

Date: August 24, 2011

To: TRS Employers

From: Dan Gaughan, Accounting & Fiscal Manager

Subject: 2011 Legislative Session

Working Retiree Limitations and Reporting Requirements – House Bill 86 and House Bill 116, both included clarification of the limitations pertaining to postretirement employment, and the reporting requirements applicable to working retirees and their employers. These amendments should assist TRS in timely identifying retirees who have returned to work, allow greater oversight and compliance with the earnings limitations applicable to working retirees, and provide for timely adjustment or suspension of retirement benefits of retirees who exceed the limitations. The 2011 legislative amendments effective July 1, 2011, include:

- TRS will no longer consider the working retiree's employment status (working full-time or part-time) in determining eligibility to continue to receive retirement benefits. With this change, only the one-third earnings limitation will apply to TRS retirees returning to a TRS reportable position.
- Clarification that the maximum compensation that a retired member may earn under a postretirement contract includes all amounts paid to or on behalf of the retired member, and the value of all benefits provided to or on behalf of the retired member by the employer, including any amounts deferred for payment to a later year, **except**:
 - health insurance premiums directly paid by the employer on the retired member's behalf for health care coverage provided by the employer concurrent with the term of employment;
 - the value of housing provided by the employer to the retired member;
 - the amount of employment-related travel expenses reimbursed to the retired member by the employer;
 - 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
 - payroll taxes paid by the employer on behalf of the retired member.
- Clarification that, if a retired member is employed in a position that is reportable to TRS after July 1, 2011, and the retired member is concurrently working for the same employer in another position that is not reportable to the system, all earnings of the retired member that are generated by these positions are reportable to the retirement system.

- Clarification that postretirement employment that is reportable to TRS, and will be counted against the earnings limitation, includes any work performed or service provided by a retired member to or on behalf of an employer, including but not limited to work performed or service provided through a professional employer arrangement, an employee leasing arrangement, as a temporary service contractor, or as an independent contractor.
- Retired members and their employer(s) are required to notify TRS within 30 days of the date of execution of an employment/service contract or the first date on which services are provided in the position, whichever is earlier, using the 'Retired Member's and Employer's Notice of Postretirement Employment' form available on the TRS website at www.trs.mt.gov. The employer is required to verify the terms of postretirement employment and the retired member is required to provide supporting documentation, including all contracts, service agreements, salary or payment agreements, position or job description, or other written documentation evidencing the terms of employment, the duties and functions of the position, and all amounts/compensation to be earned.
- **A provision establishing that an employer will be jointly and severally liable for repayment to the retirement system of any retirement benefits to which the retiree was not entitled, plus interest, for failing to properly report the employment of and compensation paid to a TRS retired member.**

Restrictions on Exceptions to the 10% Cap on Earned Compensation – The compensation reported in each year of the 3 years that make up the member's average final compensation may not be greater than 110% of the previous year's compensation included in the calculation of average final compensation or the earned compensation reported to the retirement system, whichever is less, except as provided by §19-20-715, MCA.

Amendments included in HB 116, limits exceptions only to a change resulting from movement on an employer's approved salary matrix. No other exceptions to the 10% cap, such as summer employment, extra duty pay, promotions, change in employer, etc., can be granted by the Board. TRS members who believe they qualify for an exception based on movement on an employer approved salary matrix will need to send TRS a copy of all the applicable salary matrices.

Full Actuarial Reduction for Early Retirement Calculations - Members electing to retire early (with less than 25 years of service or less than age 60) receive a reduced "early retirement" benefit. The Actuary recommended that TRS adopt early retirement reduction factors based on the member's actual age and/or years of service at retirement so that early retirement benefits will be the actuarial equivalent of regular retirement benefits and the retirement system will not be "subsidizing" early retirement. The early retirement reduction will continue to be based on the number of months the member is short of 25 years of service, or age 60, whichever is less. This change will take effect for active members who retire after July 1, 2011.

Reminder: Please download and use the current version of TRS employer forms (e.g., Record for Membership, etc) available on our website. The use of older forms may be rejected and returned to you.

If you have any questions, please do not hesitate to contact our office.

Thank you