



HHS Bulletin B-09-003 **H.B. 2559, 81st Legislature, Regular Session, 2009**

This bulletin responds to several inquiries from employees who have retired or are considering retirement about the scope and meaning of certain provisions of the recently-enacted H.B. 2559. This bulletin is intended to answer employee questions and explain how the law will affect retirees who seek to return to state employment.

Return-to-Work Retirees and the 90-Day Waiting Period

The 81st Legislature, Regular Session, 2009, enacted H.B. 2559, which changes the terms under which a retiring state employee may return to state employment. Before the bill, a retiring employee could return to state employment one full calendar month after the date of the employee's retirement.

Section 5 of H.B. 2559 adds Section 812.205 to the Government Code and provides that a member of the Employees Retirement System who retires from the employee class **on or after May 31, 2009**, may not return to state employment in the employee class before the **90th day after the date of the retiree's original retirement**. In other words, under the new section, a return-to-work retiree cannot return to state employment after one month; the employee is required to wait 90 days.

H.B. 2559 itself did not take effect May 31, 2009; it takes effect on September 1, 2009. Many employees have asked whether and how this affects employees who retire on or after May 31, 2009, and before September 1, 2009. Many employees have contemplated retirement but wish to return to state employment – or at least apply for state employment – before September 1, 2009.

Some state employees who have inquired at ERS have been told that Section 5 of H.B. 2559 is currently in effect. Others have received the following written information from the Employee Retirement System (ERS) concerning Section 5 of H.B. 2559:

Q: How does H.B. 2559 affect me if I retire from the state between May 31 and August 31, 2009, but don't know if I want to return to work?

A: H.B. 2559 does not impact any presently retiring ERS members unless they want to come back to work for the state of Texas following retirement.

Section 5 of H.B. 2559 prohibits employees who retire from the state on or after May 31, 2009, from returning to work for the state for 90 days following retirement.

If you retire on or after May 31 and later determine that you want to come back and work for the state, you should consult with the



Legal Counsel for the agency you are interviewing with to confirm how the particular agency interprets this aspect of H.B. 2559.

It appears from these communications that ERS believes Section 5 became immediately effective when it was signed into law by the Governor on June 19, 2009. It also appears that ERS has determined that each state agency must interpret Section 5 as it considers whether to hire a recently retired state employee. ERS also appears to be encouraging recently retired state employees to consult with the state agency or agencies that they wish to work for.

HHSC Interpretation of Section 5

In light of the ERS advice, HHSC offers the following interpretation of Section 5 of H.B. 2559 as it relates to state employees who retire between May 31 and August 31, 2009, and who want to return to state employment. NOTE: HHSC does not have statutory authority to interpret the terms of the retirement statutes. Consequently, HHSC cannot guarantee that ERS will take action consistent with HHSC's interpretation.

- ***Section 5 of H.B. 2559 affects only state employees who retire on or after May 31, 2009.***
- ***Section 5 does not affect a retiree who returns to state employment before September 1, 2009, provided the retiree is off the state payroll at least one full calendar month before returning to state employment.***
- ***An employee who retires from state employment between May 31 and August 31, 2009, and who returns to state employment on or after September 1, 2009, is subject to the 90-day waiting period of Section 5.***
- ***Because other state laws allow a state employee to retire only on the last day of a month and require a retired state employee to remain off the state payroll for a full calendar month to avoid cancellation of retirement, any employee who retires after June 30, 2009, is subject to the 90-day waiting period of H.B. 2559 (see explanation below).***

The impact of Section 5 might be better understood as follows:

If the employee retired on...	then the earliest date the person may return to state employment without jeopardizing his or her retirement is...
May 31, 2009	July 1, 2009
June 30, 2009	August 1, 2009
July 31, 2009	November 1, 2009
August 31, 2009	December 1, 2009
September 30, 2009	January 1, 2010



Other Conditions of Retirement

Section 814.003 of the Government Code permits an employee to retire only on the last day of a month. An ERS administrative rule (34 TAC Section 73.7), requires ERS to cancel the retirement of a person who returns to state employment “during the calendar month following retirement.”

This means that if an employee retires on July 31, 2009, and wishes to continue to draw his or her retirement benefits after returning to state employment, then the person may not return to state employment until after the end of the next calendar month or, in other words, until September 1, 2009. But because Section 5 takes effect September 1, this means that *unless an employee retires from state employment by June 30, 2009, and returns to state employment before September 1, 2009*, the return-to-work employee must wait 90 days before returning to state employment.

Commitment to Rehire a Retiree

The Internal Revenue Service requires a retirement to be bona fide and constitute a complete termination of employment. As a result, ERS Rule 73.7 provides that, *regardless of when a retiree returns to work, the retiree cannot have a commitment from the state agency before to or at the time of the retiree’s retirement that the retiree will be rehired.*

H.B. 2559 does not change this requirement. The ERS requires a retiring member to disclose to the retirement system any commitment by the agency to rehire the person, and the retirement acceptance form completed by all applicants for retirement includes language certifying this fact. If a retiring employee has an existing commitment at the time of retirement to be rehired, the ERS will cancel the employee’s retirement.

Agency Payment of a Surcharge to Employ a Return-to-Work Retiree

Currently, a return-to-work retiree is not a contributing member of the retirement system. Consequently, neither the return-to-work retiree nor the state agency hiring that retiree pays contributions into the retirement system. One section of H.B. 2559 changes that.

Section 6 of H.B. 2559 requires state agencies that employ return-to-work retirees to pay into the ERS an amount equal to the amount of the state contribution that would have been paid to the retirement system as if the person were an active employee who is included in the employee class of membership. However, state agencies are required to pay the surcharge only in connection with rehired retirees who retire from state employment on or after September 1, 2009.

One Final Note

The state agency contribution to the retirement system for active employees is paid through an appropriation to the ERS. After September 1, 2009, for return-to-work retirees, state agency contributions will be paid from money appropriated to that state agency by the Legislature.



Inquiries

Inquiries regarding the content of the bulletin may be directed to the General Counsel for your agency.

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