
Update from PSERS: Modifications to Return to Service Process

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AGENDA

- What is a Return to Service?
- What is a Break in Service?
- Emergency Exceptions
 - Vacancy and Absence
- New Processes for Emergency Exceptions
- Other Exceptions



WHAT IS A RETURN TO SERVICE?

- A return to service occurs when a retiree renders school service to a school employer in any capacity, and is also receiving a retirement benefit.
- Upon return, the retiree's benefit, by law, must be suspended, unless, the return satisfies one of the six exceptions.



WHAT IS A BREAK IN SERVICE?

- The Retirement Code - employment must be “formally discontinued” from all public school employers before a member can receive an annuity.
- Statutory Factors:
 1. Whether the change in the employment relationship is more than a formal or technical change, requiring an intent to sever the employment before the retirement date;
 2. Whether there is a reasonable anticipation or prearranged agreement between the member and the employer to return to service;
 3. The amount of time that has elapsed from the date of retirement and the return to school service;
 4. Whether the services are a continuation of the member’s previous service with the same employer;
 5. Any other factors that PSERS deems appropriate.



EXAMPLES: BREAK OR NO BREAK?

- A member formally terminates employment with a school district and begins subsequent employment with a community college and elects SERS or an alternate retirement plan.
- While employed, a member agrees to enter into a contractual arrangement solely with the same employer after termination to provide the same services the member was previously providing but through the auspices of an independent contractor.
- A member formally terminates employment with a school district and begins subsequent employment with a charter school and elects an alternate plan.
- A member terminates employment with an 8301(a)(1) employer and begins service with another 8301(a)(1) employer within 90 days.
- A member formally terminates employment then, after such termination, enters into a bona fide independent contractor arrangement.
- While employed, a member creates a consulting company, and then terminates and the company enters into a contract solely with the same employer to provide the same services the member was previously providing but through the auspices of the company.
- A member formally terminates employment, then subsequently provides service through a bona fide third party vendor.



EXCEPTIONS

1. Shortage of Personnel
2. Emergency Creating an Increase in Work Load
3. Extracurricular Contract
4. Independent Contractor
5. Third Party Employer
6. Alternate Retirement Plan



EMERGENCY EXCEPTIONS

I. Shortage of Personnel

- Can be triggered by a **Vacancy** or an **Absence**.
- A lack of candidates must be established before a PSERS retiree is hired under either type of shortage.

Vacancy:

- Occurs when an existing or prior employee is not actively employed in his or her position and is not expected to return.
- May also occur when an employer creates a position that did not previously exist.

Absence:

- Occurs when an existing employee is not actively employed in his or her position but is expected to return.
- **Short-term absence** is one that does not extend longer than one week.
- **Long-term absence** extends longer than one week.



VACANCY

- PSERS will consider whether there is a qualified replacement not whether there is a better replacement than the PSERS retiree.
- An employer cannot claim a continuing shortage for the same position year after year without a continued bona fide effort each year to fill the position with someone who is not a PSERS retiree.
- If the employer did not receive advance notice of a permanent separation, then the employer may hire a retiree to fill the vacancy under the School Year Approval Process, but the employer must simultaneously begin an *Adequate and Good Faith Search* for a permanent employee who is not a PSERS retiree.



ADEQUATE AND GOOD FAITH SEARCH:

- Must advertise as quickly as possible.
- Should not be geared at hiring only PSERS retirees.
- Should not be so specific to the employer that only the PSERS retiree, who previously performed the work, would qualify.
- Should be placed in a common and public location easily accessible to a pool of candidates beyond the employees of the employer.
- Should not hire a PSERS retiree over a non-PSERS retiree candidate based on suitability.
- Should hire a qualified replacement not a better replacement than the PSERS retiree.
- If only a PSERS retiree replies to the advertisement, then the advertisement must remain open and the employer must continue to actively recruit for the position. The employer should also review the advertisement to determine whether it should be revised to attract the appropriate candidate.



ABSENCE

- A PSERS retiree filling an absence in one position can subsequently fill another absence in an entirely different position the following day or week, with each position constituting a separate absence, short-term or long-term.
- An employer may maintain a candidate list that distinguishes between those who are not PSERS retirees and those who are PSERS retirees.
- Alternately, an employer may also use a third party vendor to temporarily place one of the vendor's employees with an employer.
- If a candidate cannot be hired from the employer's candidate list or the third party vendor, then the employer can hire a PSERS retiree.
- An employer may determine that a subject-certified substitute is required to fill an absence. Although the employer has discretion to require a subject-certified substitute, nevertheless, the employer must still first attempt to fill the absence with a subject-certified substitute who is not a PSERS retiree before filling the absence with a PSERS retiree.



SCHOOL YEAR APPROVAL PROCESS

- A school employer needing to fill multiple **short-term or long-term absences** throughout the school year may request a preapproval for the entire school year from PSERS, i.e. “School Year Approval Process.”
- A school employer may use the School Year Approval Process under the following circumstances:
 - Absences, short-term and long-term
 - Vacancy with no advance notice of a permanent separation
 - Vacancy when an employer is prevented from replacing a terminated employee because of a legal challenge

Exception: The employer must use the Specific Member Approval Process if employing a PSERS retiree who: (1) retired within the last school year and (2) who is filling a vacancy or absence in the position that he or she recently retired from or a vacancy in a similar position.



APPLYING FOR SCHOOL YEAR APPROVAL

To submit a request to PSERS for the School Year Approval Process, a school employer must certify that:

1. The school employer will establish and maintain a current candidate list that distinguishes between those who are PSERS retirees and those who are not.
2. If the candidate list is established directly by the employer and the need for a candidate arises, the employer will first notify and exhaust a candidate list of those who are not PSERS retirees before employing a PSERS retiree.
3. If the employer uses a third party vendor to place candidates, then the employer confirms that: 1) the third party vendor employs the candidate directly, and 2) the employer will not employ a PSERS retiree until the third party vendor attempted, but was not able, to place a candidate.
4. The school employer will make available to any PSERS retiree who will or could be employed by the employer, upon request by the retiree, a copy of the school employer's request to PSERS for the School Year Approval Process and PSERS' response to the school employer's request.



APPLYING FOR SCHOOL YEAR APPROVAL

5. The school employer will only use the School Year Approval Process for absences, short-term and long-term; a vacancy with no advance notice of a permanent separation; and a vacancy when an employer is prevented from replacing a terminated employee because of a legal challenge.
6. If a school employer has a short-term absence that transitions to a long-term absence, the employer will repeat the search for a candidate who is not a PSERS retiree before offering it to a PSERS retiree.
7. In filling a vacancy with no advance notice of a permanent separation, the school employer will immediately begin an *Adequate and Good Faith Search* for a permanent replacement.
8. The school employer will use the Specific Member Approval Process when hiring a PSERS retiree who retired within the last school year and who is filling a vacancy or absence in the position that he or she recently retired from or a vacancy in a similar position.



SPECIFIC MEMBER APPROVAL PROCESS

A school employer must use the Specific Member Approval Process when there is a vacancy because:

- an existing employee is no longer employed in his or her position and is not expected to return.
- an employer creates a position that did not previously exist.
- an emergency increase in workload occurs.
- of any other instances that do not qualify under the School Year Approval Process.



REQUESTING SPECIFIC MEMBER APPROVAL PROCESS

To request approval to employ a PSERS retiree under this process, the employer must provide the following, as applicable:

1. The name and social security number of the PSERS retiree.
2. If the retiree retired within the last school year from the same employer, the employer must provide the following:
 - a. Copies of the formal notice of the termination/retirement, e.g., a resignation letter, internal memo, board minute documenting the notice, etc.
 - b. Copies and explanations of all relevant employment contracts and severance agreements (both oral and written).
 - c. If the retiree is filling the same position, provide an explanation of why the retiree could not have simply remained in his/her position instead of retiring.
3. An explanation of how and when the position became vacant, including copies of any notice of termination/retirement/leave resulting in the vacancy/absence.

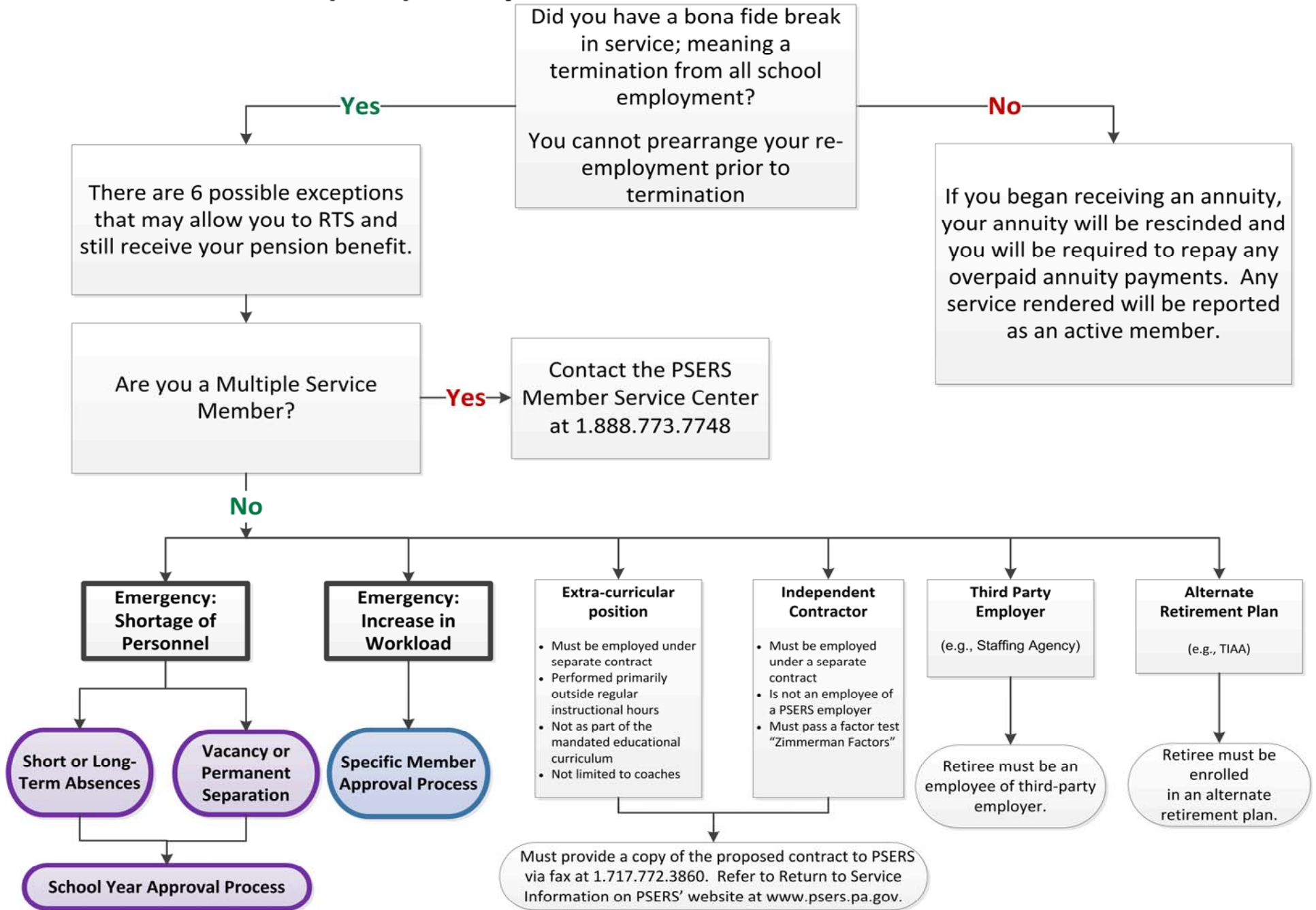


REQUESTING SPECIFIC MEMBER APPROVAL PROCESS

4. An explanation of the Adequate and Good Faith Search taken by the employer to find someone who is not a PSERS retiree and the dates of each step in the process, including, but not limited to:
 - a. Documentation for each step in the candidate search, including copies of all outreach attempts (e.g., advertisements in newspapers or trade papers, web postings, emails, direct correspondence, etc.), copy of employment consultant or other agreement to perform a search for someone who is not a PSERS retiree. Include chronological documentation of these events.
 - b. Information pertaining to who is making the hiring decision.
 - c. A written list of the candidates who applied for the position and the reason(s) why each did not meet the written requirements for the position, or, if a job offer was made, a statement that the candidate did not accept the position.
 - d. A written description of the means by which the retiree indicated his or her interest and became a candidate for the position. Include in the description facts such as whether the retiree responded to a posting for the vacant position, or if the employer first contacted the retiree regarding the vacancy.
 - e. Documentation of when the employer made the decision to hire the retiree.
5. For an *Emergency Creating an Increase in the Workload*, identify what created the emergency, when the emergency was created, how long the school employer expects the workload to be at the increased level, and why the increase in duties cannot be performed by existing staff.



Return to Service (RTS) Exception Guidance



Emergency: Shortage of Personnel – School Year Approval Process

A school employer may use the School Year Approval Process under the following circumstances:

- Absences, short-term and long-term
- Vacancy with no advanced notice of a permanent separation
- Vacancy when an employer is prevented from replacing a terminated employee because of a legal challenge

To apply for the School Year Approval Process to use PSERS retirees - The school employer must submit a letter to PSERS requesting a general approval and certifying the process used to hire all PSERS retirees under the Emergency Exceptions provisions throughout that school year. The letter submitted to PSERS should confirm that:

- The school employer will establish and maintain a current candidate list that distinguishes between those who are PSERS retirees and those who are not.
- If the candidate list is established directly by the employer and the need for a candidate arises, the employer will first notify and exhaust a candidate list of those who are not PSERS retirees before employing a PSERS retiree.
- If the employer uses a third party vendor to place candidates, then the employer confirms that: 1) the third party vendor employs the candidate directly, and 2) the employer will not employ a PSERS retiree until the third party vendor attempted, but was not able, to place a candidate.
- The school employer will make available to any PSERS retiree who will or could be employed by the employer, upon request by the retiree, a copy of the school employer's request to PSERS for the School Year Approval Process and PSERS' response to the school employer's request.
- The school employer will only use the School Year Approval Process for absences, short-term and long-term; a vacancy with no advanced notice of a permanent separation; and a vacancy, when an employer is prevented from replacing a terminated employee because of a legal challenge.
- If a school employer has a short-term absence that transitions to a long-term absence the employer will repeat the search for a candidate who is not a PSERS retiree before offering it to a PSERS retiree.
- In filling a vacancy with no advanced notice of a permanent separation, the school employer will immediately begin an *Adequate and Good Faith Search* for a permanent replacement.
- The school employer will use the Specific Member Approval Process when hiring a PSERS retiree who retired within the last school year and who is filling a vacancy or absence in the position that they recently retired from or a vacancy in a similar position.

Emergency: Shortage of Personnel – Specific Member Approval Process

A school employer must use the Specific Member Approval Process under the following circumstances:

- A vacancy because an existing employee is no longer employed in their position and is not expected to return
- An employer creates a position that did not previously exist
- An emergency increase in workload
- All other instances that do not qualify under the School Year Approval Process

To request approval to employ a PSERS retiree under this process, the employer must provide the following, as applicable:

- The name and social security number of the PSERS retiree.
- If the retiree retired within the last school year from the same employer, the employer must provide the following:
 - Copies of the formal notice of the termination/retirement, e.g., a resignation letter, internal memo, board minute documenting the notice, etc.
 - Copies and explanations of all relevant employment contracts and severance agreements (both oral and written).
 - If the retiree is filling the same position, provide an explanation of why the retiree could not have simply remained in his/her position instead of retiring.
- An explanation of how and when the position became vacant, including copies of any notice of termination/retirement/leave resulting in the vacancy/absence.
- An explanation of the *Adequate and Good Faith Search* taken by the employer to find someone who is not a PSERS retiree and the dates of each step in the process.
- For an *Emergency Creating an Increase in the Workload*, identify what created the emergency, when the emergency was created, how long the school employer expects the workload to be at the increased level, and why the increase in duties cannot be performed by existing staff.

If the employer does not provide sufficient information and/or documentation to satisfy an *Emergency* exception, the request will be denied and, if the retiree renders service, may result in the retiree being reenrolled in PSERS and the retiree's benefit being stopped retroactive to the date the retiree first began service.

Refer to the PSERS Return to Service Exceptions for more information.

Disclaimer: The information contained in this publication is strictly meant to serve as a general aid to answering many of the typical circumstances or questions that may arise from a member considering a return to service. It is not intended to serve as the final answer. It is recognized that all circumstances are unique. When in doubt a member or employer should contact PSERS for additional clarification.

EMERGENCY EXCEPTIONS continued...

2. Emergency Creating Increase in Work Load

- A workload increase must be unexpected, temporary, and beyond the normal responsibilities of any existing position.
- The termination, resignation, or retirement of an employee is not an “emergency.”
- The need to train a replacement is not an emergency that increases the workload.
- The workload remains the same; what changes is who is available to complete it.



OTHER EXCEPTIONS

- Extracurricular Contract:
 1. a written, separate contract with the public school employer; and
 2. perform the duties primarily outside regular instructional hours and not as part of the mandated educational curriculum.
- Independent Contractor:
 - Factor Test
 - Separate Contract
 - Break in Service--**The mere existence of a contract, the terms of the contract, and the intent of the parties are not determinative factors.**



OTHER EXCEPTIONS continued...

- Third Party Employer
 - If the third party employer was established or is controlled by a retiree, PSERS will look through the third party employer to determine whether the company is a valid company or created to allow the retiree to return to service. Factors include: (1) when the company was established; (2) whether other employees provide service on behalf of the company; and (3) whether the company provides service to other entities.
- Alternate Retirement Plan



Questions?

