



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

**Department of
Administration**

DIVISION OF RETIREMENT AND BENEFITS

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September 1, 2017

Dear Retirement System Member:

The Division of Retirement and Benefits (Division) records show that you are eligible or within two years of retirement eligibility under the rules and provisions of either the Public Employees' (PERS), Teachers' (TRS) or the Judicial Retirement System (JRS). This letter is to inform you of some significant changes to the provisions governing returning to work in any capacity with your same employer after retirement.

Recently, in 2016, the IRS and Treasury Department released proposed regulations setting normal retirement age applicable to governmental plans at age 62. Although the proposed regulations have not been finalized, governmental plan sponsors may rely on them until the issuance of final regulations. These regulations provide guidelines on what is a bona fide separation of employment in regard to re-employment with the same employer.

The Division has conferred with its outside tax counsel and confirmed that in order to avoid potential early distribution tax penalties for our members and to avoid a risk of disqualification of our plans, retirees must clearly demonstrate a valid separation from employment with their participating employer so that the retiree does not receive an in-service distribution in violation of the terms of the plans (the IRS refers to the valid separation from employment with the employer as a "bona fide separation from service"). **To have a bona fide separation from service, a member cannot simply "retire" from service with his/her employer and also have a prearranged agreement to be rehired by the same employer or continue to work immediately post-retirement date.** If the termination is deemed to be not valid, the member could sustain early withdrawal penalties on each retirement payment or be required to repay the Division all retirement benefits received, depending on the facts and circumstances of the situation.

For the past year, the Division has required the member's attestation that there is no pre-arrangement with the employer for the member to return to work after retirement on the retirement application form. Members who have indicated a pre-arrangement have been cautioned to fulfill the 60-day break in service before re-employing. Based upon experiences over this time, the Division has determined the plans' current requirement for only a 60-day break in employment is insufficient to protect retirees and ensure they are receiving retirement benefits only after a bona fide separation from service.

Therefore, the purpose of this letter is to provide notification that for members retiring as of December 1, 2017, the Division will establish:

- a required 6-month break in service before a member can return to employment with the same employer if the member is under the IRS-established normal retirement age of 62 at the time of retirement;

- a required 60-day break in service before a member can return to employment with the same employer if the member is age 62 or older at the time of retirement.

The Division believes that these break-in-service requirements for re-employment of a retiree who is receiving retirement benefits from the plans is sufficient to establish that the retiree has had a bona fide separation from service and will protect against financial consequences and tax ramifications.

Effective December 1, 2017 the Division will take the following actions for retirees:

- Indication of Pre-arrangement on Application for Retirement
Retirees who are under age 62, who indicate there is a pre-arrangement for rehire, will be contacted by the Division and their retirement application will be suspended until the Division is assured by both the retiree and his/her employer in writing a bona fide separation will occur.
- Re-employment Within Less Than 6 Months
Retired members under age 59 -1/2 who retire on or after November 1, 2017 and return to employment with the same employer with less than a 6-month break will have their 1099-R changed to an early distribution (without a known exception) that will result in an early distribution tax penalty levied on each retirement check. The member may then have to establish with the IRS that a bona fide separation from service occurred at the time of the member's retirement to avoid the tax penalty.
- Re-employment Within Less Than 6 Months, Evidence of Pre-arrangement
If the Division discovers there is evidence that a pre-arrangement for re-employment with the same employer was in effect prior to the member's retirement, this will constitute a sham retirement as characterized by the IRS, and the member will have benefits stopped and will be required to repay all retirement benefits received back to the system, including medical benefits, plus interest, retroactive to the date of retirement.

Future employer compliance audits will include a review of rehired retirees to detect violations of this provision. Employers will be asked to provide documentation of a bona fide separation if a retiree is rehired with the same employer within the timeframes stated above.

The Division will be writing regulations to codify this clarification. Employers and members will have an opportunity to comment during the public notice period. Regulations are tentatively scheduled to be noticed in September. The Division will also provide an educational webinar to further explain the retiree re-employment provisions and answer questions. Member educational material on re-employment is also be updated.

If you have questions regarding this policy, please visit the frequently asked questions (FAQ) posted on the Division website or contact your regional counselor at the Division at (800) 821-2251.

Sincerely,



Kathy Lea
Chief Pension Officer
Division of Retirement and Benefits