

# MEMORANDUM

## Teachers' Retirement System

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**To:** Montana TRS Employers  
**From:** Teachers' Retirement Board  
**Date:** March 31, 2008  
**Subject:** Working TRS Retirees

Under the statutes governing the Montana Teachers' Retirement System (TRS), any retired member may be employed in a **part-time** position eligible to participate in the Montana TRS, including part-time positions with the university system, and earn without loss of retirement benefits, an amount not to exceed the greater of:

- (1) one-third (1/3) of their Average Final Compensation (AFC), plus annual increases equal to the increase in the Consumer Price Index (CPI); or
- (2) one-third (1/3) of the median AFC for members retired during the preceding fiscal year. These earnings are determined on a fiscal year basis, July 1 through June 30.

The maximum compensation that a retired member may earn includes **all remuneration** paid to the retired member, excluding:

- (1) the amount of health insurance premiums paid by the employer on the retired member's behalf;
- (2) the value of housing provided by the employer to the retired member;
- (3) the amount of employment-related travel expenses reimbursed to the retired member by the employer;
- (4) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and
- (5) payroll taxes paid by the employer on behalf of the retired member.

A "retired member" is defined as a TRS member who has terminated **all** positions eligible to participate in the TRS, and who has **received** at least one monthly retirement benefit.

Retired members employed in a part-time position(s) that is eligible to participate in the TRS are **not** required to contribute to the retirement system until their earnings over the maximum allowed exceed their gross monthly benefit amount. However, it is required that retired members working in a position eligible to participate in the TRS be reported each month to the retirement system for the purpose of tracking gross earnings and hours worked after retirement.

Positions eligible to participate in the TRS include work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor. Independent contractors are excluded. However, hiring employees as independent contractors must be evaluated under the IRS's test of independent contractor status. The IRS has identified twenty factors or elements as indicating whether sufficient control is present to establish an employer-employee relationship. (REV. Ruling 87-411) The TRS Board may accept a certification from the Montana Department of Labor and Industry (DLI) as prima facie evidence of independent contractor status. If the TRS retired member's status as an independent contractor is in question, they **must** become a member of the TRS. (Ref: 2.44.308, ARM)

The TRS retired payroll staff will calculate and advise retired members, and their employer(s), of the maximum amount they may earn without affecting their monthly benefits. For audit purposes it is **required** that employer(s) provide the TRS with a copy of all post-retirement contracts whenever a retired member is hired. If a contract is not issued, the employer(s) must submit copies of any hire form(s), compensation agreement(s), letter(s) of appointment, etc. that may have been used to document the salary and hours the retired member is expected to work in all TRS eligible positions.

Should a retired member accept a full-time TRS eligible position, or multiple part-time positions totaling full-time, their retirement benefits will cease on the effective date of the full-time contract, or the effective date of the multiple part-time contracts totaling full-time. In addition, the retired member will be reinstated to active membership status and contributions will be due on all reportable earnings.

The definition of full-time service means service that is at least 180 days in a fiscal year or at least 140 hours a month during 9 months in a fiscal year. Part-time service means service that is less than full-time. (Ref: §19-20-101(8) & (12), MCA)

Many of the provisions covered in this memo were changed during the 2007 legislative Session. Therefore, if a retired member had a contract that was executed prior to July 1, 2007, they may still be covered under prior laws. Should you have any questions regarding working retirees, or the maximum they are eligible to earn, please do not hesitate to contact the TRS retired payroll section at 406 444-3185.

Please distribute a copy of this memorandum to all of your working TRS retirees.

Unless otherwise noted please Reference §19-20-731, MCA.