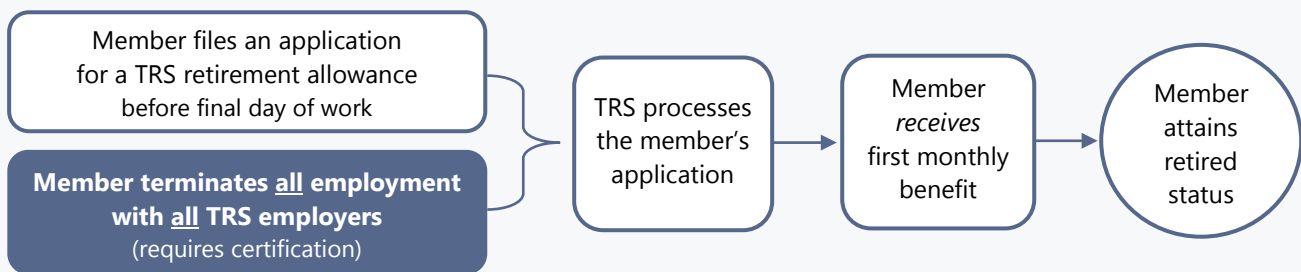




## Montana Teachers' Retirement System FACT SHEET: Terminating Employment and Retiring With TRS

To be eligible to receive retirement benefits, TRS law requires that a member **terminate all employment with all TRS employers** who have employed the member in a TRS-reportable position.<sup>1</sup> This Fact Sheet is intended to help members and employers understand how termination of employment is established, how it could be “undone” throughout the retirement process, and specific exceptions allowed under TRS law.

Termination of employment to be eligible for TRS retirement benefits is *not* determined as of a single point in time. As illustrated in the diagram below, termination of employment is just one step in the process of retiring. TRS must evaluate the *entire* process to determine whether a member’s termination of employment was valid.



After initially terminating employment, the member is strictly limited as to the timing and type of work he or she may perform on behalf of any TRS employer. For example, an agreement made *before* retiring to return to work for a TRS employer *after* retiring may mean the member has not terminated employment as intended. Similarly, a member may not have terminated if he or she works as an independent contractor or volunteer performing duties reportable to TRS or works for a TRS employer in a position reportable to the Public Employees’ Retirement System (PERS).

**Why is this important?** Failure to comply with all termination requirements may result in the member being retroactively returned to active member status, thereby defeating the member’s intent to terminate employment and retire. The member would be required to repay any retirement benefits received, with interest. Further, the employer would be responsible to pay member *and* employer contributions to TRS, with interest, on any compensation that was paid to the member during or for the period of retractive reinstatement to active member status.

### Definitions and Examples

**Termination of Employment** means the employment relationship with the employer has been fully and completely severed and all payments due upon termination of employment, if any, have been paid to the member. Upon termination of employment, the retiring member may not perform any work<sup>2</sup> on behalf of a preretirement employer in any position or in any capacity until he or she has attained retired member status.<sup>3</sup>

<sup>1</sup> See TRS Fact Sheet, *Which Positions are Reportable to TRS?*

<sup>2</sup> A TRS member who intends to return to work as a retiree must comply with a number of additional requirements. These are described in separate TRS Fact Sheets, *Working After Retirement* and *150-Day Break in Service Requirement*.

<sup>3</sup> TRS pays benefits on the *last* business day of the month. When the first monthly benefit has been deposited to the member’s bank account (if paid by direct deposit) or the member has cashed the first check, he or she has attained retired member status.

This includes work performed as an employee of a third party or as an independent contractor/consultant and any work performed in positions not generally reportable to TRS *unless* specifically allowed under an exception (see Page 3). Modification of job duties or reduction in hours worked is *not* termination of employment.

**Example:** A TRS member stops teaching on May 10<sup>th</sup>, but she begins providing service to the school district as a bus driver on May 15<sup>th</sup> (prior to attaining retired member status). This member has *not* terminated employment, even if the modified duties would not otherwise entitle a person to active membership in TRS.

**Date of Termination** means the member's date of termination of employment with the *last* TRS employer that employed the member in a position reportable to TRS. Most members will have been employed by only one TRS employer within the 12 months preceding the member's retirement, while others may have been employed by more than one. The last date on which the member was or will be employed by any TRS employer is the member's *last* date of termination and will be the date from which the member's effective date of retirement will be determined.

**Retirement application.** The member must specify his or her *last* date of termination, as defined above, of employment on the application for a TRS retirement allowance.

**Certification of Termination of Employment.** The member and each of the member's preretirement employers (that is, each TRS employer that employed the member in a TRS-reportable position in the 12 months preceding the member's expected last date of termination) must complete TRS Form 144 *Member and Employer Certification of Termination of Employment*.<sup>4</sup> TRS uses this information to determine the member's *last* certified date of termination.

#### *Terminating employment as a substitute teacher*

If the member's preretirement service is partly or wholly substitute teaching, the member must terminate employment and complete TRS Form 144 with each TRS employer on whose substitute teaching rolls the member was listed within the 12 months preceding retirement, whether or not substitute teaching service was actually provided.

The member may not perform any work or provide any service on behalf of those employers *after* the member's last certified date of termination and *before* obtaining retired member status.

**Example:** A teacher's last day of work is June 10. Based on the information provided on Form 144, TRS confirms that June 10 is the member's last certified date of termination, meaning his effective date of retirement is July 1. However, he begins working as a driver's education teacher on July 15, *before* he has received his first monthly benefit. This member has *not* terminated employment.

**Prohibited Prearranged Agreement** means an oral or written agreement between the preretirement employer and a member who has not yet reached age 60 (normal retirement age), entered into before the member has attained retired status, to again perform work on behalf of that employer, in any capacity, at any time in the future. This includes any work performed in a position that is not generally reportable to TRS (unless allowed under specific exceptions on Page 3) and work performed as an employee of a third party or as an independent contractor or consultant.

**Example:** A teacher and her employer agree that she will terminate employment and retire at the end of the school year at age 58 and will return as a part-time coach for the same employer after serving the required

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<sup>4</sup> If one employer (e.g., a school district) has reported a member to TRS for service provided on behalf of another employer (e.g., an education cooperative), the member's actual employer – the education cooperative, in this example – must certify the member's termination date on TRS Form 144 *Member and Employer Certification of Termination of Employment*.

150-calendar-day break in service.<sup>5</sup> Because the member had not reached normal retirement age as of the last certified date of termination, it is a prohibited prearranged agreement and the member has *not* terminated employment.

**Break in Service Requirement.** A retired member may not again perform any work on behalf of *any* TRS employer in a position reportable to TRS, in any capacity (except as may be allowed for substitute teaching; see *Exceptions*, below), until after a 150-calendar-day break in service beginning on the day following the member's last certified date of employment. The break-in-service requirement applies to any work performed in a TRS-reportable position as an employee of the TRS employer, as an employee of a third party, or as an independent contractor/consultant.

**Example:** A teacher retires from District A after 30 years of service. Her last certified date of termination is June 12 and her effective date of retirement is July 1. During the summer she moves across the state and accepts a part-time paraprofessional position with District B starting on September 1. Because she has returned to work in a TRS reportable position with another TRS employer within her 150-calendar-day break in service period, this member has *not* terminated employment.

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### Exceptions

- **Substitute teaching.** A member who has attained retired member status (received at least one monthly retirement benefit) may substitute teach for a regular, licensed classroom teacher who is temporarily absent for up to 45 days during the 150-calendar-day break in service.<sup>6</sup>
- **Concurrent employment in a PERS covered position.** If a member is concurrently employed by the *same* TRS employer in a position covered by the Montana Public Employees' Retirement System (PERS) and in a position reportable to TRS, the member is not required to terminate employment in the PERS covered position to retire with TRS. The member must have been fully and correctly reported to PERS for work in the PERS covered position prior to terminating the TRS-reportable position with that employer.
- **Work performed in a bona fide volunteer position.** A position that meets the legal definition of *bona fide volunteer position* (§19-20-302, MCA)<sup>7</sup> is not reportable to TRS and is not subject to the 150-day break in service requirement. A retiring TRS member may provide service in such a position if all requirements pertaining to bona fide volunteer positions are met.

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### Questions?

Whether or not employment has been terminated is dependent upon the specific facts and circumstances. If you have any questions, please contact us.

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*Please Note:* This Fact Sheet is intended to provide a concise, easy-to-understand summary of TRS law and policy. The actual application of TRS law will depend upon the specific circumstances and facts presented. In determining the rights and obligations of any person, TRS law will supersede any contradictory information provided in this Fact Sheet.

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<sup>5</sup> This is detailed in a separate TRS Fact Sheet, *150-Day Break in Service Requirement*.

<sup>6</sup> Detailed requirements for this exception are provided in a separate TRS Fact Sheet, *Substitute Teaching*.

<sup>7</sup> See TRS Fact Sheet, *Volunteer Service*, for the legal definition and administrative requirements.