



Montana Teachers' Retirement System FACT SHEET: Working After Retirement

This Fact Sheet describes the requirements and limitations that apply when a TRS member decides to return to work with a TRS employer in a position reportable to the retirement system.¹ To ensure compliance with these requirements, it is important for both members and employers to understand how active members become retired members and why there must be clear separation between these two phases.

- Certain limitations *may* apply to retired members who return to work in positions covered by the Public Employees' Retirement System or the Montana University System Retirement Plan. See *Important information about PERS or MUS employment* on Page 4 of this Fact Sheet.
- Nearly all TRS retirees who return to TRS-reportable employment are subject to an annual earnings limitation, which is described on Page 3 of this Fact Sheet.

Why is this important? Montana law requires TRS to be a tax-qualified pension plan, which means TRS must comply with all qualification standards set forth in the Internal Revenue Code (IRC). One such standard prohibits TRS from paying retirement benefits to a member who has not terminated employment in all positions covered by the retirement system. TRS must verify the member has had a *bona fide separation from service* – i.e., the employer-employee relationship has been completely severed – before paying any benefits.

Retirees who wish to resume employment in a position reportable to the retirement system while continuing to receive their monthly retirement benefit, and TRS employers who wish to hire them, must ensure that all steps have been properly completed. Failure to comply with all requirements and limitations described in this Fact Sheet could result in serious financial consequences for both the retiree and the TRS employer.

How does an active member become a retired member of TRS?

Members who are vested and eligible for a future TRS retirement benefit **must** terminate all TRS-reportable employment to apply for and receive that benefit.² A common question is whether members can resign their primary position (e.g., classroom teaching) and continue performing some duties (e.g., coaching or teaching driver's education) while applying for a retirement benefit. This is not allowed. A member who has not terminated **all** employment in **all** positions reportable to TRS *is not eligible to receive a retirement benefit*.

When a member applies for retirement, TRS must certify the member's termination date (i.e., the last date on which the member provided service) with their pre-retirement employer. For contract employees, the termination date may be prior to the contract end date. If the member worked in multiple TRS-reportable positions with one or more TRS employers, the member's termination date will be the *last* certified date of termination of employment.

- Beware of **prohibited prearranged agreements**. A member who applies for a retirement benefit *before reaching normal retirement age* (60) and who has a verbal or written agreement with their *same* TRS employer to return to work *at any time in the future, in any capacity* – including to work in a position reportable to the Public Employees' Retirement System (PERS) – *has not terminated employment*.

¹ See TRS Fact Sheet, *Which Positions Are Reportable to TRS?*

² For a detailed description of these requirements, read TRS Fact Sheet, *Terminating Employment and Retiring with TRS*.

- Beware of **returning to work too soon**. A newly retired member who returns to TRS-reportable employment *before completing the required break in service* (below) *has not terminated employment*.

The member's status with TRS does not change from "active member" to "retired member" upon terminating employment and applying for a retirement benefit. The member *attains retired member status* when they have received the first monthly benefit. (A separate TRS Fact Sheet, *Terminating Employment and Retiring with TRS*, covers the retirement process in more detail, including information about the timing of benefit payments.)

When can a retired member return to work in a TRS-reportable position?

To avoid ambiguity as to whether there has been a *bona fide separation from service*, many public retirement systems across the U.S., including TRS, require newly retired members to wait a specified number of days before resuming any kind of employment in any position reportable to the retirement system.

This is called a **break-in-service requirement** and it applies to every recent TRS retiree, regardless of whether the retiree will provide service as an actual employee of a TRS employer, as an employee of a third party, as an independent contractor, or as an unpaid volunteer, unless a documented exception exists (see *Exceptions to the break-in-service requirement*, below).

TRS law requires a break in service of 150 or 120 calendar days,³ as follows:

- If the member terminated all TRS-reportable employment *prior to January 1, 2024* and retired, the required break in service is **150** calendar days.
- If the member terminated all TRS-reportable employment *on or after January 1, 2024* and retired, the required break in service is **120** calendar days.

The required break in service begins on the day following the member's *last* certified date of termination of employment and ends on the 151st or 121st calendar day, as applicable. After processing the member's application for retirement, TRS will notify the member of the exact date on which the required break in service will end. The retired member also may view that date in **My TRS**, the secure online member portal.

Why not 90 days? TRS is often asked why the required break in service cannot be shorter, such as 90 days. In Montana's public school system, most TRS members remain employed over the summer break. If a teacher applies for retirement at the end of the school year and resumes employment 90 days later as a retiree, have they actually terminated employment and retired? Remember, TRS is prohibited from paying retirement benefits if it is not clear whether the employment relationship has been severed.

Exceptions to the break-in-service requirement

1. Under TRS law, a recent retiree who has attained retired member status and who meets other qualifying criteria may work for up to 45 days as a substitute teacher during their break in service, so long as they substitute for a regular K-12 classroom teacher *who is temporarily absent*.⁴ Retirees *may not* fill vacant positions during their break in service.

³ The 2023 Montana Legislature (HB 117) shortened the break in service from 150 to 120 days effective January 1, 2024.

⁴ See TRS Fact Sheet, *Substitute Teaching*, for a list of requirements that must be met to qualify for this exception.

2. When the employer has certified that the TRS retiree provides service only in a non-reportable *bona fide volunteer position*,⁵ the break-in-service requirement does not apply.
3. In very limited circumstances, certain reemployed teachers, specialists, and administrators who retired with at least 27 years of service and who meet all requirements specified in §19-20-732, MCA are not subject to the break-in-service requirement or annual earnings limitation.

Must TRS be notified when a retired member goes back to work on a paid or volunteer basis?

Yes, if that retired member will provide service to a TRS employer. Both the retired member and employer must complete and submit **TRS Form 146, *Retired Member's and Employer's Notice of Postretirement Employment***.

- *Note:* Form 146 must be submitted to TRS at least annually for as long as the retired member continues to provide service in any capacity (as the TRS employer's employee, as an independent contractor or consultant, as an employee of a third party, or as a volunteer). Instructions on the form explain circumstances that may necessitate an updated form with supporting documentation.

The TRS employer must report the retired member's earnings to TRS each month.

Is there a limit on how much the retired member can earn?

Yes. A retired TRS member who returns to work for a TRS employer in a position reportable to the retirement system generally is subject to an annual earnings limitation. The *maximum allowable earnings* is the highest amount the retired member may earn in the current fiscal year without affecting their monthly TRS benefit.

If the member works in multiple TRS positions or works concurrently in a TRS and a PERS position with the *same* employer, *all* earnings count toward the annual earnings limit.

Earnings include wages or other compensation paid to or on behalf of the retiree, as well as the value of certain benefits, including payments deferred to a later year.⁶ Earnings do *not* include payroll taxes or health insurance premiums paid by the employer, the value of any housing provided by the employer, travel expenses for which the employer reimburses the member, or *de minimis* fringe benefits as defined in federal law.

Effective July 1, 2023, the maximum allowable earnings amount is the greater of:

- **49%** of the retired member's Average Final Compensation (AFC) used to calculate their monthly retirement benefit, plus annual increases equal to the increase in the Consumer Price Index, OR
- **49%** of the median AFC, as determined annually by the TRS Board. The median AFC amount is based on all TRS members who retired during the preceding fiscal year and is posted on the TRS website.

Once notified of a retired member's employment, TRS will determine the earnings limit for the current fiscal year and will notify the member by mail. Retired members also may monitor their own earnings by logging into **My TRS** and selecting "My Working Retiree Earnings."

⁵ Criteria for bona fide volunteer positions are specified in TRS Fact Sheet, *Volunteer Service*.

⁶ Call TRS with questions about whether specific payments, expenses, or benefits count toward the annual earnings limit.

What happens if the working retiree's earnings exceed the annual limit?

- If TRS Form 146 indicates the retired member's aggregate earnings are expected to exceed the annual limit, TRS will suspend payment of the TRS retirement benefit as of the retired member's first day of employment.
- If the retiree's aggregate earnings are not expected to exceed the annual limit, TRS will continue paying the retiree's monthly benefits. If the earnings limit is reached in that fiscal year, TRS will reduce the member's monthly benefit on a dollar-for-dollar basis. However, if earnings for that fiscal year subsequently exceed the limit by an amount equal to the gross amount of one monthly benefit, TRS will suspend the retired member's benefit.
- If TRS has suspended the retirement benefit of a member who is *employed by a TRS employer* (not by a third party or as an independent contractor), TRS also **will return the individual to active member status**. The TRS employer must remit employee and employer contributions to TRS for all earnings paid to the member while returned to active member status. TRS will resume payment of the member's monthly benefit only after the member once again terminates all positions reportable to TRS and applies for reinstatement of their retirement benefit.

Important information about PERS or MUS employment**Working in positions covered by the Public Employees' Retirement System (PERS)**

Public schools in Montana have many non-instructional positions reportable to PERS, including office staff, kitchen and custodial staff, bus drivers and others. Depending on the situation, a **retired** TRS member *may* be able to work in such a position without restriction. Read the following conditions carefully:

1. If the PERS position is with a *different* TRS employer than the employer from which the member retired, the member may work in that position without a break in service or an annual earnings limitation.
2. If the PERS position is with the *same* TRS employer as the one from which the member retired, and the member had reached normal retirement age (60 or older) at the time they terminated all TRS employment and applied for retirement, the retired member may work in the position without a break in service or an annual earnings limitation.
3. If the PERS position is with the *same* TRS employer as the one from which the member retired, and the member had not yet reached age 60 at the time they terminated all TRS employment and applied for retirement, then the retired member may work for this employer without restriction *only if there was no prearranged agreement* to do so. (See Page 1 for an explanation of prohibited prearranged agreements.)
4. If the retired member works *concurrently* in both a TRS position and a PERS position with a single employer – whether the same TRS employer from which they retired or a different TRS employer – the earnings from *both* positions will count toward the retiree's annual allowable earnings limit.

Working for the Montana University System (MUS)

If a TRS retiree is hired by the Montana University System (MUS) – whether as an employee or an independent contractor – that member is subject to all TRS requirements described in this Fact Sheet,

including the prohibition on prearranged agreements, the required break in service, and the annual earnings limitation.

Retired TRS members who never worked for the MUS as active members have the option to join the MUS Retirement Plan; however, doing so will result in immediate suspension of their TRS retirement benefit until such time as they terminate employment and apply for reinstatement of their suspended TRS benefit.

Consequences of noncompliance

Failure to comply with any TRS requirement before or after the member begins receiving a monthly retirement benefit could mean that *TRS has paid benefits the retiree was not entitled to receive*. This may occur, for example, because the TRS employer allowed a newly retired member to return to work before completing the required break in service or because TRS was not notified of the retired member's employment.

If TRS has paid retirement benefits that the member was not entitled to receive, TRS must return the member to active member status and the member must repay all overpaid benefits to TRS, plus interest.

Even if an employer believes the work to be performed or the services to be provided are *not* reportable to TRS, it is important to notify TRS as instructed on Page 3 anytime the TRS employer hires a retired TRS member to fill a paid or volunteer position.

Questions?

If you have any questions about the content of this Fact Sheet, please contact us.

Montana Teachers' Retirement System ♦ 406-444-3134 ♦ 866-600-4045 ♦ trs.mt.gov

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.
