

TEACHERS' RETIREMENT SYSTEM



STEVE BULLOCK, GOVERNOR

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STATE OF MONTANA

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October 17, 2013

TO: Employers Reporting to the Montana Teachers' Retirement System (TRS)

FROM: Shawn Graham, Executive Director of TRS

RE: Employer Contributions Are Due on **All** Independent Contractors Working in TRS Reportable Positions

Dear Employers:

As you are aware, effective July 1, 2013, employers are required to remit employer contributions of 9.85% to the retirement system on compensation paid to TRS retirees working in positions reportable to TRS. In 2011, legislation was enacted to include a TRS retiree working as an independent contractor in a position reportable to TRS as subject to the provisions of §19-20-731, MCA. Therefore, effective July 1, 2013, employers must remit employer contributions on compensation paid to **all** TRS retirees working as independent contractors.

Since the passage of the 2011 legislation, TRS has been working with employers and retirees to ensure proper reporting of retirees working as independent contractors. TRS is aware there have been some administrative difficulties for employers in giving full effect to the requirement. The primary administrative difficulty appears to be that most employers pay independent contractors as vendors through their accounts payable process rather than through their payroll process. Since monthly reporting to TRS is typically done as a payroll function, many independent contractors are not properly reported to TRS because the payroll staff either is not aware the retiree is working for the employer or doesn't receive the information regarding compensation paid to the independent contractor.

While TRS is sympathetic to the administrative difficulties related to proper reporting of retirees working as independent contractors, the retirement system has legal and fiduciary obligations to collect contributions owed to the retirement system, including contributions now owed on compensation paid to independent contractors, and to adjust or suspend payment of retirement benefits to working retirees with earnings in excess of the limitations imposed by §19-20-731, MCA. TRS' ability to meet its legal/fiduciary obligations is dependent upon your complete and accurate reporting of the employment of and compensation paid to working TRS retirees, including those engaged as independent contractors.

An employer's failure to properly report a retiree working in a TRS reportable position, will result in unpaid employer contributions to the retirement system, which will be required to be repaid with interest at the actuarially assumed rate (7.75% annually). In addition, an employer's failure to properly report a retiree may result in the overpayment of retirement benefits to the retiree. Pursuant to §19-20-208(2), MCA, the employer is jointly and severally liable for repayment of overpaid benefits if the overpayment is due to the employer's failure to properly report time worked by and/or compensation paid to the retiree. Overpaid benefits also accrue interest at the actuarially assumed rate until the amount owed to TRS is repaid in full.

TRS' on-line employer reporting system accommodates accurate reporting and remittance of contributions for TRS retirees engaged as independent contractors. It is imperative that you establish the necessary administrative practices to allow you to completely and correctly report retirees working as independent contractors. If you have questions regarding proper reporting/coding of independent contractors, please contact TRS immediately.

Sincerely,

Shawn Graham
Executive Director