

TEACHERS' RETIREMENT SYSTEM



STEVE BULLOCK, GOVERNOR

www.trs.mt.gov

STATE OF MONTANA

1500 EAST SIXTH AVENUE
PO BOX 200139
HELENA, MONTANA 59620-0139

1-866-600-4045
406-444-3134

Date: May 8, 2014
To: Montana University System HR Directors
Montana University System Participants of the Teachers' Retirement System
Cc: Kevin McRae, Deputy Commissioner for Communications & Human Resources
From: Shawn Graham, Executive Director, TRS
Re: 150 Calendar Day Break in Service: Montana University System Employees

A number of Montana University System (MUS) faculty have recently contacted the Teachers' Retirement System (TRS) regarding the new 150 calendar day break in service requirement as it applies to retiring MUS faculty who are TRS Members. TRS has provided written answers to each Member and had in-person conversations with staff Members of the Office of the Commissioner of Higher Education (OCHE) as well as Human Resources staff from the University of Montana (UM).

The first section of this memo contains the key questions and brief answers. An in-depth response to each question follows in the second section.

Key Questions

1. What is a break in service and why is it required by TRS?

A break in service is a defined interval of time following retirement in which a TRS Retiree is not allowed to return to work in a position that would entitle them to active membership in TRS.

The IRS requires TRS to ensure termination of employment and a bona fide separation from service of its retiring members. The 150 calendar day break in service period of more than one summer or semester break allows TRS to ensure that a true separation from service has occurred for each Member.

2. Is MUS a TRS Employer?

Yes, and MUS will remain a TRS Employer as long as MUS continues to employ individuals who are required by law to participate in TRS.

3. Is the 150 calendar day break in service requirement intended to apply to MUS Members?

IRS requires TRS to apply its standards uniformly for all Members and Employers. MUS Members were expressly considered during the drafting of this law and it was clearly understood and communicated that the break in service would apply to all TRS Members.

4. Does the 150 calendar day break in service requirement apply to a retired faculty Member who is volunteering his/her services?

The 150 calendar day break in service applies if the Retiree is performing any of the services that they, or any other employee, would perform as an active member of TRS.

5. Does the 150 calendar day break in service requirement apply to a retired faculty Member who has been granted emeritus status?

The 150 calendar day break in service applies if the Retiree is performing any of the services that they, or any other employee, would perform as an active member of TRS.

6. Does the 150 calendar day break in service requirement apply to retired faculty with respect to work performed by that retiree in a wholly personal capacity?

The 150 calendar day break in service applies if the Retiree is performing any of the services that they, or any other employee, would perform as an active member of TRS.

In Depth Responses

1. What is a break in service and why is it required by TRS?

A break in service, for TRS purposes, is a defined interval of time following retirement in which a TRS Retiree is not allowed to return to work to perform service on behalf of a TRS employer that would otherwise entitle them to active membership in TRS.

TRS is statutorily required to be a tax-qualified pension plan which allows for tax deferred employer and employee contributions to the retirement system. In order to maintain its status as a tax-qualified plan, TRS must comply with many qualification standards set forth in the Internal Revenue Code (IRC). Public pension systems, including TRS, are now subject to periodic compliance reviews of plan documents and processes to maintain IRS qualification.

Specific to a break in service requirement, TRS must comply with a qualification standard that allows TRS to pay retirement benefits *only* to individuals who have *actually* retired (have had a bona fide separation from service as described by the IRS). This prohibits TRS from paying retirement benefits to individuals who remain employed in a position covered by the retirement system (frequently referred to as the "prohibition against in-service distributions").

It would not be administratively feasible for TRS to ensure that each retiree has had a bona fide separation from service by looking at each individual's facts and circumstances. Therefore, TRS advocated for, and the Montana Legislature enacted, a uniformly applied 150 calendar day break in service requirement to ensure that TRS retirees have actually retired when they receive retirement benefits from TRS.

2. Is MUS a TRS Employer?

Yes, MUS is identified as a TRS Employer in statute (19-20-101(9)(i), MCA), and MUS continues to employ individuals who are required to be participants of TRS (19-20-302(1)(b)). MUS employees who are Members/Retirees of TRS are wholly subject to TRS law with respect to eligibility for retirement benefits.

3. Is the 150 calendar day break in service requirement intended to apply to MUS Members?

Participants of TRS are not segregated or categorized based on whether they work for a K-12 school district, a community college, a state agency, MUS or another TRS employer. TRS law, except where expressly stated, must be applied uniformly to *all* Employer and Member participants in TRS.

TRS advocated for a uniformly applied break in service period that would ensure a sufficient break in service for all TRS Retirees, regardless if they work year-round or over a 9 or 10 month school year. TRS was fully aware that the 150 calendar day break in service requirement would apply to all TRS Employers and Retirees, regardless of a Retiree's typical term of pre-retirement employment within a fiscal year. TRS fully understood the impact the 150 calendar day break in service period would have on MUS due to the regular practice of re-hiring retirees, frequently based on an agreement or contract for re-hire entered into before the

employee/TRS Member retires. TRS had several face-to-face meetings with MUS officials to explain the proposed legislation and how it would be applied to retiring MUS faculty.

4. Does the 150 calendar day break in service requirement apply to a retired faculty Member who is “volunteering” his/her services?

The question regarding volunteers must be addressed at two levels:

General Status of Retirees Who are not Compensated for Service

First, with respect to *all* TRS retirees, it is TRS’s long-standing position that a TRS Retiree is employed in a position reportable to TRS if the Retiree is performing duties and functions (*providing service*) on behalf of a TRS Employer that would entitle the individual to active Member status with TRS, even if the Retiree is not being paid for the services.

In other words, if a TRS Retiree is performing duties and functions that would typically be performed for pay by an individual who is reported to TRS, the Retiree must be reported to TRS as a working Retiree. The Employer must report compensation and remit Employer contributions to TRS based on the compensation a non-volunteer employee *would* be paid for the same work.

Uncompensated Service and Termination of Employment and the 150 Day Break in Service

Second, IRS guidance on termination of employment/bona fide separation from service requires termination of the *provision of service* by the retiring employee, not just termination of payment for the employee's services by the Employer. Based on TRS's understanding and application of the IRS qualification standard and TRS's position on uncompensated working retirees, a TRS retiree who performs any service:

1. that would entitle the individual to active membership in TRS
2. on behalf of an Employer before attaining retired Member status
3. and/or during the 150 calendar day break in service period

remains employed in a position reportable to TRS, *has not terminated* employment in all positions reportable to TRS, and *is not eligible* for retirement benefits.

TRS's position on volunteers, as applied to working retirees, applies only to services that would entitle the individual to active membership in TRS, not to de minimus work performed by the retiree on behalf of an Employer that would normally be performed by uncompensated volunteers rather than by paid employees.

Example: The requirement to terminate employment (and the 150 calendar day break in service) would not apply to work performed by a TRS retiree who volunteers to sell or take tickets at a football game or to assist with graduation ceremonies by seating graduates or other attendees.

5. Does the 150 calendar day break in service requirement apply to a retired faculty Member who has been granted emeritus status?

With respect to whether the 150 calendar day break in service is meant to – or does – apply to a retired TRS Member who has been granted emeritus status, the question, again, is whether the retiree is performing work or providing service on behalf of MUS that would typically be performed for pay by an individual in a position reportable to TRS.

Simply continuing association with an MUS unit in emeritus status, including maintaining office space, having the right to use other facilities and services of the MUS unit, etc., will not mean that a TRS Member has not terminated employment with MUS.

It is TRS's understanding that emeritus status does not, in and of itself, mean that the retiree will continue to teach, advise students, direct research programs/projects, supervise other faculty/staff, or perform other such services on behalf of MUS. A retiree with emeritus status who does *not* perform TRS reportable services on behalf of an Employer will not violate the requirement for termination of employment or the 150 calendar day break in service requirement.

6. Does the 150 calendar day break in service requirement apply to retired faculty with respect to work performed by that retiree in a wholly personal capacity?

After retirement, a TRS retiree is entitled to do any work s/he chooses to do in a wholly personal capacity without impact to the individual's retirement status or receipt of retirement benefits – as long as that work is not performed on behalf of a TRS Employer in a capacity that would otherwise entitle the Retiree to active member status with TRS.

If a retiree is performing work or providing service on behalf of a TRS Employer that would typically be performed for pay by an individual in a position reportable to TRS, that work/service is subject to TRS requirements for termination of employment, the 150 calendar day break in service requirement, the postretirement earnings limitation, and all other applicable TRS law and policy.

Conclusion

TRS understands that application of the 150 calendar day break in service requirement may complicate the postretirement employment plans of many TRS Members – not just MUS faculty. TRS endeavored to communicate the need for and application of the break in service requirement to TRS Employers and Members even before the legislation was drafted or introduced.

In addition, TRS staff clearly and accurately described the basis and need for the break in service in testimony to legislators. It was not, and is not, the intent of TRS to interfere with the staffing needs of our Employers or the postretirement plans of our Members. Rather it was and remains the agency's intent to comply with IRS qualification standards to maintain the tax-qualification of the retirement system for the benefit of all TRS Employers and Members.

This memorandum is intended to address the most frequently asked questions received by TRS in recent weeks surrounding the 150 calendar day break in service requirement specific to MUS faculty that are also members of TRS. If you have additional questions or would like further clarification, please do not hesitate to contact TRS at (406) 444-3134 or toll free at (866) 600-4045.