

CONDITIONS UNDER WHICH A RETIRANT MAY RETURN TO COVERED SERVICE WITHOUT RESCINDING RETIREMENT

(Amended by Act 1293 of 1995; Act 384 of 1997; Act 30 of 1999; Act 1146 of 2001; and Act 911 of 2005)
(A.C.A. § 24-7-708)

AGE AND SERVICE RETIRANT

1. Except for a waiver provided in accordance with Act 30 of 1999 and Act 1146 of 2001, as amended by Act 911 of 2005, if a retirant returns to service - as an employee of a public employer whose employees are covered by ATRS¹ - without rescinding his/her retirement under Act 39 of 1989 (A.C.A. § 24-7-717), then, for each twelve-month period ending June 30, the amount of his/her System annuity shall be subject to the limitations equivalent to twice the limitations imposed by the Social Security retirement test. The amount a retirant may earn and still collect full benefits depends upon whether he/she has reached "full retirement age (FRA)" as defined in P.L. 106-182.
 - A. Effective for years ending after December 31, 1999, pursuant to P.L. 106-182, which eliminated the Social Security retirement earnings test in and after the month a person attains "full retirement age (FRA)," a retirant reaching full retirement age may return to service without being subject to the earnings limitations. "Full retirement age (FRA)" will gradually increase from age 65 to age 67.²
 - B. Effective July 1, 1992, a retirant who is under age 65 may earn up to twice the Social Security earnings limitation amount without affecting his/her ATRS benefits. If his/her ATRS covered earnings exceed that amount, \$1 in benefits will be deducted for each \$2 earned above the earnings limitation amount.
 - C. For each year ending June 30, the Social Security retirement test to be considered shall be the test in effect for the calendar year beginning the January 1 immediately preceding June 30. The retirant's earnings shall be his or her remuneration for the employment for the year ending June 30.

¹ (Prior to July 1, 1991, the earnings limitation applied to retirants who were

- employees with ATRS, ASHERS, or ASERS from 7-1-71 through 6-30-77;
- employees with a public employer, whose employers are covered by a state-supported retirement plan or the University of Arkansas from 7-1-77 through 6-30-78;
- employees of a public employer whose employees are covered by a retirement plan supported wholly or in part by state contributions from 7-1-78 through 6-30-91.)

² Previously, a retirant aged 65 to 69 could earn up to twice the Social Security amount without affecting his/her ATRS benefits. If his/her ATRS covered earnings exceeded that amount, \$1 in benefits was to be deducted for each \$3 earned above the earnings limitation amount.

- D i. For those retirants exceeding the earnings limitation, the System will suspend payment of benefits in the fiscal year in which the earnings limitation is exceeded; however, if the System is not notified in a timely manner, the System may carry over suspension of benefits into the next fiscal year.
 - ii. In the case of hardship to the retirant or for the convenience of the System, upon request of the retirant, the System may negotiate an alternate method of repayment other than total suspension of retirement benefits for the recovery of the amount of benefits that exceeded the earnings limit.
 - iii. The amount recovered by ATRS will not exceed the amount of benefits paid during the year(s) in which the earnings limitation is/was exceeded.
 - iv. For questions not covered by this rule, see No. 9-6 (Error Corrections and Collection of Overpayments).
- 2. A. Employers and retirants must report immediately, upon acceptance of employment in a position covered by ATRS, a return to covered employment by a retirant. A Statement of Employment form must be completed immediately by employers and retirants upon acceptance of employment for each retirant hired in a position covered by ATRS.
 - B. Employers will report monthly all retirants who have returned to full or part-time employment in an ATRS covered position and who have not rescinded their retirement. The monthly report will be filed on a Retired Member Returned To Service form, which will be furnished by ATRS.
 - C. In the event that both the employee and the employer fail to notify the Teacher Retirement System of a retiree's return to service, and benefits are paid illegally due to such lack of notice, the Teacher Retirement System shall delay restoration of benefits until all funds paid illegally have been recovered either through direct payment by the retiree or through delay in restoration of benefits by the System.
- 3. A. Effective July 1, 1977, a retirant may receive remuneration as an employee from any private employer or as a member of the General Assembly without any effect on his/her annuity.³
 - B. Effective July 1, 1991, an age and service retiree may be employed by a public employer whose employees are not covered by ATRS without any effect on his/her annuity.

³ (From 7-1-71 through 6-30-77 this "exemption" covered employees receiving remuneration "from any other public employer or private employer.")

4. During any period of employment in a position covered by the System (which is not covered by Act 39 of 1989 [A.C.A. § 24-7-717(a)--(e) Rescission of Termination]), an age and service retiree shall not accrue additional service credit in the Arkansas Teacher Retirement System.
5. A. Effective July 1, 1995, Act 1293 of 1995 provided that if a retirant is employed in a covered position by a state college, university, or vocational-technical school, his annuity shall not be subject to the limitations provided in No. 1 above.

B. Effective July 1, 1997, Act 384 of 1997 repealed Act 1293 of 1995, making subject the ATRS earnings limitation the annuity of a retirant who is employed in a covered position by a state college, university, or vocational-technical school, as provided in No.1 above.

WAIVER OF EARNINGS LIMITATION

1. A. In accordance with Act 30 of 1999 and Act 1146 of 2001 as amended by Act 911 of 2005 and with rules and regulations adopted by the State Board of Education, the Arkansas Department of Education (ADE) may request of the ATRS Executive Director a waiver of the conditions subjecting annuities to the ATRS earnings limitation.

B. All requests for waiver must originate with ADE and must be submitted for approval by ATRS within sixty (60) days of employment. If approved, the waiver shall be effective for one (1) year from the date of hire or until the end of the current fiscal year, whichever comes first, with the option to renew annually for up to a total of three (3) years as requested by ADE. Renewals must also be approved by the Executive Director of ATRS.

C. Waiver requests (1) initiated by the employer prior to the member's effective date of retirement or (2) filed within thirty (30) days following the member's effective date of retirement will not be eligible for consideration by ATRS.

D. Effective for the fiscal year beginning July 1, 2006, retirants who have completed the 10-year maximum duration period allowed under T-DROP will not be eligible for a waiver.
2. Effective July 1, 2005, under Act 911 of 2005, the ATRS Executive Director is authorized to take appropriate action on waivers of the ATRS earnings limitations requested by the Department of Education:
 - A. If the retiree is hired by a public school district due to a shortage of certified teachers in a critical academic area in which the retiree is certified; OR

- B. If the retiree is hired as a superintendent due to a reconstitution or reorganization of a public school district as allowed in A.C.A. § 6-15-201 et.seq., § 6-15-401 et.seq., or § 6-20-1901 et.seq. following an appropriate determination by the State Department of Education that:
- i. The public school district has failed to meet standards of accreditation pursuant to A.C.A. § 6-15-201 et.seq.; OR
 - ii. The public school district is in academic distress status for failing to meet the minimum level of academic achievement on the ACTAAP examinations pursuant to A.C.A. § 6-15-401 et.seq.; OR
 - iii. The public school district is in fiscal distress status pursuant to A.C.A. § 6-20-1901 et.seq.; AND
 - iv. An appropriately qualified applicant, as determined by the State Department of Education, who is not an ATRS-covered retiree is not available to be employed.
3. Critical academic areas in which there is a shortage of certified teachers shall be determined annually by the State Department of Education.
4. Employers shall maintain audit files identifying personnel granted a waiver and documenting the reasons for the waiver and will be responsible for reporting to ATRS, all retirees who have returned to employment under these provisions.
5. Beginning July 1, 2005, under provisions of Act 911 of 2005, for any retired member employed in a position covered by the System pursuant to a waiver, the amount paid to the System shall be equal to the combined employee and employer contributions rate in effect at the time of the employment and shall be remitted by the employer. The contributions shall be paid on all salary earned in the fiscal year and shall not be collected from the employee. These amounts shall be recorded in the ADE Waiver Income Account.

DISABILITY RETIREE

Disability Retiree Employed Full-Time

1. When a disability retiree is employed in a position covered by the Teacher Retirement System as a full-time employee, the Teacher Retirement System is required to remove the retiree from the disability payroll. It is the responsibility of the employee and employing agency to report such employment to the retirement office immediately. The employing agency will report salary and service as described on page 10-2-2 under Age and Service Retiree, Nos. 2A and 2B above. Unless the retiree was a member of the

noncontributory plan, it is also the responsibility of the employing agency to withhold employee contributions.

2. If the retiree completes a minimum of 120 days or more during a fiscal year in Arkansas, thus adding a year's service credit, the retiree can then again make application for disability or age and service retirement, and the benefits will be recomputed based on the additional year or years of service credit.
3. Full-time employment is defined as a member working at least 480 hours in a fiscal year.
4. If a disability retiree under age 60 becomes employed as a full-time employee by a public employer whose employees are covered by a retirement plan supported wholly or in part by state contributions his/her disability retirement shall terminate. His/her credited service and accumulated contributions at the time of disability retirement shall be restored to his/her credit in the Member's Deposit Account, and the person shall immediately again become a member of the System, if eligible.
5. If a disability retiree returns to full-time employment and receives credited service but dies before completing 120 days of creditable service, a determination must be made by the System as to whether survivor or disability benefits will be payable.

Disability Retiree Employed Part-Time

1. Part-time employment is defined as a disability retiree working less than 480 hours in a fiscal year.
2. A disability retiree employed part-time will be subject to the same earnings limitation policy as age and service retirees (see above); however, a waiver of the earnings limitation is not available for disability retirees.
3. A disability retiree shall not be permitted to purchase or establish service credit when employed in a part-time position.
4. A disability retiree shall not be given service credit during the time in which he/she receives a disability annuity (Act 541 of 1977).

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