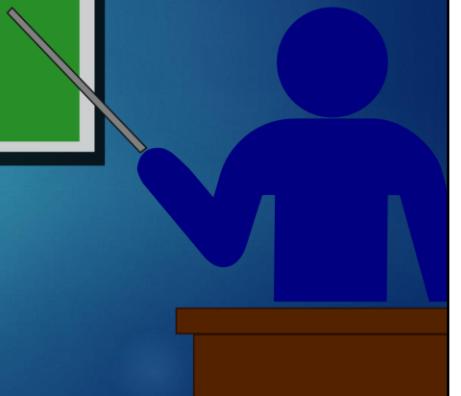


Return to Service Webinar

- ▶ Today's presentation will run approximately 30 minutes
- ▶ All participants microphones will be muted
- ▶ Please use the Q/A feature through Skype to ask questions
- ▶ When the presentation ends ESC will remain in Q/A for an additional 15 minutes to continue to answer questions asked.

Return to Service Exceptions and Guidelines

PSERS EMPLOYER TRAINING



Welcome to the Return to Service Exceptions Training! Thank you all for taking time out of your schedule for this important webinar.

Agenda

1. What does “return to service” mean?
2. When does a Retiree need to be reported to PSERS?
3. What are the Exceptions in which a retiree does not need to be reported to PSERS?
4. What are the approval processes for someone falling under the Exception Criteria?

In today's agenda we'll cover the following:

1. What does “return to service” mean?
2. When does a Retiree need to be reported to PSERS?
3. What are the Exceptions in which a retiree does not need to be reported to PSERS?
4. What are the approval processes for someone falling under the Exception Criteria?

- ▶ A Break in Service
is required first for a retiree to collect their pension after returning to work.
- ▶ Employment must be “formally discontinued” from all public school employers before a member can receive an annuity.
- ▶ PSERS would look at the following items to determine if a break in service truly occurred.
 - ✓ 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;
 - ✓ Whether there is a reasonable anticipation or prearranged agreement between the member and the employer to return to service;
 - ✓ The amount of time that has elapsed from the date of retirement and the return to school service;
 - ✓ Whether the services are a continuation of the member’s previous service with the same employer;

A break in service is required for a member to be able to collect their pension. For a break in service to have occurred a member would have had to terminate all positions with all school districts.

An example of a break in service would be a teacher who terminates employment with a district on June 30th and retires. They then decided in August they’d like to coach for the district. Because they completely terminated all employment with the district, and did not have a prearrangement to return to work this would be considered a break in service and they could work under the Extra Curricular Exception.

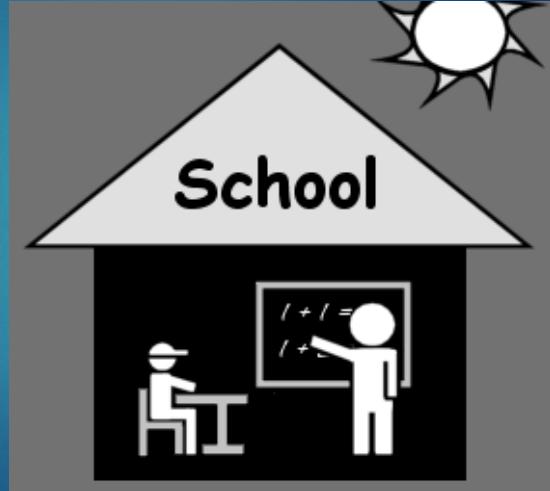
An example of something that wouldn’t be considered a break in service is if a teacher who is also a coach decides to terminate their teaching position in January but wants to continue to coach winter sports. Just terminating the teaching position does not constitute a break in service as they were already actively employed as a coach as well and did not terminate that position.

If a break in service needs to be questioned PSERS will look at the bullet points referenced in the slide (reference bullet points). I want to stress however, that these bullets are not the sole determining factor.

If PSERS determines that their was not a break in service prior to the retiree returning to work, the retirees pension would be stopped and they would become a return to service and continued to be reported to PSERS as an active member.

What does “return to service” mean?

- ▶ “Return to Service” refers to PSERS members who:
 - ▶ Have retired
 - ▶ Are receiving a retirement benefit
 - ▶ Wish to return to work with a PSERS participating school who **do not** qualify under one of the six exceptions.



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Let’s start by defining “return to service”. Return to service refers to PSERS members who have retired from a PSERS-participating school, are receiving a retirement benefit from PSERS, and wish to return to work with a PSERS-participating school in an assignment that is not covered by one of the six return to service exceptions.

For example, a biology teacher retired but several years later realizes that he misses instructing in the classroom and would like to return to teaching high school biology. He would need to be chosen from a list of other standard applicants to get the job, and if he did, a 1299 Return to Service form would need to be submitted to PSERS to freeze his retirement benefit payments.

But it does not matter what type of job they are returning to within the school system. For example, a retired secretary could return as a food service worker, or assist in the transportation department.

Members need to understand that returning to work within the school system could jeopardize their retirement benefit, unless the position they are returning to is covered under one of the six exceptions on the next slide.

Exceptions to the rule....

- ▶ Retiree's need to be reported to PSERS **unless** they fall under the following exceptions:
 - ▶ **Shortage of Personnel**
 - ▶ **Emergency Creating an Increase in Work Load**
 - ▶ **Extracurricular Contract**
 - ▶ **Independent Contractor**
 - ▶ **Third Party Employer**
 - ▶ **Alternate Retirement Plan**

Retirees who return to service need to be reported to PSERS. Typically a retiree will let you know they are receiving a PSERS pension when they say they are available to work for the district. If they don't tell you they are a retiree, you may find out by getting an error message inside ESS when trying to enter their contract record to report them. This error message that will tell you to contact your ESC representative because you are trying to enter a contract for someone who is retired.

But sometimes there is an exception that will preclude them from being reported. Above are the six exceptions where it is possible for a PSERS retiree to return to work and still continue to receive their monthly PSERS benefit.

These exceptions include:

- Shortage of Personnel
- Emergency Creating an Increase in Work Load
- Extracurricular Contract
- Independent Contractor
- Third Party Employer
- Alternate Retirement Plan

Emergency Exceptions



➤ 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.

Let's begin with Shortage of Personnel, which tends to be the most common of the exceptions applied to retirees who decide to return to work particularly for substitute teaching.

A 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 for either of these shortages. A vacancy occurs when an existing or prior employee is not actively employed in their position and is not expected to return. This could also occur when a new position is created that has not existed previously.

An absence occurs when an existing employee is not actively employed in his position, but IS expected to return. Absences can be broken down further by short-term, an absence that is expected to extend no longer than a week, compared to a long-term absence where the time period extends longer than a week.

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.

While retirees need to be aware of the factors that may impact their decision to return to service, schools have a responsibility, too.

An adequate and good faith search to find a qualified candidate for the position needs to be conducted even if you must choose a retiree to fill the position until that person can be found. Some of the components for conducting a good faith search include advertising the position quickly and in a public place where others job seekers are likely to see it and posting the position so that you are looking for the skills sets needed but not restricting the posting to the point where only that retiree would be qualified,

Additionally, you are searching for a **QUALIFIED** candidate. You should not hire a PSERS retiree over a non-PSERS retiree because of suitability (you know their work, you like working with them, etc.) Did you know? An employer may request an exceptional case permit from the Pennsylvania Department of Education (PDE) that addresses potential staffing problems due to the lack of a qualified applicant. 22 Pa. Code § 49.32. Under this regulation, a person who does not have all the qualifications for the position, but whom the employer believes can fill the position on an emergency basis, may receive an emergency permit that will remain in place through the end of the school year

(including summer school) which follows the date of issuance.

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.

If the only qualified candidate is a PSERS retiree, the position advertisement must remain open. The search for a non-retiree should continue until a qualified candidate for that position is found. Once your qualified candidate begins, the PSERS retiree must stop working.

Adequate and Good Faith Search

- ✓ 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.

While retirees need to be aware of the factors that may impact their decision to return to service, schools have a responsibility, too.

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Emergency Exceptions continued..

➤ 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.



Another exception is an emergency which increase work load. These are typically very rare, they are not marked by a termination, resignation or the need to train a new replacement which leads to others doing additional work, rather this workload increase must be unexpected, temporary, and beyond the normal responsibilities of any existing position. For example, a school district performed badly on standardized tests in the prior year. To help tutor and prepare students for this year's standardized tests, the school may decide to bring in additional tutors as resources to help prepare students. If there are no non-retirees available for tutoring, this may be a situation where a PSERS retiree can assist with the temporary increase in workload. Once the standardized tests have passed, the position would end and the retiree would no longer be able to continue working for the school.

Another example that may many of you experienced this past year is an increase in workload due to new legislation. Act 5 created new classes with a defined contribution component to the benefit structure. In doing so, it created work that had never existed in business offices previously where an additional person may have been needed to accommodate the payroll testing, work reporting, etc.

School Year Approval Process

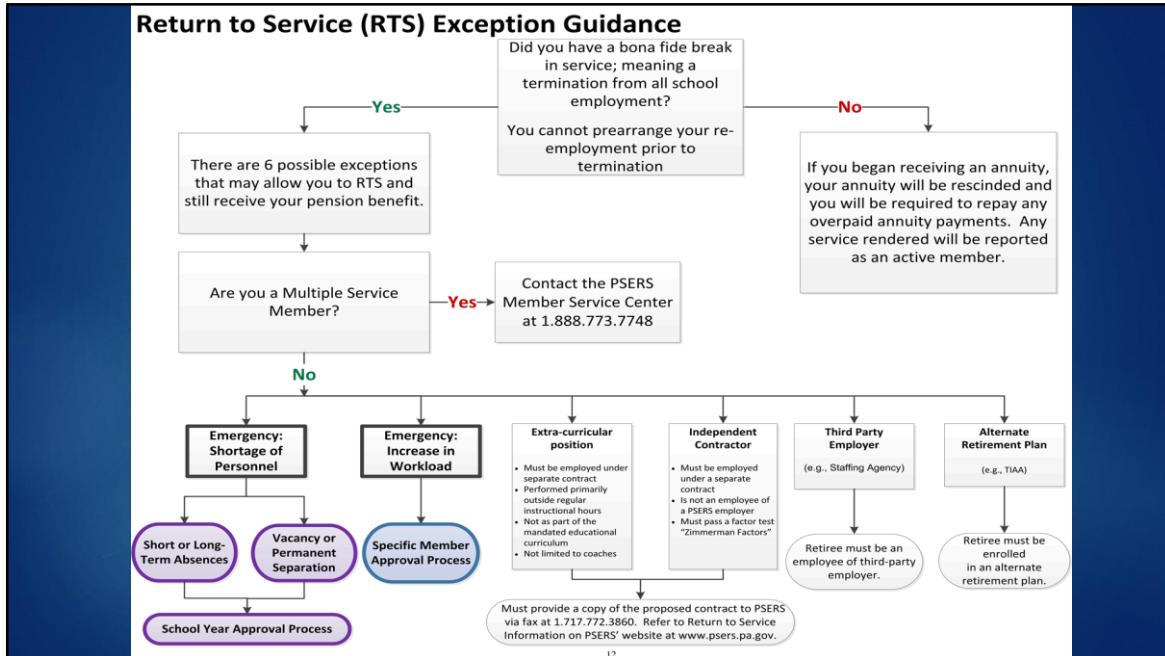
- A school employer may use the School Year Approval Process under the following circumstances:
 - ✓ **Absences, short-term and long-term**
 - ✓ **Vacancy with no advance notice of a permanent separation**
 - ✓ **Vacancy when an employer is prevented from replacing a terminated employee because of a legal challenge**



*For more information on the steps of the process see the
Return to Service Guidelines*

In any given year, your school may experience many “emergency exception” positions. PSERS has established two processes to be used by employers to request an approval of an emergency exception.

To apply for a School Year Approval 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 the year. There is a template available to use for this process and it can be found on the PSERS website under Employer/ Employerpedia. The letter can be faxed to PSERS or scanned and emailed to your Representative.



This slide contains the flow chart also found in the Return to Service Guidelines and can be a useful tool in determining what action should be taken or what process should be used when hiring a retiree.

Basically, just answer the questions starting at the top and depending on the answer to each question will determine what action ultimately needs to be taken by the district.

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.
 - ✓ Any other instances that do not qualify under the School Year Approval Process.

For more information on the steps of the process see the Return to Service Guidelines

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

(Speaker can use #1-5, explaining that these items are needed to justify the explanation within the letter.)

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:

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.

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.
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:
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.

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.

Other Exceptions

➤ **Extracurricular Contract:** Example's would be coaches, bus drivers, school musical directors

- ✓ Retiree must have a written, separate contract with the public school employer.
- ✓ Retiree must perform duties primarily outside regular instructional hours and may not be part of the mandated educational curriculum.

There are other exceptions as well.

Extracurricular contracts are permitted as work a PSERS retiree can perform. For instance, a cafeteria employee can return to work as a game ticket taker. As we discussed earlier, a break in service must occur, meaning that the retiree must formally terminate employment in all positions, then subsequently decide to return to work in an extracurricular capacity. Extracurricular positions are performed primarily outside of regular instructional hours and not as part of the mandated educational curriculum. These positions also need a separate written contract that details the specific duties that are performed. The contract also needs to include a waiver of any potential retirement benefits and a release of the employer and PSERS from any liability related to the waiver. A copy of this contract should be submitted to PSERS for review. (p8)

This next piece of information is very important. If an employee is retiring and is subsequently hired in an extracurricular position, the employer's official decision to hire the retiree, as reflected in the board minutes, cannot be made prior to the retiree's effective date of retirement. You can find more information on this at the bottom of page 2 in the Return to Service Guidelines.

Other Exceptions continued...

➤ **Independent Contractor:**

- ✓ Must be a true independent contractor - if the district is uncertain complete eligibility questionnaire and PSERS will determine status.
- ✓ Must have a separate contract
- ✓ Retiree must have a break in service from the district and cannot fill the same position as an independent contractor.

For someone to be considered an approved Independent Contractor, there are several factors that are considered.

Those factors are:

control of manner of work that is to be done; responsibility for result only; terms of agreement between the parties; the nature of the work or occupation; skill required for performance; whether one is engaged in a distinct occupation or business; which party supplied the tools; whether payment is by the time or by the job; whether work is part of the regular business of the employer; the right to terminate employment at any time; presence at the school employer's site; and whether wages, working conditions, and fringe benefits are comparative to other employees of the school employer.

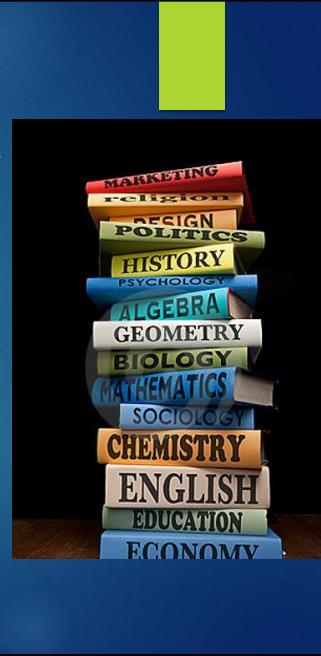
Also, does this individual perform the services to any other entities or just this one district. Was the position they filled as an independent contractor the one they just vacated?

The retiree must experience a bona fide break in service and be able to pass the factor test for the retiree to be covered under the Independent Contractor exception.

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** - Retiree works for another company like a sub service or a bus service.
- **Alternate Retirement Plan** - If the member is working for a charter school or community college with an alternative plan option, that retiree can work and be in the alternate plan without impacting their PSERS Pension.

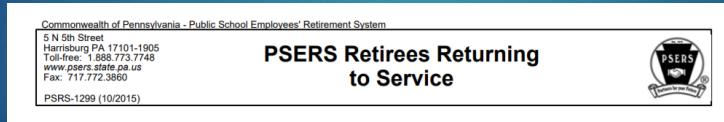


A popular way to return to work for a school without having a negative impact on a retiree's benefit is to work for a third party employer. For instance, a retiree who wishes to substitute teach may do so if they work for a sub service like STS, or they could drive a bus with an outsourced company. The retiree must show that he or she is compensated, controlled, and engaged in work relating to a private, third party entity and not a school employer.

Lastly is the Alternate Retirement Plan exception. A retiree can work for a Pennsylvania charter school without loss of annuity if the retiree is eligible and does elect into an alternate retirement plan or meets one of the other return to service exceptions. There are options for other retirement plans if the retiree returns to work for one of the participating state universities or community colleges also.

What to do if no exceptions apply

- ▶ The member would still like to work for the district
- ▶ The PSERS Retirees Return to Service Form (PSRS-1299) needs to be filled out by the district and faxed to 717-772-3860
- ▶ The form can be found on the PSERS website under Employer/Employer Forms:
<https://www.psers.pa.gov/FPP/Forms/Pages/EmployerForms.aspx>



If a retiree doesn't meet any of the exceptions covered in today's presentation and they would still like to return to work the district needs to fill out the 1299 form as previously mentioned in the 5th slide and fax it to PSERS. Based on the information provided on the form, PSERS staff will create the new contract record for the member for your district and stop their pension. Your ESC Rep will notify you via email when you may begin reporting them on your work reports.

Additional Resources

- ▶ Link to the Template Letter:
<https://www.persers.pa.gov/Employers/Documents/Return%20to%20Service/RTS%20Template%20Letter.pdf>
- ▶ Link to the Flow Chart:
<https://www.persers.pa.gov/Employers/Documents/Return%20to%20Service/RTS%20Chart%20Final.pdf>
- ▶ Link to the Return to Service Guidelines:
<https://www.persers.pa.gov/FPP/Publications/Retired/Pages/ReturntoService.aspx>

This slide includes useful links to resources and information that can help you determine what action is needed if you have a retiree working for your district. As mentioned previously the template letter can help you when applying for the school year approval process if you know you'll need emergency subs and may have to use retiree's.

The link to the flow chart is the one shown previously in this presentation. And finally, the return to service guidelines covers all of the information we presented today in an easy to read format that is designed for both the districts and your Members. If members have questions about returning to service, you may also direct them to that publication.

Thank you for Attending!

- ▶ Contact ESC with questions at 1.866.353.1844
- ▶ Email your Rep with questions at the following email
 - ▶ Rachael Riddle: rariddle@pa.gov
 - ▶ Scott Rainey: scorainey@pa.gov
 - ▶ Lynn Wadley: lwadley@pa.gov
 - ▶ Deanna Brown: deabrown@pa.gov
 - ▶ Michelle Doman: midoman@pa.gov
 - ▶ Katie Pajtis: kpajtis@pa.gov

Thank you for attending today's presentation on Return to Service Guidelines! If you have any questions you can call our toll free number shown on the slide, or email your representative directly.