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Retirement

S-4 Working After Retirement

This article addresses the retirees of the Kansas Public Employees Retirement System (KPERS) and the policies adopted by the Legislature for working after retirement. The Legislature has alternated between a policy of restrictions and of no restrictions on retirees who go back to work for a KPERS participating employer after retirement from state agencies, local units of government, and school districts and other educational institutions.

As recently as 1987, there were no statutory restrictions on working after retirement. Prior to that time, there had been a movement away from earlier restrictions that previously had been in statutes. In recent years since 1993, the Legislature has made exceptions to the statutory restrictions, which suggests at least a partial movement away from the restrictions adopted after 1987. In fact, the first restrictive 1988 language lasted only one year and was replaced in 1989 by the Legislature with the general policy currently in effect for KPERS retirees.

Working after retirement statutes address the retirees of KPERS, of the Kansas Police and Firemen's (KP&F) Retirement System, and the Kansas Retirement System for Judges. Each plan will be discussed below as appropriate in the historical context of legislative actions.

Current Legislative Policy for KPERS, KP&F, and Certain Judicial Retirees

KPERS. Current statutory provisions generally impose a salary cap of \$20,000 on KPERS retirees who return to work for the same KPERS participating employer from whom they retired. The salary cap legislation originally passed during the 1988 Session when a \$6,000 limitation was imposed on KPERS retirees. Subsequent amendments raised the dollar amount of the cap and changed the circumstances under which the cap is applied. In 1993, the Legislature placed retirees of KP&F under an annual limitation, initially at the same dollar cap as KPERS retirees. When the statutory salary cap limitation is reached during a given calendar year, KPERS and KP&F retirees must either stop working or stop receiving their retirement benefits until the end of the calendar year. The cycle begins to be repeated with a new cap on calendar year income on each subsequent January 1. A permanent exemption from the KPERS cap was authorized for nurses who return to work for state institutions from which they retired, and a three-year exemption from the cap with a sunset of July 1, 2015, was authorized for school

professionals. Substitute teachers and legislative staff are exempt from the salary cap limitation on working after KPERS retirement.

Another statutory policy imposed a special assessment for other KPERS participating employers who hire KPERS retirees. The special assessment does not apply to hiring KP&F retirees. A statutory provision required participating employers who hire a retired KPERS member that did not retire from that participating employer to pay an actuarially-determined employer contribution plus the 4.0 percent employee contribution. The original provision passed during the 2006 Session. Beginning after the 2009 Session, school districts that rehire any licensed professional employee who retired from that same participating employer are required to pay the actuarially-determined employer rate plus 8.0 percent as the employee rate, with an expiration date of July 1, 2015, for this provision.

A final statutory policy required KPERS retirees to be off the payroll at least 60 days before returning to work after retirement for a participating employer. The previous period of separation had been 30 days, but the longer period was added in 2009. The 30-day separation requirement was added by the 1998 Legislature in response to a federal compliance review that recommended a specific separation time-period in order to determine that a person actually was retired. Prior to July 1, 1998, there had been no prohibition against retiring one day and going back to work for a KPERS participating employer the next day.

KP&F. Current statutory law reflects 1998 legislation that set the working after KP&F retirement salary cap limitation at \$15,000 for retirees who returned to work for the same participating employer from whom they retired and who returned to work in a KP&F covered position. These KP&F retirees are subjected to a 30-day waiting period before they can return to work for any participating employer. The Legislature did not amend the KP&F salary cap or the KP&F days of waiting for KP&F when the KPERS statutes were amended in 2009 to increase the limitation and double the waiting period before being eligible to work after retirement for a participating employer.

Judges and Justices. The Chief Justice of the State Supreme Court has statutory authority to appoint retired judges and justices to hear cases, as authorized by a provision dating from 1967. Total compensation for post-retirement judicial work performed in a fiscal year, when combined with concurrent retirement payments, cannot exceed the salary of a district court judge, as set by statute.

Recent History of Working After Retirement

In 2006, the Legislature increased the working after retirement cap from \$15,000 to \$20,000 for retirees who returned to work for the same participating employer from whom they retired. The increased cap of \$20,000 also applied to elected public officials who retired from KPERS-covered positions and continued to serve in an elected public office that also is covered by KPERS.

In addition, the 2006 Legislature specifically addressed public school teachers and working after KPERS retirement by changing existing law. The legislation amended the statutory definition of a professional employee to exclude, beginning in the 2006-2007 school year, any person who retired from school employment as a KPERS member, regardless of whether an agreement on terms and conditions of professional service between a board of education and an exclusive representative of professional employees provided to the contrary. The legislation also changed the definition of "teacher" to exclude, beginning in the 2006-2007 school year, any person who retired from school employment as a KPERS member.

Also in 2006, the Legislature imposed a special assessment on all KPERS participating employers who hired a retired KPERS member. A statutory provision required that participating employers who employed a retired KPERS member would be responsible for paying an actuarially-determined employer contribution plus the 4.0 percent employee contribution. The provision applied to state, school and local KPERS participating employers who hired a retired KPERS member beginning July 1, 2006. Any KPERS retiree previously employed before July 1, 2006, by a

participating employer was exempted from the new law. The first actuarially-determined employer rates in FY 2007 were 5.84 percent for the state group, 9.75 for the school group, and 7.69 percent for the local group of participating employers.

In 2008, the Legislature removed a sunset that would have repealed an exemption for licensed nurses at state institutions who had been exempted from the working after KPERS retirement salary cap that was to expire after three years on June 30, 2008.

The 2008 Legislature also amended the statutory provisions related to working after KPERS retirement that applied to teachers. A change in the definition of “teacher” provided that a teacher means (1) a teacher defined by KSA 72-5436 and (2) any professional employee who retired from school retirement and previously was covered by KPERS.

In 2009, the Legislature extended the break in employment required after KPERS retirement from 30 days to 60 days before retirees can return to work for any KPERS participating employer. The Legislature clarified that any retirees who return to work for a KPERS participating employer, even if associated with a third-party contractor who provided services to a school district or other employer, would be covered by the working after KPERS retirement salary cap if working for the same participating employer from whom they retired.

The 2009 Legislature also established a three-year exemption from the working after KPERS retirement salary cap for school professionals who return to work for their former KPERS participating school employer. The legislation provided for the participating employers to pay KPERS the actuarially-calculated amount of employer contributions plus 8.0 percent for each school professional working after retirement. The provisions were scheduled to sunset on July 1, 2012. A report from KPERS to the Joint Committee on Pensions, Investments and Benefits is required to be submitted after the sunset date.

The 2012 Legislature extended the sunset date to July 1, 2015, for the exemption from

the working after KPERS retirement salary cap for school professionals who return to work for their former KPERS participating school employer. The legislation continued the provision for the participating employers to pay KPERS the actuarially-calculated amount of employer contributions plus 8.0 percent for each school professional working after retirement.

Retired Judicial Branch Judges, Justices, and Working after Retirement

Prior to the inclusion of the Kansas Retirement System for Judges under the administration of the KPERS Board of Trustees in 1975, the 1967 Legislature statutorily authorized any retired justice or district court judge to be assigned by the Chief Justice of the State Supreme Court to perform judicial duties in any district that the retiree was willing to undertake. The legislation further provided that the retiree would serve without compensation, but would receive actual and necessary expenses to be paid in the same manner as reimbursements for a district judge. The post-retirement program was modeled after the federal judicial practice of allowing judges to take “senior” status after retiring and to continue hearing cases as needed.

The 1976 Legislature added judges of the Court of Appeals to the statutory provisions to make them eligible for working after retirement and assignment of cases by the Chief Justice.

The 1980 Legislature modified the compensation provision by allowing retired judges and justices to receive *per diem* compensation beginning July 1, 1980, of which the total amount of *per diem* compensation, plus the annual retirement benefit, could not be greater than the annual salary of a district court judge. In addition, the retired judges and justices were allowed to collect the subsistence allowance, mileage allowance, and other actual and necessary expenses.

The 1981 Legislature made all judicial annuities and other retirement benefits, including the working after retirement *per diem* compensation, exempt from state taxation, and also excluded such amounts from execution, garnishment, attachment, or any other process or claim,

including decrees for support or alimony. The annual *per diem* compensation for post-retirement work, plus the annual retirement benefit, continued to be capped to an amount not greater than the annual salary of a district court judge.

The 1993 Legislature added district magistrate judges to the list of retirees eligible for the working after retirement and assignment to duties by the Chief Justice of duties after retirement.

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