

Fact Sheet #1

Termination of Employment and Postretirement Employment

Subject to strict requirements regarding eligibility for retirement benefits and limitations on the amount of compensation that you can earn in postretirement employment, you can work again in a position reportable to the Montana Teachers' Retirement System (TRS) while receiving retirement benefits.

REQUIREMENTS

If you are considering returning to employment in a position reportable to TRS after retirement, it is imperative that you understand and comply with TRS's retirement eligibility requirements and postretirement earnings limitations. If you fail to comply, it may result in having to repay all retirement benefits received, with interest.

If you have any questions about how the requirements and limitations apply to your circumstances or situation, we advise you to contact TRS before agreeing to or actually returning to postretirement employment.

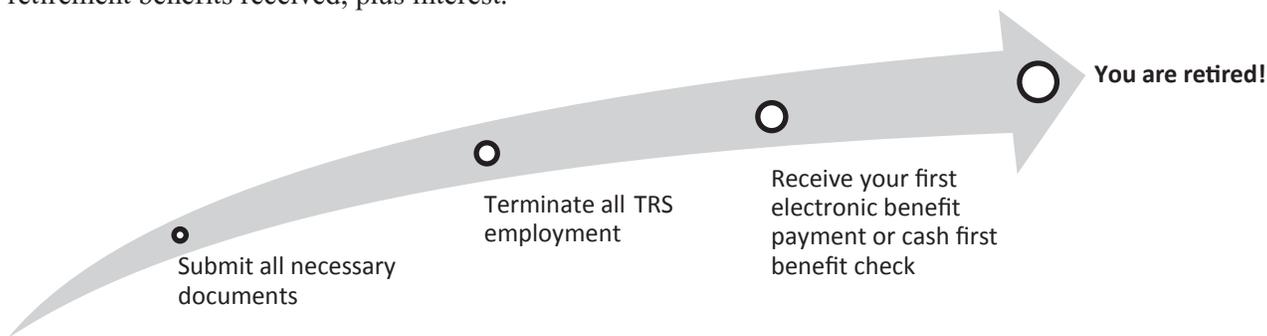
Addressing Postretirement Employment Requirements and Limitations Before Retirement

While you should understand all the information in this fact sheet, the most important fact to keep in mind is that TRS law requires that you must

- terminate employment in all positions reportable to TRS, and
- attain retired member status

before you can return to employment in a position reportable to TRS after retirement. There are other requirements covered in this fact sheet.

Many TRS members, intentionally or unintentionally, have not actually terminated employment when they think they did. This mistake can have serious repercussions. As you know, you are not eligible for retirement benefits until the first of the month following your last certified date of termination. If you violate the requirements for termination and your date of termination changes, it may also change your date of eligibility for retirement. This may result in your obligation to repay retirement benefits received, plus interest.



Positions Reportable to TRS

Prior to retirement, you are employed in “a position reportable to TRS,” and must be an active member of TRS if:

- the person is an employee of a TRS employer (§19-20-101(9), MCA)
 - the state of Montana;
 - a public school district;
 - the Office of Public Instruction;
 - the Board of Public Education;

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- an education cooperative;
- the Montana School for the Deaf and Blind;
- the Montana Youth Challenge program;
- a state youth correctional facility;
- the Montana University System;
- a community college;
- or any other agency, political subdivision, or instrumentality of the state; and
- the duties performed in the position entitle the person to active membership in TRS.

If you return to work as a TRS retired member, you are employed in a “position reportable to TRS” if:

- you perform work or provide service on behalf of a TRS employer (see list above), and
- the duties you perform on behalf of the employer would entitle you to active membership in TRS
 - without respect to the job title ascribed to the position, and
 - regardless of whether you are an employee of the employer, an employee of a third party, an independent contractor or a volunteer. (*§19-20-302, MCA*)

NOTE: It is the duty of the retirement board to determine the eligibility of a person to become a member of the retirement system in accordance with the provisions of *§19-20-302, MCA*.

Terminating Employment in a Position Reportable to TRS

You have terminated employment in a position reportable to TRS

- when you are no longer performing any work or providing any service on behalf of the employer, in any capacity, and
- your employer has paid all amounts owed to you.

NOTE: You must terminate all positions with all TRS employers to attain retired member status.

CIRCUMSTANCES THAT DO NOT CONSTITUTE TERMINATION OF EMPLOYMENT

Reduced Hours or Modified Duties

If you have a reduction in hours worked or a modification or reduction of duties and functions performed, it does not constitute termination of employment. Even if you subsequently only perform work or provide services that would not otherwise entitle you to active membership in TRS.

EXAMPLES:

- If you were a full-time employee and now you are a part-time employee – you *have not* terminated employment.
- If you were working as a full-time classroom teacher and now you are an intermittent substitute teacher – you *have not* terminated employment.

EXCEPTION: If you were working for an employer in a position reported to the Montana Public Employees’ Retirement System (PERS) prior to your last certified date of termination in the TRS reportable position, you can continue to work in that PERS position.

EXAMPLE: If you were working for the same employer as a substitute teacher (a position reportable to TRS) and a bus driver (a position reportable to PERS), you would not have to terminate your employment as a bus driver in order to retire and receive a monthly benefit from TRS.

Independent Contractor, Volunteer, or Employee of a Third Party

If you continue to perform any work or provide any service on behalf of an employer as the employee of a third party, you have not terminated employment. This includes but not limited to: an employee of an affiliated entity or contractor of the employer, through a temporary staffing agency or an employee leasing agency, as an independent contractor, or as a volunteer.

EXAMPLES:

- If you were working as an employee for a school district as a speech therapist and you are now an independent contractor working with the school district as a speech therapist – you *have not* terminated employment.
- If you were working as a classroom teacher and you are now volunteering in the classroom – you *have not* terminated employment.
- If you were working as employee for a school district and you are now working for the school district through a temp agency – you *have not* terminated employment.

Normal Retirement Age and Pre-arranged Agreements

Normal retirement age for TRS members is age 60. If you have not attained normal retirement age and you have a pre-arranged agreement for postretirement employment with a pre-retirement employer – you have not terminated employment.

A pre-arranged agreement for postretirement employment is

- an oral or written agreement
- made before you have attained retired member status
- to perform work or provide service on behalf of your employer,
- in any capacity
- including as an employee of the employer, as an employee of a third-party, as an
- independent contractor, or as a volunteer
- at any time in the future.

EXAMPLE: You are 58 years old and decide that you will retire at the end of the school year. You and your employer agree that you will return to work as a part-time librarian – after you spend a year traveling around the country. In this case, you have not terminated employment.

Multiple Employers and Termination Dates

In order to be eligible for retirement benefits, you must terminate employment in all positions reportable to TRS. You have not terminated employment if you perform any work or provide any service on behalf of any employer in a position reportable to TRS after your last certified date of termination – but prior to attaining retired member status.

EXAMPLES:

- If you are working in a school district as a classroom teacher and your certified date of termination is June 10, you would be eligible for retirement benefits as of July 1 with payment on the last business day of July – if this was your only TRS reportable position. However, you also work as a curriculum specialist for an educational cooperative and you do not terminate your employment with the cooperative until July 15.

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- You must certify your date of termination with both employers, and your last certified date of termination is July 15. In this situation, you are eligible for retirement benefits as of August 1 with payment on the last business day of August.
- If you cash a benefit check or receive an electronic benefit payment in July because you did not report your termination dates correctly,
 - you would be obligated to repay all retirement benefits that you were not yet entitled to receive, plus interest;
 - you would also be obligated to pay regular member contributions for the time that you were working and had not met the requirements for termination of employment;
 - you would have to re-apply for retirement benefits.

ATTAINING RETIRED MEMBER STATUS

As a TRS member, you attain retired member status only when all of the following have occurred:

- you have terminated employment in all positions reportable to TRS (see above);
- you have filed an application for a retirement allowance and all required supporting documentation with TRS;
- TRS has processed your completed application for retirement allowance, and
- you have actually received an electronic deposit or cashed one monthly retirement benefit payment from TRS.

TRS monthly retirement benefits are mailed or electronically deposited on the last business day of each month. The earliest date that you will actually receive your first monthly retirement benefit payment is the last business day of the month following your last certified date of termination from any and all positions reportable to TRS.

EXAMPLE: If you terminate your employment on June 10 and apply for retirement based on that certified date of termination, your effective retirement date is July 1. TRS will electronically deposit or mail your first monthly payment on the last business day of July. You attain retired member status when the benefit has been electronically deposited or the check is cashed.

ELIGIBILITY TO WORK IN A POSITION REPORTABLE TO TRS AS A WORKING RETIREE AS SOON AS ATTAINING RETIRED MEMBER STATUS

If you retired based on a last certified date of termination of employment before January 1, 2014, you are eligible to work in a position reportable to TRS as a working retiree beginning the day after you attain retired member status (see above).

If you retire based on a last certified date of termination of employment on or after January 1, 2014, you must complete a break in service of 150 calendar days before you are eligible to work in a position reportable to TRS as a working retiree.

The 150 Calendar Day Break in Service Requirement

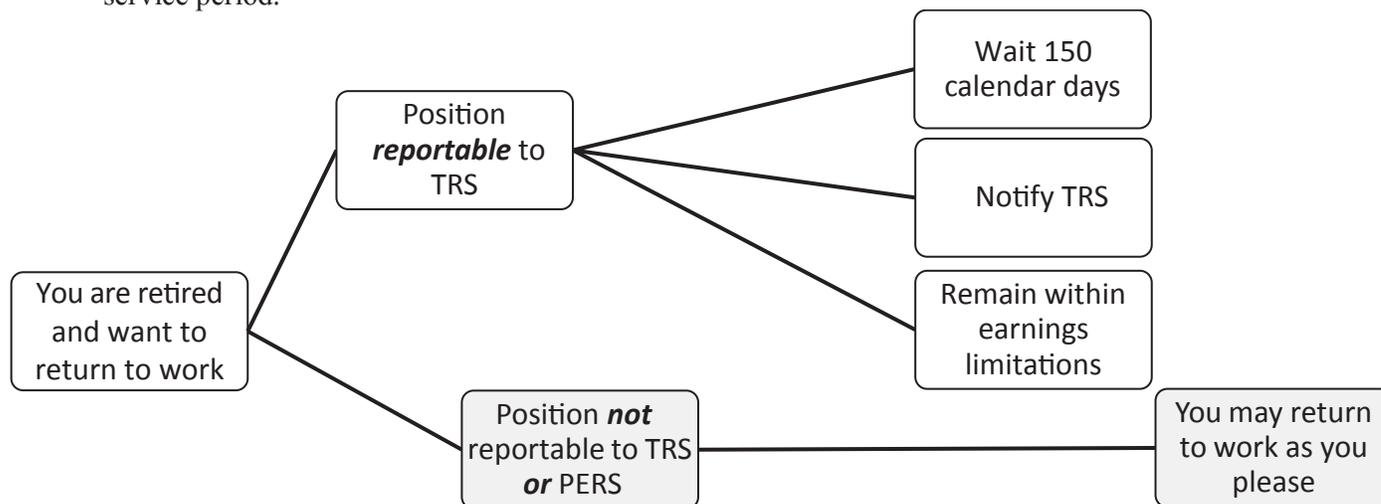
The 150 calendar day break in service period begins on the first day following your last certified date of termination. The break in service requirement applies to

- any work performed or service provided in a position reportable to TRS
- whether the TRS retiree is an employee of the employer, an employee of a third-party, an independent contractor, or a volunteer.

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EXCEPTION: All of the following must be satisfied for the exception to apply:

- you must have attained retired member status;
- you must be employed as a substitute classroom teacher to carry on the duties of a regular, licensed teacher who is temporarily absent, and
- your service as a substitute classroom teacher is for no more than 45 days during the 150 calendar day break in service period.



Consequences of Violating the 150 Calendar Day Break in Service Requirement

If you violate the 150 calendar day break in service requirement, you must be returned to active member status retroactive to your date of retirement (or date of reinstatement of your suspended retirement benefit). You must also repay all retirement benefits received during the time for which you are returned to active member status, plus interest.

You and your employer(s) would also be obligated to pay employee and employer contributions for all TRS positions during the time that you were working and had not met the requirements for termination of employment.

Providing Certified Date(s) of Termination to TRS

As part of the application for a retirement allowance, you and each of your employers are required to complete Form 144 Member and Employer Certification of Termination of Employment to certify

- your date of termination of employment,
- whether or not there is a pre-arranged agreement for postretirement employment, and
- understanding of and compliance with the requirements for attainment of retired member status and the 150 calendar day break in service requirement.

A separate Form 144 certification must be completed for each position and employer reportable to TRS in which you were employed during the 12 months preceding your last certified date of termination. A separate certification must also be completed for employment in a position on behalf of one employer but for which another employer reported you to TRS.

EXAMPLE: if a fiscal agent school district reports your service on behalf of an education cooperative, Comprehensive System of Personnel Development (CSPD), Regional Educational Service Area (RESA) or Prairie Educational Service Area (PESA). The certification obligation of you and your employer(s) is ongoing; a new Form 144 must be submitted when errors are discovered or information is no longer accurate due to changed circumstances.

LIMITATIONS

Earnings Limitations That Apply if a Retired Member Returns to Postretirement Employment

As a retired member of TRS, you may be employed by an employer(s) in a position(s) reportable to the retirement system, without suspension or adjustment of your monthly retirement benefit, as long as your earnings do not exceed the greater of:

- one-third of the sum of your Average Final Compensation (AFC), plus annual increases equal to the increase in the Consumer Price Index, or
- one-third of the median AFC for members retired during the preceding fiscal year as determined by the TRS Board.

The maximum amount you can earn and the type of employment subject to the earnings limitation is set forth in §19-20-731, MCA. TRS will determine your earnings limitation amount when notified of your return to postretirement employment. These earnings are determined on a fiscal year basis (July 1 through June 30).

NOTE: TRS does not consider your full-time equivalent (FTE) status in determining your eligibility for continuing monthly retirement benefits; only the earnings limitation outlined above are relevant.

Types of Payments From an Employer That Will Be Counted Against the Earnings Limitation

TRS will consider payments from all TRS employers and count the following against your postretirement earnings limitation:

- all amounts paid to you or on your behalf,
- the value of all benefits provided to you or on your behalf,
- any amounts deferred for payment to a later year, and
- any amount paid to you as an independent contractor or employee of a third party for service in a position reportable to TRS.

The following benefits do not count against your postretirement earnings limitation:

- Health insurance premiums directly paid by the employer on your behalf for health care coverage provided by the employer during the term of your employment.
- This exception applies only to health insurance premiums paid concurrent with your term of employment. An agreement between you and the employer for health insurance coverage for any time during which you are not employed by the employer will be treated as deferred compensation to you.

EXAMPLE: if your employer pays health insurance premiums during your term of employment, and agrees to provide an additional year of health insurance coverage for each year you are employed once you terminate your employment, the promised payments for health insurance premiums after you terminate your employment will be counted against your earnings limitation in the timeframe in which you are employed and they are “earned.”

- The value of housing provided by the employer to you.
 - This exception applies only to the value of housing provided by the employer for your use during your term of employment. It does not apply to any stipend, reimbursement or other payment made to you or on your behalf to a landlord, rental agent, or any other third-party. Such payments to you or on your behalf will be counted against your earnings limitation.
- The amount of employment-related travel expenses reimbursed to you.
 - This exception applies only to actual reimbursement of documented, employment related travel expenses. It

does not apply to

- any stipend, non-documented reimbursement amount, or other payment paid to you or on your behalf, for employment-related travel, whether paid in anticipation of or as reimbursement for such travel,
 - any amount paid to you or on your behalf as an auto allowance or fuel allowance for the use of your personal vehicle for employment purposes or for vehicle lease or rental that is not actual reimbursement of documented, employment-related travel.
- Such payments to you or on your behalf will be counted against your earnings limitation in the timeframe in which you are employed and they are “earned.”

EXAMPLE: Payment for the cost of travel between home and work do count against your earnings limitation.

- De minimis fringe benefits, as defined in *26 U.S.C. 132(e)*.
- Payroll taxes paid by the employer.

POSTRETIREMENT POSITIONS REPORTABLE TO TRS

If you are employed in a position in which the performance of the duties and functions of the position would make you eligible to participate in TRS, you are in a postretirement position reportable to TRS.

Such position is reportable to the retirement system regardless of:

- the full-time equivalency of the position,
- the job title ascribed to the position,
- whether you are employed in the position as an employee of the employer or an employee of a third-party (e.g. an employment agency or employee lease arrangement),
- whether or not you are compensated by the employer for your service, even if you agree to volunteer, and
- without consideration for your status as a TRS retiree.

Independent Contractors

If you retired after July 1, 2011 – with an effective retirement date of August 1, 2011 or later – amounts you earn from an employer for service as an independent contractor in a position reportable to TRS will be counted against your earnings limitation.

EMPLOYMENT IN THE SAME FISCAL YEAR IN TWO OR MORE POSITIONS WITH ONE TRS EMPLOYER, OR EMPLOYMENT BY TWO OR MORE TRS EMPLOYERS IN THE SAME FISCAL YEAR

Your earnings limitation in postretirement employment will be applied to the total of all amounts and compensation paid to you if you have

- multiple positions with a single employer and/or
- positions with two or more employers.

If you retired after July 1, 2011 – with an effective retirement date of August 1, 2011 or later – amounts you earn from an employer for service in a position that is not otherwise reportable to TRS will be counted against your earnings limitation if you are concurrently employed by the same employer in a position reportable to TRS.

EXAMPLE: If you are working for the same employer as a part-time administrator (a position reportable to TRS) and you are concurrently employed as a bus driver (a position reportable to PERS), in the same fiscal year, the compensation earned by

you in both positions will be counted against your earnings limitation for TRS purposes.

Exceeding the Postretirement Earnings Limitation

EXAMPLES:

- If you enter into an agreement—or multiple agreements—in which the total of the amounts to be earned exceeds your postretirement earnings limitation, your monthly retirement benefit will be suspended as of your first date of employment.
- If you enter into an agreement—or multiple agreements—in which the total of the amounts anticipated to be earned does not exceed your limitation, but subsequently your postretirement earnings do exceed your limitation, your monthly retirement benefit will be temporarily reduced by \$1 for each dollar earned over your limitation. If/when the amounts earned by you exceed your postretirement earnings limitation plus one gross monthly benefit amount, your benefit will be suspended.

In both examples above, if your monthly benefit is suspended, you will be returned to active member status with respect to those positions in which you are eligible to participate in TRS. In other words, TRS reportable positions in which you are an employee of the employer rather than an employee of a third-party or an independent contractor.

Your retirement benefit will not resume until you again terminate employment in all positions reportable to TRS and apply for resumption of your monthly retirement benefit. Contributions will be required on earned compensation paid to you in all positions for which you are returned to active member status.

NOTICES AND CONSEQUENCES

You Are Required to Notify TRS When You Are Employed by a TRS Employer(s)

Employers have long been required to notify TRS when they employ a TRS retiree. Effective July 1, 2011, written notification must be within 30 days of the date of execution of an employment/service contract or the first date on which you provide service for a TRS employer(s), whichever is earlier. Written notification must be made using Form 146 Retired Member's and Employer's Notice of Postretirement Employment available on the TRS website at www.trs.mt.gov/forms.

You will also be required to provide supporting documentation evidencing the terms of employment, the duties and functions of the position, and all amounts and compensation to be paid to you or on your behalf for all postretirement positions with each employer. Supporting documentation includes all contracts, service agreements, salary or payment agreements, position or job description, or other written documentation.

Failure to Report Employment by a TRS employer(s) to TRS

Any postretirement employment for a TRS employer(s) must be reported to TRS.

If TRS finds that you were employed in a position(s) that should have been reported to TRS but was not, and the failure to report resulted in the payment of monthly retirement benefits to you to which you were not legally entitled, you will be required to repay the overpaid benefits with interest at the actuarially assumed rate of 7.75% per year. Even if your employer believes your employment is not in a position(s) reportable to TRS, you must notify TRS of your employment. Any question regarding postretirement service or work you perform on behalf of a TRS employer is a matter to be determined by TRS.



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If TRS does not discover the failure to report for months, or even years, the accrued repayment obligation, with interest, could be substantial. By law, TRS is required to recover the overpaid monthly retirement benefits plus interest. Recovery of overpaid monthly retirement benefits most often requires the reduction of future monthly retirement benefits. This could result in you receiving far less in your monthly retirement benefit than you had planned.

Timely reporting of all postretirement employment, by you and your TRS employer(s), will allow TRS to accurately track your accumulation of earnings against your limitation, and suspend your monthly retirement benefit as soon as legally appropriate, in order to prevent the accrual of monthly retirement benefits you will be required to repay with interest. An employer that fails to timely or accurately report the employment of, time worked by, or compensation paid to a retired member is jointly and severally liable with the retired member for repayment to the retirement system of retirement benefits paid to which the member was not entitled, plus interest.

Montana TRS

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