

Fact Sheet #2

Postretirement 150 Day Break in Service Requirement

BREAK IN SERVICE REQUIREMENT

TRS is required, by Montana law, to be a tax-qualified pension plan. In order to maintain its tax-qualified status with the IRS, TRS must comply with many qualification standards set forth in the Internal Revenue Code (IRC).

One of the IRS standards for public pension systems prohibits TRS from paying retirement benefits to an individual who remains employed in a position covered by the retirement system. In other words, we may pay retirement benefits only to individuals who have actually retired. The IRS requires TRS to verify termination of employment and a bona fide separation from service of its retiring members.

Break in Service Defined

A break in service is a defined interval of time following retirement during which a TRS retiree may not return to work for a TRS employer in any position that would entitle them to active membership in TRS.

BONA FIDE SEPARATION FROM SERVICE

TRS cannot investigate each individual to be certain that every retiree has had a bona fide separation from service. The 150 calendar day break in service period helps TRS to ensure that a true separation from service has occurred for all members since the required break is longer than one summer or one semester.

Over the past several years, due to recent guidance and enhanced scrutiny by the IRS, more retirement systems have implemented break in service requirements; many systems that previously had break in service requirements have extended the length of the break periods.

Public retirement systems around the U.S. have break in service periods ranging from 30 days to a full calendar year. Several retirement systems do not allow any level of post-retirement employment in a system-covered position.

APPLICATION OF BREAK IN SERVICE

The break in service requirement applies to all TRS members who

- retire, or
- apply for recalculation or reinstatement of retirement benefits based on a termination of employment date of January 1, 2014 or later.

The break in service requirement applies to employment with all TRS employers including (but not limited to):

- community colleges
- educational cooperatives
- K-12 public schools
- Montana University System
- state agencies and boards

BREAK IN SERVICE PERIOD

The break in service period

- begins on the first day following your last certified date of termination of employment, and

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- ends on the 151st calendar day.

After the break in service period is complete, you may then go to work in a position reportable to TRS as a working retiree. You will be subject to the limitations set forth in § 19-20-731, MCA.

NOTE: you may not return to work for a pre-retirement employer if

- you were not normal retirement age (60) at the time of your termination of employment, and
- you had a prearranged agreement for postretirement employment with the employer.

For additional information regarding the following topics, please refer to Fact Sheet #1 Termination and Postretirement Employment:

- retired member status
- certification of termination of employment
- normal retirement age
- prearranged agreement

EXCEPTIONS

There is only *one* exception to the break in service requirement—a TRS retired member may provide service as a substitute teacher for *no more than* 45 days during the break in service period subject to the following two requirements:

1. The member must have attained retired member status before providing service as a substitute teacher.
 - A TRS member attains retired member status only after the member has (i) terminated employment in all positions reportable to TRS, (ii) filed an application for retirement allowance, and (iii) actually received at least one monthly retirement benefit payment.
2. The member may only provide service as a substitute teacher to carry on the duties of a regular, licensed classroom teacher who is temporarily absent.
 - The Normal Retirement Age exception from the previous section applies to this section as well.

The substitute must be carrying on the duties of a regular classroom teacher in a class(es) taught during the regular class time(s) and providing instruction in a subject or subjects that requires teacher licensure/endorsement.

The exception applies whether the regular teacher being substituted for provides instruction in only one of the subjects listed during a regular class period or provides instruction in multiple subjects during a regular class period—for example, a general classroom teacher in an elementary education setting.

The following subject fields require teacher licensure and/or endorsement and are considered to be eligible for the substitute teaching exception to the 150-day break in service requirement.

art	geography	physics
biology	health	political science
business & information tech education	health enhancement	psychology
chemistry	history	reading
communication	industrial trades and tech education	science (broadfield)
computer science	journalism	social studies (broadfield)
earth science	library	theatre
economics	marketing	traffic education
English	mathematics	world languages
English as a Second Language	music	
family and consumer sciences	physical education	

Positions not eligible for the substitute teaching exception include, but are not necessarily limited to, the following:

- paraprofessionals
- teacher aides
- coaches
- administrators
- specialists (school nurse, speech language pathologist, school counselor, school psychologist, audiologists, etc.).

“Temporarily absent” is defined as follows:

- The teaching position is filled by a qualified and licensed educator (the regular teacher) who is under contract during the school term. The exception to the 150-day break in service requirement applies to the substitute’s performance of the regular duties of the qualified and licensed educator.
- The contracted teacher is temporarily absent because of circumstances outside of the control of the employer. For example, if a teacher who is contracted to teach a particular class is (a) subsequently reassigned by the employer, (b) contracts with the employer to provide conflicting services, or (c) is paid by the employer to perform other services for the same hours of work such that the teacher is no longer available to regularly perform the original assignment, the teacher is not considered “temporarily absent” from the original assignment.

SCOPE OF THE REQUIREMENT

IRS guidance on termination of employment and bona fide separation from service requires that the member must cease providing service for the employer. The break in service requirement applies to:

- employees of a third party
- employees of a TRS employer
- independent contractors
- volunteers

Note, if the retired member is performing un-paid volunteer duties and functions that would typically be performed for pay by an individual who is reported to TRS, then the retired member has not terminated employment and is not eligible for retirement benefits.

Volunteering

The question of volunteer work must be understood at two levels:

1. General status of all TRS retirees who are not compensated for their service.

A TRS retiree is employed in a position reportable to TRS if the retiree is performing duties and functions (i.e. providing service) on behalf of a TRS employer that would entitle that individual to active membership in TRS.

This applies even if the individual is not being paid for the services. If a TRS retiree is providing services that would typically be provided by an individual for pay, that retiree must be reported to TRS as a working retiree. The employer must also remit employer contributions to TRS based on the compensation a non-volunteer employee would be paid for the same work.

2. Uncompensated service, termination of employment, and the break in service requirement.

As discussed previously, a bona fide separation from service requires termination of the provision of services by the retiring member—not simply the termination of payment for their services.

A TRS retiree who performs any service

- that would entitle them to active membership in TRS,
- on behalf of a TRS employer,
- before attaining retired member status, or
- during the 150 calendar day break in service

has not terminated employment in all positions reportable to TRS and is not eligible for retirement benefits.

This applies only to services that would entitle the retiree to active membership in TRS. It does not apply to work performed by the retiree for a TRS employer that would normally be performed by uncompensated volunteers.

EXAMPLE:

If you retire as a classroom teacher in May and return to work in an unpaid TRS reportable position such as coach, study hall monitor, or teacher's aide in August, you have not terminated, and as such, you have violated the break in service period and are not eligible for retirement benefits.



VIOLATION OF THE REQUIREMENT

If a member violates the 150 break in service requirement,

- the member will be returned to active member status, retroactive to their date of retirement;
- the member will be required to repay all retirement benefits received during the time they were working and violating the break in service requirement, plus interest; and
- the member and employer will be required to pay both member and employer contributions that should have been paid during the time they were violating the break in service requirement.

If you have any questions about this, or any other topic covered in this fact sheet, please contact the TRS office.

Montana TRS

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