

**EDUCATOR POSTRETIREMENT REEMPLOYMENT**

**REVISIONS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: LaVar Christensen**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the Postretirement Reemployment Restrictions Act by amending provisions relating to postretirement reemployment for educators.

**Highlighted Provisions:**

This bill:

- ▶ provides definitions;
- ▶ allows certain educator retirees to be reemployed with a participating employer after a certain period from the retiree's retirement date if the retiree:
  - does not receive certain employer provided retirement benefits for the reemployment; and
  - is reemployed by a different participating employer than the participating employer that employed the retiree at the time of retirement except in limited circumstances;
- ▶ requires a participating employer to pay certain amounts for a reemployed retiree in certain circumstances;
- ▶ requires the Utah State Retirement Office to report certain information to an interim committee of the Legislature;
- ▶ specifies penalties for violating the reemployment provisions; and
- ▶ makes technical changes.



28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 This bill provides a special effective date.

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **49-11-1202**, as enacted by Laws of Utah 2016, Chapter 310 and last amended by  
35 Coordination Clause, Laws of Utah 2016, Chapter 310

36 **49-11-1205**, as last amended by Laws of Utah 2017, Chapter 141

37 **49-11-1206**, as enacted by Laws of Utah 2016, Chapter 310 and last amended by  
38 Coordination Clause, Laws of Utah 2016, Chapter 310

39 **49-11-1207**, as last amended by Laws of Utah 2017, Chapter 141



41 *Be it enacted by the Legislature of the state of Utah:*

42 Section 1. Section **49-11-1202** is amended to read:

43 **49-11-1202. Definitions.**

44 As used in this part:

45 (1) (a) "Affiliated emergency services worker" means a person who:

46 (i) is employed by a participating employer;

47 (ii) performs emergency services for another participating employer that is a different  
48 agency;

49 (iii) is trained in techniques and skills required for the emergency service;

50 (iv) continues to receive regular training required for the service;

51 (v) is on the rolls as a trained affiliated emergency services worker of the participating  
52 employer; and

53 (vi) provides ongoing service for a participating employer, which service may include  
54 service as a volunteer firefighter, reserve law enforcement officer, search and rescue worker,  
55 emergency medical technician, ambulance worker, park ranger, or public utilities worker.

56 (b) "Affiliated emergency services worker" does not include a person who performs  
57 work or service but does not meet the requirements of Subsection (1)(a).

58 (2) "Amortization rate" means the amortization rate, as defined in Section **49-11-102**,

59 to be applied to the system that would have covered the retiree if the retiree's reemployed  
60 position were deemed to be an eligible, full-time position within that system.

61 (3) (a) "Reemployed," "reemploy," or "reemployment" means work or service  
62 performed for a participating employer after retirement, in exchange for compensation.

63 (b) Reemployment includes work or service performed on a contract for a participating  
64 employer if the retiree is:

65 (i) listed as the contractor; or

66 (ii) an owner, partner, or principal of the contractor.

67 (4) "Retiree":

68 (a) means a person who:

69 (i) retired from a participating employer; and

70 (ii) begins reemployment on or after July 1, 2010, with a participating employer; and

71 (b) does not include a person:

72 (i) (A) who was reemployed by a participating employer before July 1, 2010; and

73 (B) whose participating employer that reemployed the person under Subsection

74 (4)(b)(i)(A) was dissolved, consolidated, merged, or structurally changed in accordance with

75 Section 49-11-621 on or after July 1, 2010; or

76 (ii) who is working under a phased retirement agreement in accordance with Title 49,  
77 Chapter 11, Part 13, Phased Retirement.

78 (5) "Retiree surcharge" means the board certified percentage of a reemployed retiree's  
79 salary:

80 (a) paid on behalf of a reemployed retiree to the office;

81 (b) that is required to amortize the actuarial loss that would occur due to eligible  
82 retirees being authorized to:

83 (i) commence their benefits at an earlier age; and

84 (ii) return to the workforce with a participating employer; and

85 (c) set in accordance with policies established by the board upon the advice of the  
86 actuary.

87 Section 2. Section 49-11-1205 is amended to read:

88 **49-11-1205. Postretirement reemployment restriction exceptions.**

89 (1) (a) The office may not cancel the retirement allowance of a retiree who is

90 reemployed with a participating employer within one year of the retiree's retirement date if:

91 (i) the retiree is not reemployed by a participating employer for a period of at least 60  
92 days from the retiree's retirement date;

93 (ii) upon reemployment after the break in service under Subsection (1)(a)(i), the retiree  
94 does not receive any employer paid benefits, including:

95 (A) retirement service credit or retirement-related contributions;

96 (B) medical benefits;

97 (C) dental benefits;

98 (D) other insurance benefits except for workers' compensation as provided under Title  
99 34A, Chapter 2, Workers' Compensation Act, Title 34A, Chapter 3, Utah Occupational Disease  
100 Act, and withholdings required by federal or state law for social security, Medicare, and  
101 unemployment insurance; or

102 (E) paid time off, including sick, annual, or other type of leave; and

103 (iii) (A) the retiree does not earn in any calendar year of reemployment an amount in  
104 excess of the lesser of \$15,000 or one-half of the retiree's final average salary upon which the  
105 retiree's retirement allowance is based; or

106 (B) the retiree is reemployed as a judge as defined under Section [78A-11-102](#).

107 (b) Beginning January 1, 2013, the board shall adjust the amounts under Subsection  
108 (1)(a)(iii) by the annual change in the Consumer Price Index during the previous calendar year  
109 as measured by a United States Bureau of Labor Statistics Consumer Price Index average as  
110 determined by the board.

111 (2) A retiree shall be considered as having completed the one-year separation from  
112 employment with a participating employer required under Section [49-11-1204](#), if the retiree:

113 (a) before retiring:

114 (i) was employed with a participating employer as a public safety service employee as  
115 defined in Section [49-14-102](#), [49-15-102](#), or [49-23-102](#);

116 (ii) and during the employment under Subsection (2)(a)(i), suffered a physical injury  
117 resulting from external force or violence while performing the duties of the employment, and  
118 for which injury the retiree would have been approved for total disability in accordance with  
119 the provisions under Chapter 21, Public Employees' Long-Term Disability Act, if years of  
120 service are not considered;

121 (iii) had less than 30 years of service credit but had sufficient service credit to retire,  
122 with an unreduced allowance making the public safety service employee ineligible for  
123 long-term disability payments under Chapter 21, Public Employees' Long-Term Disability Act,  
124 or a substantially similar long-term disability program; and

125 (iv) does not receive any long-term disability benefits from any participating employer;  
126 and

127 (b) is reemployed by a different participating employer.

128 (3) (a) The office may not cancel the retirement allowance of a retiree who is employed  
129 as an affiliated emergency services worker within one year of the retiree's retirement date if the  
130 affiliated emergency services worker does not receive any compensation, except for:

131 (i) a nominal fee, stipend, discount, tax credit, voucher, or other fixed sum of money or  
132 cash equivalent payment not tied to productivity and paid periodically for services;

133 (ii) a length-of-service award;

134 (iii) insurance policy premiums paid by the participating employer in the event of death  
135 of an affiliated emergency services worker or a line-of-duty accidental death or disability; or

136 (iv) reimbursement of expenses incurred in the performance of duties.

137 (b) For purposes of Subsections (3)(a)(i) and (ii), the total amount of any discounts, tax  
138 credits, vouchers, and payments to an affiliated emergency services worker may not exceed  
139 \$500 per month.

140 (c) Beginning January 1, 2016, the board shall adjust the amount under Subsection  
141 (3)(b) by the annual change in the Consumer Price Index during the previous calendar year as  
142 measured by a United States Bureau of Labor Statistics Consumer Price Index average as  
143 determined by the board.

144 (4) (a) If and to the extent a public education participating employer finds it necessary,  
145 beneficial, or in the best interest of the state's system of public education or finds that  
146 reemploying a retiree would be beneficial in addressing an educator employment shortage, the  
147 office may not cancel the retirement allowance of a retiree who is reemployed with a  
148 participating employer within one year of the retiree's retirement date if:

149 (i) the retiree:

150 (A) is not reemployed by a participating employer for a period of at least 60 days from  
151 the retiree's retirement date;

152 (B) except as provided in Subsection (8), is reemployed by a participating employer  
153 that is a different participating employer than the participating employer the reemployed retiree  
154 was employed by at the time of retirement;

155 (C) is reemployed by a public education participating employer in a position as an  
156 educator as defined under Section 53E-6-102; and

157 (D) does not receive any employer paid retirement service credit or retirement related  
158 contributions from the participating employer; and

159 (ii) the participating employer that reemploys the retiree pays to the office on behalf of  
160 the retiree:

161 (A) the amortization rate; and

162 (B) the retiree surcharge.

163 (b) Any contribution paid to the office under Subsection (4)(a)(ii) shall be applied to  
164 the system that would have covered the retiree if the retiree's reemployed position were  
165 considered to be an eligible, full-time position within that system.

166 (c) The office shall, on or before November 30, 2024, study, evaluate, and report on the  
167 actuarial costs and effectiveness of implementing the educator retiree reemployment exception  
168 authorized under this Subsection (4) to the Retirement and Independent Entities Interim  
169 Committee of the Legislature.

170 (5) (a) (i) A retiree receiving a retirement allowance may be reemployed under the  
171 provisions of Subsections (1), (3), and (4) in only one position for only one participating  
172 employer at a time following the retiree's retirement date.

173 (ii) The participating employer shall notify the office which postretirement  
174 reemployment exception under this section will govern the retiree's reemployment.

175 (b) A retiree reemployed under the provisions of Subsection (1), (3), or (4) may change  
176 reemployment to a new position under the provisions of Subsection (1), (3), or (4) only if:

177 (i) the retiree ceases actual work and is terminated from the current reemployed  
178 position;

179 (ii) except as provided in Subsection (8), the retiree begins the subsequent  
180 reemployment with a participating employer that is a different participating employer than:

181 (A) the participating employer for the retiree's current reemployment; and

182 (B) the participating employer that employed the retiree at the retiree's original time of

183 retirement; and

184 (iii) the participating employer or retiree notifies the office of the change in  
185 reemployment and provides evidence to the office of the termination and change.

186 ~~[(4)]~~ (6) (a) If a retiree is reemployed under the provisions of Subsection (1) ~~[or]~~<sub>2</sub> (3),  
187 or (4), the termination date of the reemployment, as confirmed in writing by the participating  
188 employer, is considered the retiree's retirement date for the purpose of calculating the  
189 separation requirement under Section 49-11-1204.

190 (b) If a retiree changes reemployment to another position under the provisions of  
191 Subsection (1), (3), or (4), the final termination date of all reemployment, as confirmed in  
192 writing by the last participating employer, is considered the retiree's retirement date for the  
193 purpose of calculating the separation requirement under Subsection 49-11-505(3)(a).

194 ~~[(b)]~~ (7) The office shall cancel the retirement allowance of a retiree for the remainder  
195 of the calendar year if the reemployment with a participating employer exceeds the limitation  
196 under Subsection (1)(a)(iii) or (3)(b).

197 (8) Notwithstanding Subsections (4)(a)(i)(B) and (5)(b)(ii), a reemployed retiree that  
198 was employed by:

199 (a) the state at the time of retirement may be reemployed by the state under Subsection  
200 (4) or (5) if the reemployment is with a different agency or office; or

201 (b) a participating employer located within a county of the fourth, fifth, or sixth class,  
202 as classified under Section 17-50-501, may be reemployed by that participating employer under  
203 Subsection (4) or (5) if and to the extent that the public education participating employer finds  
204 it necessary, beneficial, or in the best interest of the state's system of public education.

205 Section 3. Section **49-11-1206** is amended to read:

206 **49-11-1206. Notice of postretirement reemployment.**

207 (1) A participating employer shall immediately notify the office:

208 (a) if the participating employer reemploys a retiree;

209 (b) whether the reemployment is subject to Section 49-11-1204 or Subsection  
210 49-11-1205(1), (2), ~~[or]~~ (3), (4), or (5); and

211 (c) of any election by the retiree under Section 49-11-1204.

212 (2) A participating employer shall certify to the office whether the position of an  
213 elected official is or is not full time.

214 (3) A retiree subject to this part shall report to the office the status of the reemployment  
215 under Section [49-11-1204](#) or [49-11-1205](#).

216 Section 4. Section **49-11-1207** is amended to read:

217 **49-11-1207. Postretirement reemployment -- Violations -- Penalties.**

218 (1) (a) If the office receives notice or learns of the reemployment of a retiree in  
219 violation of Section [49-11-1204](#) or [49-11-1205](#), the office shall:

220 (i) immediately cancel the retiree's retirement allowance;

221 (ii) keep the retiree's retirement allowance cancelled for the remainder of the calendar  
222 year if the reemployment with a participating employer exceeded the limitation under  
223 Subsection [49-11-1205](#)(1)(a)(iii)(A) or (3)(b); and

224 (iii) recover any overpayment resulting from the violation in accordance with the  
225 provisions of Section [49-11-607](#) before the allowance may be reinstated.

226 (b) Reinstatement of an allowance following cancellation for a violation under this  
227 section is subject to the procedures and provisions under Section [49-11-1204](#).

228 (2) If a retiree or participating employer failed to report reemployment in violation of  
229 Section [49-11-1206](#), the retiree, participating employer, or both, who are found to be  
230 responsible for the failure to report, are liable to the office for the amount of any overpayment  
231 resulting from the violation.

232 (3) (a) A participating employer is liable to the office for a payment or failure to make  
233 a payment in violation of this part.

234 (b) In addition to other penalties under this section, if the reemployment of a retiree is  
235 in violation of Subsection [49-11-1205](#)(4), the participating employer shall pay the office any  
236 delinquent retiree surcharge and amortization rate contributions, plus interest, under Section  
237 [49-11-503](#).

238 (4) If a participating employer fails to notify the office in accordance with Section  
239 [49-11-1206](#), the participating employer is immediately subject to a compliance audit by the  
240 office.

241 Section 5. **Effective date.**

242 This bill takes effect on January 1, 2019.



**Legislative Review Note**  
**Office of Legislative Research and General Counsel**