

# Employment After Retirement

(Excerpts from December 2007 TRS Benefits Handbook)



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# Employment After Retirement

## Required Break in Service Before Employment After Retirement

You **revoke** your retirement if you become employed in any position in a Texas public education institution in any capacity during the first calendar month following the effective date of your retirement. If your retirement date is May 31 but your contract or work agreement requires you to work into June but no later than June 15, you may not return to employment in Texas public education until August 1. If you revoke your retirement, benefits (including any DROP or PLSO distribution and any group health benefits through TRS-Care) must be repaid to TRS. You must also reapply for retirement. The break in service requirement applies to both normal-age and early-age retirees and to both service and disability retirees. Volunteering to perform services that are normally provided by an employee, or waiving payment for service during the required break in service, may be considered service that revokes retirement.

**Note:** One full calendar month of separation from employment with any TRS-covered employer is also required of a person retiring with the Employees Retirement System (ERS) whose last place of employment was with a TRS-covered employer and who uses TRS service credit, transferred at retirement, for benefit calculation under ERS.

## General Information about Employment After Retirement

Retirees who plan to work in Texas public education after retirement should carefully review all requirements that apply to such work. If the retiree does not effectively terminate employment, or if the retiree's work is not in compliance with the requirements, the retiree could:

- revoke his or her retirement entirely, or
- lose monthly annuity payments for

work that exceeds the allowable amount.

To work after retirement without revocation of retirement or loss of benefits, a retiree must:

- terminate all employment with a TRS-covered employer
- wait to negotiate a return to employment as permitted under law,
- not be employed or otherwise work for a TRS-covered employer during the required break in service after the retirement effective date, and
- work only the amount of time permitted under one of the employment-after-retirement exceptions. The exceptions permit certain kinds of employment without losing the annuity for the month in which the employment is performed.

These requirements apply to all retirees, service and disability and both normal age and early age. However, there are some differences (described below) in how the requirements are applied, depending on retirement circumstances. Please contact TRS if you are considering returning to employment in Texas public education after retirement and are unsure whether your employment will affect your retirement or your monthly annuity payment.

**For employment-after-retirement purposes, the definition of "school year" is a 12-month period beginning September 1 and ending August 31 of the next calendar year.**

During employment after retirement, a retiree will not earn additional TRS service credit, and TRS member contributions will not be withheld from your salary. For employment on or after September 1, 2005, public education employers in Texas are required to pay a surcharge to the TRS pension fund for retirees employed in positions that would be eligible for TRS membership if held by an active member. This surcharge payment is not a member contribution, nor is it refundable to the retiree at any time. Employers may also be required to pay the state contribution for the retirees' TRS-

Care health benefits. The surcharges are not required for a retiree who (1) retired prior to September 1, 2005, (2) works only as a substitute (serves on a temporary basis in the place of a current employee), or (3) works in a position that does not meet TRS membership eligibility requirements for active members.

### **\*Employment through a "Third-Party Entity"\***

Employment by a third-party entity is considered employment by a Texas public educational institution subject to the employment-after-retirement requirements unless:

- the retiree was first employed by the third-party entity on or before May 24, 2003, or
- the retiree does not perform duties or provide services on behalf of or for the benefit of a Texas public educational institution.

For purposes of employment after retirement, a third-party entity is an entity retained by a Texas public educational institution to provide personnel to the institution to perform duties or provide services that employees of the institution would otherwise perform or provide.

### **\*Employment as an Independent Contractor\***

Employment with a Texas public educational institution as an independent contractor is not subject to the TRS laws and rules regarding employment after retirement. Additionally, the employer surcharges do not apply to retirees working as independent contractors. Therefore, if you are an independent contractor, your employment is not reported to TRS and your monthly annuity is not affected. A member who wants to return to work as an independent contractor should carefully consider whether the work arrangement meets all legal tests for this status. The characterization of your relationship with the Texas public educational institution as an independent contractor may be affected by laws such as those governing federal income tax and Social Security as well as TRS laws. TRS recommends that you carefully review the

work arrangement and seek legal advice from your attorney as necessary to determine if you are an independent contractor.

If your employment arrangement does not meet the legal tests for an independent contractor, you are regarded as an employee of the educational institution rather than as an independent contractor. If your contract was negotiated prior to retirement, you may not have terminated employment for TRS purposes, and you are not eligible to retire. In this case, you must return all benefits associated with your retirement, including any annuity payments, DROP or PLSO payments, and any group health benefits received under TRS-Care. If the contract was negotiated after the required break in service, your retirement eligibility may not be in question. You will, however, forfeit benefits for any month that your work exceeds the applicable limits under the exceptions described below. Additionally, your employer may owe TRS the applicable surcharges on your employment. Consult your own attorney before entering into an agreement to work as an independent contractor to make sure that the work arrangement does not jeopardize your eligibility for retirement and retirement benefits.

## **Service Retirees**

### *Employment without Forfeiture of Monthly Annuity Payments*

**TRS retirees who retired before January 1, 2001, are permitted to return to work without employment restrictions or reduction in TRS benefits.**

The following employment-after-retirement provisions apply to members retiring **on or after January 1, 2001**. After terminating employment and fulfilling the required break in service, TRS service retirees may work in a Texas public educational institution without forfeiting their annuity payment under the following conditions:

### **\*A return to work during same school year as retirement\***

- **Substitute:** Retirees may substitute an un-

limited number of days during the school year. For TRS purposes, a substitute is a person who serves on a temporary basis in the place of a current employee. If the position is vacant, the retiree is not a substitute for TRS purposes. The retiree's pay cannot be more than the daily rate of substitute pay set by the employer.

• **One-half Time or Less: Retirees may work one-half time or less:** Working one-half time means employment during any month for no more than one-half the full-time load for the particular position as determined by the employer. One-half time employment cannot exceed 50 percent of the full-time position. Additionally, the following apply:

- Employment measured in clock hours must not exceed more than one half the number of working hours in the month or 92 clock hours, whichever is less.
- Employment measured in credit or semester hours may not exceed one-half of the full-time load. A full-time work load measured in credit or semester hours is usually 12 to 15 semester hours or 4-5 courses per long semester.
- Paid time off, including sick leave, vacation leave, and compensatory leave for overtime worked, is employment and reduces the number of hours available to work in a calendar month.
- Because the number of working days in each month is not always the same, the maximum amount of time a retiree is allowed to work under the one-half time exception will vary from month to month.
- If an employer is closed for business during scheduled periods, the amount of time available to work during that month is reduced by the number of business days that the employer is closed.
- A retiree working as a bus driver under the one-half time exception can drive the bus only for one half the number of working days in that particular calendar

month, not to exceed 12 days. For example, December is a short work month due to the Christmas holidays. Therefore, if the school is open for only 10 working days in the month, a retiree could drive five days in the month. This rule does not apply to bus drivers who qualify for the "Bus Driver Exception" below.

• **Bus Driver:** Retirees who retired before September 1, 2005, may work on as much as a full-time basis under the bus driver exception provided the retiree is a normal-age retiree and regularly drives at least one route per day that complies with Texas Education Agency (TEA) guidelines. Effective with retirements after September 1, 2005, retirees who work as bus drivers under this exception and drive at least one route per day that complies with TEA guidelines will not forfeit their annuities provided bus driving is their primary employment with the TRS-covered employer. For bus driving to be considered an employee's primary employment, the total amount of any other employment with a TRS-covered employer must be less than half time. An early-age retiree may work as a bus driver only under the one-half time exception, and all rule provisions governing the one-half time exception are applicable.

• **Combination of Substitute and One-half time Employment:**

Retirees may combine substitute and one-half time employment during the same calendar month provided the amount of total time worked including any paid leave does not exceed the amount of time available for half-time employment for that month. Retirees may also work either as a substitute or on a half-time basis in different months of the same school year.

**\*A return to work during school years beginning after retirement, but with less than a 12-month break in service\***

• **Substitute, One-half Time or Less, or Bus Driver:** These employment exceptions are available for retirees who return to work the same school year in which they retired as well

as those who return to work in the school years following retirement.

- **Six-Month Exception: Retirees may work on as much as a full-time basis in any position for as long as six months during the school year.** This exception cannot be used in the same school year that retirement occurs. Any employment during any month after the sixth month will result in the forfeiture of the monthly annuity for the month. Paid time off, including sick leave, vacation leave, and compensatory leave for overtime worked, is considered employment for purposes of this exception. The following also apply:

- Retirees who are working under the six-month exception and cannot complete work required under their contract by May 31 may work into June, but no later than June 15, without losing the annuity for June.
- Attendance at professional development activities not included in the work required in the contract of employment will not result in the loss of an annuity.
- This exception cannot be used with any other exception to forfeiture of benefits during the same school year. If the retiree works full time (more than one-half time) in any month, employment as a substitute or on a one-half time basis in any other month will be counted in the six months, and the monthly annuity payment will be forfeited for any month that exceeds the six months.

- **Combination of Substitute and One-half time Employment:** Retirees may combine substitute and one-half time employment during the same calendar month provided the amount of total time worked including any paid leave does not exceed the amount of time available for half-time employment for that month. Retirees may also work either as a substitute or on a one-half time basis in different months of the same school year.

### **\*A return to work after 12-month break in service after retirement\***

- **Acute Shortage Area Exception:** Retirees may work on as much as a full-time basis without limitation as a teacher in an acute shortage area. This exception is limited to certified classroom teachers. An acute shortage area is determined by the board of trustees of the employing school district based on guidelines provided by the Commissioner of Education. In addition, a retiree must meet the following requirements:

- Retired without a reduction in benefits due to early age
- Has not worked in any position or capacity for any Texas public educational institution for a 12-consecutive-month period following the date of retirement
- Is employed to teach at least one classroom hour per day in an area designated as an acute shortage area
- Is certified by the State Board of Educator Certification (SBEC) to teach in the acute shortage area
- Completed form TRS 581, "Certification for Employment After Retirement as a Classroom Teacher in an Acute Shortage Area or as a Principal or Assistant Principal." The employer must submit the completed form to TRS.

- **Principal or Assistant Principal Exception:** A retiree may work on as much as a full-time basis without limitation as a principal or assistant principal provided the retiree meets the following requirements:

- Retired without a reduction in benefits due to early age
- Has not worked in any position or capacity for any Texas public educational institution for a 12-consecutive-month period following the date of retirement
- Is certified under Subchapter B, Chapter 21, Education Code, to serve as principal
- Is employed as, and performs the duties of, a principal or assistant principal
- Completed form TRS 581, "Certification for Employment After Retirement as

a Classroom Teacher in an Acute Shortage Area or as a Principal or Assistant Principal." The employer must submit the completed form to TRS.

• **Faculty of professional nursing program:**

A retiree may work on as much as a full-time basis without limitation as faculty of a professional graduate or undergraduate nursing program provided the retiree meets the following requirements:

- Has not worked in a position or capacity for any Texas public educational institution for a 12-consecutive-month period following the date of retirement
- Is employed as a faculty member in an undergraduate or graduate professional nursing program as defined in §54.221, Tex. Education Code
- Completes form TRS 581N, "Certification of Employment After Retirement as Faculty Member of a Nursing Program." The employer must submit the completed form to TRS.
- This exception is currently available through the last day of the 2015 spring semester.

*Employment with Forfeiture of Monthly Annuity Payments*

A service retiree who retired after January 1, 2001 will forfeit retirement annuity payments for any month worked as follows:

1. Full-time employment during the same school year in which retirement occurs unless working as a bus driver under the "Bus Driver Exception" described previously. Full-time employment is any employment that is more than one-half time and includes any paid leave.
2. Work in excess of six months in the school year after retirement if employed under the "Six-Month Exception" as described on page 44. The use of any paid leave during a calendar month is considered work for purposes of the six-month exception. The six-month exception applies if any work during the school year

is full time. For return-to-work purposes, a school year is defined as September 1 through August 31.

3. Work as a substitute combined with work on a one-half time basis, including any paid leave, and the combined employment for the month exceeds the time allotted for the one-half time position.

4. Work as a bus driver when combined with other work that is one-half time or more, including any paid leave. A normal age retiree who retired prior to September 1, 2005 may have other employment on as much as full-time basis without forfeiting any annuity provided he or she drives at least one bus route per day that meets TEA guidelines.

**Disability Retirees**

Disability retirees are subject to the requirements and limitations found in the sections on "Required Break in Service," "General Information," "Employment Through a Third-Party Entity," "Employment as an Independent Contractor and "Negotiation for Return to Employment." Please refer to these sections for more information and instructions.

It is important to remember that the retirement of a disability retiree will be revoked if there is a return to employment in a Texas public educational institution in any capacity during the calendar month following the effective date of retirement. For instance, if a disability retiree retires in August, the retiree cannot return to work before October 1 of the same calendar year. If the retirement date is May 31, but the contract or work agreement requires work into June but no later than June 15, the retiree cannot return to work until August 1 of the same calendar year. If retirement is revoked, all benefits associated with retirement (including any benefits of health care under TRS-Care) must be repaid to TRS. The retiree must also reapply for retirement. Waiving payment for service during this time period is employment that revokes retirement. Volunteering to perform services that are normally provided by an employee also may be considered employment that revokes retirement.

## *Employment without Forfeiture of Monthly Annuity Payments*

Disability retirees may be employed by a Texas public educational institution for a maximum of 90 days per school year (September through August) in the following categories without forfeiting their annuity payments:

- **Substitute:** Disability retirees may serve as a substitute subject to the 90-day limit on total employment in a school year. For TRS purposes, a substitute is a person who serves on a temporary basis in the place of a current employee. Service in a position that is vacant is not substitute service for TRS purposes. Also, the retiree's pay cannot be more than the daily rate of substitute pay set by the employer.

- **One-half Time or Less:** Disability retirees may work one-half time, subject to the 90-day limit on total employment in a school year. For employment-after-retirement purposes, "one-half time" means employment during any month for no more than one half the full-time load for the particular position as determined by the employer. One-half time employment cannot exceed 50 percent of the full-time position. In addition, the following requirements are applied in determining one-half time employment:

- Employment measured in clock hours must not exceed more than one half the number of working hours in the month or 92 clock-hours, whichever is less.
- Employment measured in credit or semester hours may not exceed one-half of the full-time load. A full-time work load measured in credit or semester hours is usually 12 to 15 semester hours or 4-5 courses per long semester.
- Because the number of working days in each month is not always the same, the amount of time available to work one-half time may vary from month to month.

- **Combination of substitute and one-half time employment:** Disability retirees

may combine substitute and one-half time employment during the same calendar month provided the total time worked does not exceed the amount of time available for half-time employment for that month. The total number of days worked in both capacities cannot exceed 90 days. Disability retirees may also work either as a substitute or on a one-half time basis during different calendar months provided the total number of days worked in both capacities does not exceed 90 days.

In addition to the above, on a one-time-only trial basis a disability retiree may work up to full time for a period of no more than three months provided that all of the following requirements are met:

- The work occurs in three consecutive months designated by the employee. Working any part of a month counts as a full month.
- The full-time employment is performed beginning in a school year that starts after the disability retiree's effective date of retirement, and the required break in service has been met.
- Written notice on "Employment After Retirement Disability Election" form (TRS 118D) is submitted by the employer to TRS before the end of the trial period of full-time employment. This form can be found on the TRS Web site under "Forms."

## *Employment with Forfeiture of Monthly Annuity Payments*

Disability retirees will forfeit their retirement annuity for any month worked as follows:

- **Full-time employment:** A disability retiree who works full time during any month will forfeit the annuity payment for that month. In addition, the days worked will be included in the 90-day limit total. An exception to this limit is if the full-time employment occurs during one of the three consecutive months of trial full-time work referenced above. Working more than one-

half time is considered full-time employment.

- **Substitute service in excess of 90 days:** A disability retiree who serves more than 90 days as a substitute will forfeit the annuity for the month in which the 91st day is worked and for any additional month in which work occurs during that school year.

- **One-half time employment in excess of 90 days:** A disability retiree who works more than 90 days of one-half time employment will forfeit the annuity for the month in which the 91st day is worked and for any additional month in which work occurs in that school year.

- **Work in excess of 90 days:** A disability retiree who works more than a total of 90 days in a school year (September through August) will forfeit the annuity for the month in which the 91st day is worked and for any additional month in which work occurs in that school year.

- **Earnings limit:** A disability retiree whose compensation earned for work while receiving disability benefits exceeds the applicable earnings limit established by TRS will forfeit the monthly annuity payments until the earned compensation ceases or is reduced to an allowable amount. See full discussion in next section below.

**Note:** In addition to the forfeiture of benefit for working in excess of 90 days or exceeding the earnings limit if applicable, disability benefits may be discontinued if the disability retiree refuses or fails to submit to a medical examination requested by TRS. Disability benefits may also be discontinued for those disability retirees who are subject to an annual determination of disability, if the Medical Board determines you are no longer disabled.

#### *Forfeiture of Monthly Annuity Payments Due to Excess Earnings*

A disability retiree whose retirement date is

after August 31, 2007 and whose retirement application is received after August 31, 2007 is subject to a limit on the compensation the retiree may earn for work while receiving disability retirement benefits. Earning excess compensation will subject a disability retiree to forfeiture of annuity payments as well as to higher TRS-Care contributions during the period of time one or more annuities are forfeited, if the retiree has TRS-Care coverage. Compensation subject to the limits includes, but is not limited to, compensation for any work performed for any employer including a TRS-covered employer; self-employment income; and profit from a business.

Excess compensation must be reported to TRS in the manner required by TRS. Failure to report excess compensation will subject a retiree to forfeiture of annuities and higher TRS-Care contributions. TRS may obtain information from other sources regarding compensation earned by a disability retiree. TRS also may audit the compensation report and require a disability retiree to provide supporting documentation to verify the accuracy of the report.

TRS will resume payment of an annuity after receipt of a report that the compensation has ceased or decreased to below the established limit.

For more information on the limit on compensation for work, please visit the TRS Web site or contact TRS if you have questions.

## **Negotiation for Return to Employment**

With limited exceptions, a member's employment does not terminate (end) for TRS purposes if, at time of retirement, the member has a contract, agreement, or promise for future employment with a Texas public education institution. Arranging for future employment before retirement is permissible only when the following two conditions are met:

- the member must be eligible to take normal-age retirement, and
- the post-retirement employment must



qualify under one of the exceptions to loss of monthly benefits.

Specifically, retirees who meet the requirements for normal-age retirement may only have a contract for employment during the school year in which they retire for half-time employment or as a bus driver whose primary employment is bus driving. If an agreement is for employment after the school year in which retirement occurs, a normal-age retiree may also have an agreement for full-time employment **that does not exceed six months.**

Members taking normal-age retirement will be ineligible to retire if, at the time of retirement, they enter into a contract for full-time employment that exceeds six months.

Members who do not meet these two criteria, but nevertheless enter into employment arrangements at the time of retirement, are not eligible for retirement because they have not effectively terminated employment. They are not eligible for any retirement benefits they may have received or for retiree health care coverage. Normal-age retirees must wait until after the required break in service to negotiate for full-time employment.

Members taking early-age retirement may not have a contract, agreement, or promise for any type of future employment with a TRS-covered employer at the time they retire. They must wait until after the required break in service to negotiate any contract for employment with a TRS-covered employer. After the required break in service, an early-age retiree may contract for any type of employment; however, the employment after retirement remains subject to the forfeiture of benefit provisions described below.

Members who enter into contracts, agreements, or promises to return to work that do not meet the requirements described above risk revocation of their retirement and loss of all associated benefits of retirement.