



STATE OF WASHINGTON  
DEPARTMENT OF RETIREMENT SYSTEMS

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April 13, 2022

The Honorable Drew Stokesbary  
Washington State Representative  
Select Committee on Pension Policy  
PO Box 40914  
Olympia, WA 98504-0914

Dear Chair Stokesbary:

The Department of Retirement Systems (DRS) respectfully requests that the Select Committee on Pension Policy (SCPP) study the return to work restrictions that apply to the Public Employees' Retirement Systems (PERS) retirees who retire using the 2008 early retirement factors (ERFs). This study may result in recommended legislation to clarify the intent of the current language.

[RCW 41.40.630\(3\)\(b\)](#)\* regarding Plan 2 currently reads:

*Any member who retires under the provisions of this subsection is ineligible for the postretirement employment provisions of [\\*RCW 41.40.037\(2\)\(d\)](#) until the retired member has reached sixty-five years of age. For purposes of this subsection, **employment with an employer also includes any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer included under the provisions of [RCW 41.40.690\(1\)](#).** (emphasis added)*

\*Also in Plan 3 as [RCW 41.40.820\(3\)\(b\)](#)

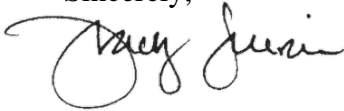
DRS has interpreted this restriction broadly ([WAC 415-02-325](#)), applying it to employees working for a DRS covered employer, including employees in positions that would normally not be eligible for retirement and to contractors, as that has been our understanding of the intent. Since implementation, legislation has eased these restrictions for retirees working in non-administrative positions with schools who can work 867 hours each year. As of September 2021 there were 4,103 PERS retirees who retired using the 2008 ERFs who were still under the age of 65.

The Honorable Drew Stokesbary  
Select Committee on Pension Policy  
April 13, 2022  
Page 2

Other than disability related decisions made by DRS, determinations regarding the return to work restrictions and employee/employer relationships are the most common petitions received by DRS. Often, these petitions involve retirees working as contractors on projects that they have specific expertise on, such as the Growth Management Act or similar regulations, etc.

DRS is willing to present additional information to the committee as necessary and would appreciate further review and clarification of these statutes. Ideally, that review would result in a “brighter line” in the law, or better clarity regarding the amount or type of work that may be allowed without impacting a retiree’s pension. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracy Guerin". The signature is fluid and cursive, with the first name "Tracy" being more prominent and the last name "Guerin" following in a similar style.

Tracy Guerin  
Director

Enclosure

cc: Members of the Select Committee on Pension Policy

**WAC 415-02-325 2008 Early retirement factors.** (1) **What are the 2008 early retirement factors?** In chapter 491, Laws of 2007, the legislature created optional early retirement factors (ERFs) for members retiring on or after September 1, 2008. Referred to as the 2008 ERFs, these optional factors are available to Plan 2 and Plan 3 members of the following retirement systems: Public employees' retirement system (PERS); school employees' retirement system (SERS); and teachers' retirement system (TRS). The 2008 ERFs provide a higher retirement benefit than the three percent ERFs, but impose stricter return to work rules.

(2) **If I retire before age sixty-five using the 2008 ERFs, how will my benefit be calculated?** Your normal (age sixty-five) retirement benefit will be multiplied by the factor shown in the following table, based on your age at the time of your early retirement.

Retirement Age	2008 Early Retirement Factor
55	0.80
56	0.83
57	0.86
58	0.89
59	0.92
60	0.95
61	0.98
62	1.00
63	1.00
64	1.00
65	1.00

(3) **Am I eligible for the 2008 ERFs?** Plan 2 and Plan 3 members of PERS, SERS, and TRS, who entered membership prior to May 1, 2013, must be at least age fifty-five and have at least thirty service credit years to be eligible for retirement using the 2008 ERFs.

(4) **What are the return to work rules if I retire under the 2008 ERFs?** The legislation that created the 2008 ERFs also established restrictions on retirees who return to an employer after selecting the 2008 ERF option. The 2008 ERF return to work restrictions are a broad prohibition to avoid incentives for early retirement while the member continues to collect payments from a public employer before reaching full retirement age. A retiree's benefit will stop if they retire under the 2008 ERFs and return to a DRS-covered employer, in any capacity for which they receive compensation, before age sixty-five.

(5) **What are the exceptions to the return to work rules if I retire from SERS or TRS under the 2008 ERFs?** Under legislation effective May 8, 2019, you may return to work in a nonadministrative position as defined in WAC 415-02-030 for a school district, charter school, educational service district, state school for the deaf, state school for the blind, or tribal school without suspension of your benefit until you exceed eight hundred sixty-seven hours in a calendar year.

(6) **What organizations are DRS-covered employers?** For the purpose of this section, a DRS-covered employer is any organization that employs one or more members of any retirement system administered by DRS. This includes, but is not limited to, public agencies, boards and commissions, counties, cities and towns, public schools and educational service districts, higher education institutions, libraries and utilities throughout the state. It also includes first class cities

that maintain separate retirement systems but also employ members of the law enforcement officers' and fire fighters' retirement system.

**(7) What types of compensation impact my benefit if I retire under the 2008 ERFs and return to work before age sixty-five?** The legislature defines "employment with an employer" for purposes of the 2008 ERF return to work restrictions as including "any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer." The phrase "any other similar compensated relationship with any employer" includes both employment with a DRS-covered employer and any other type of compensated relationship with a DRS-covered employer.

**Example:**

**Bob, an attorney for the city of Olympia, retires using the 2008 ERFs. Can Bob receive his pension if he subsequently provides legal services to Spokane County?** It depends on whether Bob's compensated relationship with Spokane County meets the definition of "employment with an employer." Below are examples of the different types of potential compensated relationships Bob could have, and whether those relationships would be considered "employment with an employer."

**Personal service contract.** If Bob has a personal service contract with Spokane County to provide legal services, then Bob would be considered to be in a "similar compensated relationship with an employer" within the meaning of the statute. Bob's monthly benefit would be suspended for any month in which he provides this compensated service to Spokane County.

**Sole proprietorship or partnership. 2008 ERF retiree is sole proprietor or partner.** If Bob is a sole proprietor or a partner of a law firm; the firm contracts with Spokane County to provide services; and Bob or any other employee of the law firm provides legal services to Spokane County, then Bob would be considered to be in a "similar compensated relationship with an employer" within the meaning of the statute. Bob's monthly benefit would be suspended for any month in which he or his firm provides service to Spokane County under the contract.

**Corporation. 2008 ERF retiree is a shareholder of a publicly traded corporation.** If Bob is a shareholder of a publicly traded corporation and the corporation contracts with Spokane County to provide services, then Bob would not be considered to be in a "similar compensated relationship with an employer" within the meaning of the statute. Bob's monthly benefit would not be suspended for any month in which the corporation provides service to Spokane County.

**Corporation. ERF retiree is an employee of the corporation.** If Bob is working for the corporation solely on matters unrelated to the corporation's contract with Spokane County, Bob is not in a "similar compensated relationship" with Spokane County. Bob's monthly benefit would not be suspended for any month in which the corporation provides service to Spokane County.

If Bob is working for the corporation on matters that are related to the corporation's contract with Spokane County, then Bob would be considered to be in a "similar compensated relationship with an employer."

**(8) What is considered compensation?** Compensation is financial consideration for work performed, regardless of whether that consideration is paid as a salary, hourly amount, or flat dollar amount. A reimbursement is not considered compensation.

**Examples:**

**Independent contractor** - A TRS Plan 2 member retires using the 2008 ERFs at age 62. He receives a \$2,500 monthly pension payment. When he is 64, he enters a contract to provide training for school employees. He receives a flat dollar amount of \$50 per trainee. Under the 2008 ERF return to work restrictions, he has received compensation from a DRS-covered employer. Therefore, his \$2,500 pension benefit is forfeited for the month he performed the services.

**Board/commission** - A PERS Plan 3 member retires using the 2008 ERFs at age 60. She receives a \$1,200 monthly pension payment. When she is 62, she is elected as a member of the local school board. As a school board member she does not receive a salary; however, she does receive reimbursements for travel and food. Under the 2008 ERF return to work restrictions, she is able to continue to receive her pension while receiving those reimbursements.

(9) **What are a DRS employer's responsibilities for determining whether an employee is a 2008 ERF retiree?** RCW 41.50.139 requires DRS employers to obtain, in writing, the retirement status of all new employees. If the employer fails to report a 2008 ERF retiree's retirement status to the department, the employer is liable for any overpayments that may occur.

(10) **What are a DRS employer's responsibilities for determining whether a contractor's employees are 2008 ERF retirees?** DRS employers who hire a contractor to perform services for their organization will need to inquire with the contractor and confirm with DRS to determine if any of the workers providing services to the DRS employer through the contractor retired using the 2008 ERFs, or if the company is owned by an individual who retired using the 2008 ERFs, and whether the nature of the service and compensation would result in a retirement benefit being suspended. See WAC 415-108-710 (PERS), 415-110-710 (SERS), and 415-112-525 (TRS).

[Statutory Authority: RCW 41.50.050. WSR 20-01-079, § 415-02-325, filed 12/11/19, effective 1/11/20. Statutory Authority: RCW 41.50.050(5). WSR 17-04-050, § 415-02-325, filed 1/26/17, effective 2/26/17.]