

Employment After Retirement

Teachers' Pension and Annuity Fund

As people are retiring at an earlier age and living longer after retirement, the question of how employment after retirement will affect pension benefits is becoming more important. This fact sheet provides information a Teachers' Pension and Annuity Fund (TPAF) retiree should consider when deciding on returning to the work force in either a full- or part-time capacity.

Working for private industry, the federal government, or a government agency in another state will not normally affect your TPAF retirement benefits. (See the Disability Retiree section on page 3 for exceptions to this.) Returning to public employment in New Jersey after retirement, however, could affect your benefits as described in the following information. Your prospective employer should be able to tell you if the employment you are considering is covered by the TPAF. You will be responsible for any penalties imposed based on violation of the law. If there is any doubt as to whether or not you should be enrolled in the TPAF, contact the Division of Pensions and Benefits.

TPAF RETIREE RETURNING TO WORK IN A TPAF COVERED POSITION

TPAF Membership Continued

When you return to TPAF covered employment is critical in determining your TPAF status.

You are not considered to be "retired" from the TPAF until your retirement becomes "due and payable" and after the employer/employee relationship is severed. This occurs after there has been a break in employment without pay of at least 30 days immediately following your retirement date, or 30 days after the approval of your retirement by the TPAF Board of Trustees, whichever is later.

Note: N.J.A.C. 17:3-21 requires that employees who work a 10-month school year and retire on July 1 or August 1, must count the 30-day break in service from the start of the following normal school year in September.

This means that if you return to a TPAF covered position — on either a paid or voluntary basis — before the 30 days have elapsed, you should expect

to continue enrollment in the TPAF. Your retirement will not be considered valid, and you will remain an active employee under your original TPAF account.

TPAF Reenrollment Required

If you accept regular full or part-time employment in a position covered by the TPAF, you must reenroll in the TPAF. Your retirement allowance will be suspended for the duration of your employment. The procedure for enrollment in the TPAF after retirement is covered later in this publication.

Membership in the TPAF is required as a condition of employment if:

- You are appointed to a teaching or professional staff position requiring certification and the position is covered by Social Security; and
- Your annual salary is \$7,500* or more (disability retirees, see page 3).

Generally, non-certified professional personnel are not eligible for TPAF membership. Neither are seasonal or substitute teachers employed on a temporary basis. All other teachers whose positions require certification are required to participate in the TPAF even if paid on an hourly or per diem basis.

TPAF Enrollment Not Permitted

You cannot reenroll in the TPAF if you are employed:

- As a per diem substitute;
- As a permanent or long-term substitute;
- As a replacement for a regular employee on approved leave of absence (provided the regular employee is not on terminal leave).
- If your annual salary is less than the minimum required for enrollment under TPAF Tier 3 membership (\$7,500 in 2009, subject to annual adjustment).

*The minimum annual salary required for enrollment in Tier 3 of the TPAF is \$7,500 for calendar years 2008 and 2009. Under the provisions Chapter 89, P.L. 2008, this amount is subject to adjustment in future years.

Certificated Superintendent or Certificated Administrator

Chapter 355, P.L. 2001 (N.J.S.A. 18A:66 - 53.2) provides an exemption from the reenrollment after retirement provisions to retirees of the TPAF who are certificated superintendents or certificated administrators (this does not apply to those retired on a disability retirement — see page 3). Positions which require certificated administrators include that of superintendent, assistant superintendent, executive superintendent, principal, assistant principal, vice-principal, director, supervisor, school business administrator and State monitor. For a complete list of certificated administrator positions, please contact the New Jersey Department of Education.

A certificated superintendent or certificated administrator who becomes employed by the New Jersey Department of Education in a position of critical need as determined by the Commissioner of Education is exempt from the reenrollment provisions.

A certificated superintendent or certificated administrator who becomes employed by a board of education as a certificated superintendent or certificated administrator on a contractual basis for a term of not more than one year, is exempt from the reenrollment provisions. The contract for employment can be renewed for one additional year; however, the retiree's total period of employment with any individual board of education may not exceed a two-year period.

Chapter 355 also provides that the current pension reenrollment provisions will still apply **if a retiree accepts employment within 120 days of retirement** with the same employer from which the retiree retired.

EFFECT ON RETIREMENT BENEFITS IF REEMPLOYED IN A TPAF ELIGIBLE POSITION

If you are required to reenroll in the TPAF as a condition of employment in a full- or part-time position covered by the TPAF, your retirement allowance will be suspended for the duration of your employment, and you become an active contributing member under the TPAF membership tier in effect at the time you reenroll. (If you are over age 60, you must prove insurability for life insurance coverage.) If you die

while under the second membership, no benefits from the previous membership or retirement are payable, other than the return of any contributions not used to pay your retirement allowance. This means that retirement option benefits and life insurance death benefits from the suspended retirement would not be paid to your beneficiaries.

If you return to employment under the TPAF and are eligible for membership but you fail to reenroll, you will be required to reimburse the retirement system in the amount of all retirement benefits you received since the date you should have reenrolled. In addition, you will be required to pay pension contributions in the form of back deductions back to your enrollment date. Your employer may also be liable for pension and Social Security contributions.

There is no limitation on the amount of reimbursement that may be recovered by the retirement system in these situations.

The following steps should occur when you are reemployed and reenrolled in the TPAF:

1. Your employer must submit a TPAF *Enrollment Application* on your behalf to the Division of Pensions and Benefits. You will be enrolled in a new TPAF account under the membership tier in effect at the time you are reemployed.
2. Your retirement allowance will be suspended as of the date you are required to reenroll. The date of enrollment is not negotiable. The Retirement Bureau of the Division of Pensions and Benefits will advise you of the suspension.
3. Your *Enrollment Application* will be processed and a *Certification of Payroll Deductions* will be sent to your employer. This certification will include instructions to collect pension contributions and any back deductions, if appropriate.
4. You will be billed for any retirement payments you received after the effective date of your new TPAF enrollment. Because of the sequence of events, most retirees are enrolled in the TPAF on a retroactive basis. You should therefore anticipate that you will be required to refund one or more pension checks to the retirement system.

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5. On or before the effective date of your second retirement, you must file an *Application for Retirement Allowance*. You must meet all the qualifications and requirements for retirement under the TPAF membership tier of your second account. Your former retirement allowance and any option selection will be restored along with any appropriate cost-of-living adjustment due based upon your original date of retirement. In addition, you will receive a retirement allowance based upon your new period of service. These two calculations are paid in one retirement check.

You cannot combine your first and second account to qualify for a different type of retirement — such as a Veteran Retirement. By law, the combined retirement allowances cannot be greater than the allowance you would have received if your first retirement had not occurred.

Note: Any additional allowance due as a result of the second period of service will be determined under the Service Retirement formula; a reduction applies if the retiree is under certain ages as defined by the PERS membership tiers (age 55 for **Tier 1** members, age 60 for **Tier 2** members, and age 62 for **Tier 3** members).

Service credit from your first and second account can be combined to satisfy the 25 years of service requirement for TPAF-paid School Employees' Health Benefits Program (SEHBP) coverage. In order to be eligible for this coverage, you must be eligible for employer-paid SEHBP or local employer coverage from your last employment in the TPAF.

**RETURNING TO WORK IN A
POSITION COVERED BY A DIFFERENT
NEW JERSEY STATE-ADMINISTERED
RETIREMENT SYSTEM**

In this case, your retirement allowance continues and you can receive salary but you cannot become a member of that retirement system.

**DISABILITY RETIREES RESTORED TO
ACTIVE SERVICE IN THE TPAF**

If you are a disability retiree, before you can return to active service in a TPAF eligible title you must:

1. Make a written request to return to active service to the Division of Pensions and Benefits.
2. Submit a physician's report to the Division certifying that you are no longer disabled and can return to employment. The physician should be one with the same specialty as the physician who originally certified that you were disabled.
3. Be examined by a physician appointed by the TPAF Board of Trustees.
4. Be approved for return to active service by the TPAF Board of Trustees.

When you return to active service your original account and TPAF membership tier are restored — provided that you will earn at least the minimum annual salary required for enrollment in your TPAF membership tier (\$500 for Tier 1 or Tier 2 members or \$7,500 subject to annual adjustment for Tier 3 members). Deductions for pension begins and you are treated as an active employee in all respects. Upon subsequent retirement, you will receive a benefit based on total service.

**DISABILITY RETIREES — EARNINGS
AFTER RETIREMENT**

A disability retirement allowance may be adjusted if you have earnings from any occupation after retirement. If your pension, when added to the earnings from other employment, exceeds what your former position currently pays, the law states that the disability pension shall be reduced dollar for dollar by the excess earnings above what the former position currently pays. TPAF disability retirees are subject to an annual earnings test and the Division of Pensions and Benefits may request copies of your federal tax returns, *Form W-2*, and *Form 4506T*.

OTHER CONSIDERATIONS

**School Employees' Health
Benefits Program Retired Group Coverage**

Returning to public employment in New Jersey may affect your eligibility to continue coverage under the School Employees' Health Benefits Program (SEHBP). If your retirement allowance is suspended because you return to work in a position covered by the TPAF, your retired group SEHBP coverage is also suspended.

If you are eligible for SEHBP coverage based on your second retirement, the Division of Pensions and Benefits will send you an offering letter and a *Retired Coverage Enrollment Application* (for health benefits enrollment). Complete and return the application. You will be asked to submit payment with your application. If your previous coverage was TPAF-paid, attach a note to the application identifying your prior retirement account.

If you are not eligible for SEHBP coverage based on your second account, you must write to the Division to have your retired coverage from your first account reinstated.

Returning to a position that is not covered by the TPAF will not affect your eligibility for retired group coverage under the SEHBP. Maintaining SEHBP retired group coverage also does not affect your eligibility for active group health coverage associated with your new (non-TPAF) employment.

Social Security Benefits

There is an earnings test for people under full retirement age receiving Social Security benefits. Check with the Social Security Administration at 1-800-772-1213 for information on earnings limits before accepting employment after retirement.

SELF EMPLOYMENT ISSUES

The Division of Pensions and Benefits is frequently approached by TPAF retirees who seek recognition as independent contractors rather than employees. Many of these retirees want to resume work similar to that performed while they were public employees without it affecting their eligibility to receive TPAF retirement benefits. While it is the public agency's responsibility to correctly classify the worker's employer-employee relationship, our experience indicates that workers are frequently incorrectly identified as independent contractors when they are, in fact, employees of the agency.

As a rule, the Division of Pensions and Benefits accepts the tests and standards used by the Internal Revenue Service (IRS) to determine the employer-employee relationship. Since penalties levied by the IRS can be severe, both you (the worker) and the employer should give careful consideration before classifying you as an independent contractor. In

addition to IRS penalties and any penalties imposed by in the event that an employee has been incorrectly classified as an independent contractor, there are penalties relating to the TPAF. The employer will be assessed delinquent enrollment charges for failing to enroll you in the retirement system in a timely fashion. You will be required to refund all retirement benefits received after the date enrollment should have occurred and you must also pay any retroactive pension contributions due on the new TPAF account.

The IRS test to assess the employer-employee relationship includes the following factors:

A) Behavioral Control – Included in this test are instructions and training.

(1) Instructions – if the individual receives extensive instructions on how work is to be done, this suggests an employee relationship exists. Ask how, when, or where the person is asked to do the work; what and who owns the tools or equipment used; what assistants are hired to help with the work and where and by whom supplies and services are purchased. If one receives less extensive instructions about what should be done, but not how it should be done, the person may be an independent contractor. Each of these factors will vary dependent upon the actual position.

(2) Training – If the business provides training about required procedures and methods, this indicates that the business wants the work done in a certain way, and that suggests that the individual may be an employee.

B) Financial Control – Included in this test are facts which would reveal whether there is a right to direct or control the business part of the work.

Examples are:

(1) If the individual has made a significant investment in a position, this may qualify as an independent contractor.

(2) If the individual is not reimbursed for some or all business expenses, then he or she may qualify as an independent contractor, especially if unreimbursed business expenses are high.

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- (3) If the individual can realize a profit or incur a loss, this suggests that the person is in business for themselves and may be an independent contractor.

- C) Relationship to Parties – These are facts that illustrate how the business and the worker perceive their relationship.

For example:

- (1) Does the person receive benefits such as paid leave or insurance? This may indicate employee status.
- (2) Written contracts – A written contract may show what both the individual and the employer intend.

No one of these factors is controlling and the response to all factors must be weighed together, under the common law definition of "employment." However, one of the most important factors for consideration is whether the employer has the right to instruct and control the employee with respect to the details of the work that is performed by the employee.

There are several IRS documents that discuss how to evaluate individual circumstances that are available at: www.irs.gov

**SPECIAL NOTICE FOR RETIREES
IF REENROLLED TO A
TPAF COVERED POSITION**

If you are reenrolled in the TPAF after retirement, you are treated as an active member in all respects. Your retirement allowance is suspended as a result of a return to TPAF covered employment and no retirement or insurance benefits associated with your former retirement will be paid to your beneficiary should you die during your second membership. If you are over the age of 60 when you reenroll, you will be required to prove insurability through physical examination before you will be covered by the group life insurance benefits of active members. Once you retire again, the death benefits associated with your first retirement become effective.

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