the programs each have independent eligibility and benefit structures.

Two provisions adopted by the 2007 Oregon Legislature clarified the administration of the interplay among these programs. First, HB 2281 required a member who withdraws from one program to withdraw from all. This bill was an outgrowth of our realizations in administering these programs’ independent eligibility and benefit structures. PERS members have also expected to move from one PERS-covered employer to another and continue to participate based on their established eligibility: e.g., a Tier One member who goes to another PERS-covered employer stays as a Tier One member and does not need to re-establish membership.

This expectation was further supported by the elimination of “Break in Service” by the 2007 Legislature’s HB 2285. Members in the PERS Chapter 238 Program will now continue in that program if they interrupt their PERS-covered employment. Permitting new employers to participate in less than all programs would further complicate the administration of the PERS Plan and disrupt the employee’s expected continuity of membership in the system.

Adoption – Employer Participation Rules

07/25/2008

Page 2 of 3

POLICY ISSUE

Should participating employers be required to participate in all programs in the PERS Plan?

The tension among these provisions substantially clouds the factors in a new employer's decision on whether to join the Public Employees Retirement System. If the new employer tried to offer only some of the programs within the PERS Plan, members would be at best confused if not contentious when their work for a PERS-covered employer does not yield the benefits they expect. Membership and contribution start dates would fluctuate among employers and members could conceivably start and stop several times. Employer rates would be similarly tangled in sorting out which category a particular member's salary should fall. Finally, there's no practical way that a benefit administration system can be designed to track the permutations of a member who could potentially fall into an unpredictable combination of circumstances simultaneously for several employers concurrently.

All PERS employers in the system as of August 29, 2003 were required to continue participating in all the plan's programs. Any new employer should know the consequences of their decision to start offering PERS benefits. Those consequences should not be clouded by confused employees' expectations, administrative frustrations, and counter-intuitive cost structures. Therefore, staff developed and recommends adoption of these rule modifications so that an employer that chooses to join the PERS Plan, as a single plan, must join all the programs and members will participate based on their established eligibility.

The proposed modifications to OAR 459-070-0050 require that an employer applying to participate in the PERS Plan must apply to participate in all programs. The modifications to OAR 459-075-0010 eliminate provisions regarding concurrent membership in the OPSRP Pension Program and the PERS Chapter 238 Program. While open for rulemaking, that rule is also modified to clarify the waiting period of an educational employee in the OPSRP Pension Program.

MODIFICATIONS TO THE RULES SINCE FIRST READING

OAR 459-075-0010: Section (3) was added to establish retroactive application of the rule, providing consistent administration of OPSRP Pension educational employee waiting periods.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on May 27, 2008 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on July 1, 2008 at 5:00 p.m. No public comment was received.

LEGAL REVIEW

The attached draft rules were submitted to the Department of Justice for legal review and any comments or changes are incorporated in the rules as presented for adoption.

IMPACT

Mandatory: No, the Board need not adopt the modifications.

Adoption – Employer Participation Rules

07/25/2008

Page 3 of 3

Impact: Adoption would resolve this participation issue and provide stability and predictability for employers, members, and system administration.

Cost: There are no discernible material costs attributable to this rule.

RULEMAKING TIMELINE

April 15, 2008	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
May 1, 2008	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
May 16, 2008	PERS Board notified that staff began the rulemaking process.
May 27, 2008	Rulemaking hearing held at 2:00 p.m. in Tigard.
June 27, 2008	First reading of the rules.
July 1, 2008	Public comment period ended at 5:00 p.m.
July 25, 2008	Board may adopt the rules.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to OAR 459-070-0050 and 459-075-0010, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- Reason: To provide newly participating employers clearer guidance on participation in the PERS Plan for employees who are already members of PERS programs at the time of hire.

If the Board does not adopt: Staff would return with rule modifications that more closely fit the Board’s policy direction if the Board determines that a change is warranted.

B.3. Attachment 1 – OAR 459-070-0050, *Participation of Public Employers*

B.3. Attachment 2 – OAR 459-075-0010, *Eligibility and Membership*

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459**

DIVISION 070 – OREGON PUBLIC SERVICE RETIREMENT PLAN, GENERALLY

1 **459-070-0050**

2 **Participation of Public Employers**

3 (1) Any public employer that does not already provide benefits under the Oregon
4 Public Service Retirement Plan (OPSRP) may apply to participate in *[the]* OPSRP
5 *[Pension Program, the OPSRP IAP, or both, only]* for service by eligible employees
6 performed on or after the date the employer's participation becomes effective. An
7 employer that applies to participate in OPSRP must also apply to participate in the
8 PERS Chapter 238 Program for members of that program that it employs on or
9 after the employer's participation begins.

10 (2) The application to participate *[in either or both OPSRP programs]* must
11 contain *[, at a minimum,]* the following *[information]*:

12 (a) A true copy of the resolution, motion or other official action by which the
13 employer's governing board or equivalent decided to apply to participate;

14 (b) A designated person or position authorized to represent the employer on PERS
15 matters;

16 (c) Whether the employer will participate for one or more designated classes
17 *[groups]* of employees or for all employees. If the employer already provides coverage
18 for some but not all employees, the application must designate which additional class(es)
19 *[group(s)]* will be added *[to the program or programs]*;

20 (d) *[Whether]* A statement that the employer will *[offer]* participate in the OPSRP
21 Pension Program *[,]* and the OPSRP IAP *[, or both]*;

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1 (e) *[Whether]* A statement that the employer will *[offer]* participate in the PERS
2 Chapter 238 Program *[plan to qualifying employees]* for members of that program
3 that it currently employs or may hire in the future in the class(es) designated for
4 coverage pursuant to subsection (c) of this section;

5 (f) *[If the employer elects to participate in the PERS Chapter 238 plan for qualifying*
6 *employees, w]* Whether the employer will participate in the unused sick leave program
7 pursuant to ORS 238.350 *[provide the unused sick leave benefit for those employees];*
8 and

9 (g) The date on which the employer proposes to commence participation. *[coverage*
10 *under the specified program or programs.]*

11 (3) If the employer *[elects to participate in the PERS Chapter 238 plan for qualifying*
12 *employees, and the employer also]* elects to participate in the State and Local
13 Government Rate Pool (SLGRP) for the PERS Chapter 238 Program *[those*
14 *employees]*, the employer shall provide PERS with a resolution electing to participate in
15 the SLGRP before the coverage agreement is signed by the parties.

16 (4) Upon receipt of the properly completed application, PERS will prepare a
17 coverage agreement, which will be forwarded to the person designated by the employer
18 under (2)(b) above. In no event will coverage commence before the agreement has been
19 executed on behalf of the employer's governing body (or equivalent), the PERS
20 Executive Director, and the PERS Board.

21 (5) The employer will provide any and all information requested by PERS to ensure
22 that the employer is eligible to participate, including whatever information PERS deems

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1 necessary to determine that the employer qualifies as a public employer. Factors to be
2 addressed in that determination include but are not limited to:

3 (a) If the employer is a public corporation, whether a governmental entity retains
4 essential control over the employer's activities, with delegated powers for administration
5 or discharge of public duties;

6 (b) Whether a state or local governmental body controls management of the
7 employer;

8 (c) If the employer is a public corporation, whether it generates profits for private
9 investors or stockholders;

10 (d) Where the employer derives its funding for operations;

11 (e) Whether the employer performs a governmental function; and

12 (f) Any information deemed necessary to determine that the employer's coverage
13 will not adversely affect PERS' status as a qualified governmental retirement plan under
14 the Internal Revenue Code.

15 (6) Unless the coverage agreement specifically provides otherwise, no retirement or
16 service credit will be provided under *[OPSRP or]* the PERS Chapter 238 Program
17 *[plan]* for the service performed with that employer prior to the employer becoming a
18 participating employer~~*[, including service towards the member's six-month waiting*~~
19 *period]*.

20 *[(7) An employee who is employed in a qualifying position with a newly*
21 *participating employer and who had previously established membership in the PERS*
22 *system as of August 29, 2003, shall be an active member of the applicable OPSRP or*

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1 *PERS Chapter 238 program(s) as of the coverage agreement effective date, to the extent*
2 *eligible under OAR 459-075-0010 and 459-080-0010.]*

3 Stat. Auth: ORS 238A.450, [238.650](#)

4 Stats. Implemented: ORS [238A.025](#), 238A.070

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 075 – OPSRP PENSION PROGRAM**

1 **459-075-0010**

2 **Eligibility and Membership**

3 (1) Eligibility. An employee who is employed in a qualifying position on or after
4 August 29, 2003 by an employer participating in the OPSRP Pension Program is eligible
5 to become a member of that program unless the employee:

6 (a) Has established membership in the PERS Chapter 238 Program before August
7 29, 2003 under the terms of ORS 238A.025 and has not terminated membership in that
8 program under ORS 238.095;

9 (b) Is a judge member as defined in ORS 238.500;

10 (c) Elects to participate in an optional or alternative retirement plan as provided in
11 ORS Chapters 243, 341, or 353; or

12 (d) Is otherwise ineligible for membership.

13 *[(2) Notwithstanding section (1) of this rule, an employee who established*
14 *membership in the PERS Chapter 238 Program before August 29, 2003 under the terms*
15 *of ORS 238A.025 and has not terminated membership in that program under ORS*
16 *238.095 may nevertheless be eligible to establish membership in the OPSRP Pension*
17 *Program if employed by a public employer that is participating in the pension program*
18 *and is not participating in the PERS Chapter 238 Program.]*

19 **(2)[(3)] Membership:**

20 (a) An employee who meets the requirements in section (1) *[or (2)]* of this rule
21 becomes a member of the OPSRP Pension Program on the first day of the calendar month
22 following the employee's completion of a waiting period of six full calendar months of

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1 service in a qualifying position with the same participating public employer. The six full
2 calendar months of service may not be interrupted by more than 30 consecutive working
3 days. For the purposes of this rule, a working day is defined as a day that the employer is
4 open for business.

5 (b) The waiting period begins:

6 (A) On the date the employee is hired, and includes the month of hire as a full
7 calendar month, if the date of hire is the first business day of the month. For the purposes
8 of this rule, a business day is defined as Monday through Friday when PERS is open for
9 business;

10 (B) On the first day of the month following the date of hire; or

11 (C) On the first day of the month following the end date of an interruption of service
12 of more than 30 consecutive working days.

13 (c) In the event an employee is on an official leave of absence as described in OAR
14 459-010-0010, the period of absence shall not constitute an interruption of the waiting
15 period under subsection (a) of this section. The waiting period shall be extended by the
16 length of the leave of absence.

17 (d) Absence from service by an educational employee during periods that the
18 employing educational institution is not in session shall not constitute an interruption of
19 the waiting period under subsection (a) of this section. *[The waiting period shall be
20 extended by the length of the period the educational institution is not in session.]*

21 **(3) The provisions of this rule are retroactive to November 23, 2007.**

22 Stat. Auth.: ORS 238A.450

23 Stats. Implemented: ORS 238A.025, 238A.100 & OL 2007 Ch. 769