

Q&A: Employer Changes to Employee Contribution Type for the IAP (ORS 238A.330, ORS 238A.335, and OAR 459-009-0200)

Q1: How are contributions made to the IAP employee account?

A: PERS collects three types of IAP account contributions: (1) Member Paid After-Tax (MPAT), Member Paid Pre-Tax (MPPT), and Employer Paid Pre-Tax or (EPPT). These contributions are remitted by participating PERS employers who may withhold the amount from their employees' pay before or after taxes (MPPT or MPAT), or may pay the contribution on behalf of their employees (EPPT).

Q2. Can an employer change the type of its employee contributions?

A: Yes. For example, if an employer is withholding and remitting contributions on an MPAT or MPPT basis, the employer may change the contribution type to EPPT by agreeing to assume and pay the employee contribution on behalf of its employees. Alternatively, the employer may change the contribution type to MPPT by agreeing to "pick-up" the employee contributions withheld.

Q3: How does an employer change its contribution type?

A: An employer may change its contribution type by submitting to PERS by a certified copy of the employer's policy established by statute, charter, ordinance, administrative rule, executive order, collective bargaining agreement, or other written employment policy or agreement, that meets the requirements of OAR 459-009-0200 as detailed in Q4 and Q5.

Q4: How does an employer change contribution type from MPAT or MPPT to EPPT?

A: Employers are required to provide PERS with a certified copy of the employer's employment policy(ies) or agreement(s) which must specify that:

1. The required PERS employee contribution is deemed to be "picked up" for purposes of IRC Section 414(h)(2) and is assumed and paid for purposes of ORS 238A.335(2)(b);
2. The employees do not have the option of receiving the assumed amount directly;
3. Employee compensation may not be reduced and the employer shall provide the additional amounts necessary to make the employee contributions; and
4. The employer's employment policy(ies) or agreement(s) is not retroactive in its application.

Q5: How does an employer notify PERS of a change in contribution type from MPAT or EPPT to MPPT?

A: Employers are required to provide PERS with a certified copy of the employer's employment policy(ies) or agreement(s) which must specify that:

1. The employees do not have the option of receiving the picked-up amount directly;
2. Employee compensation shall be reduced by the amount necessary to make the employee contributions; and
3. The employer's employment policy(ies) or agreement(s) is not retroactive in its application.

Q6. May a participating employer agree to "assume and pay" or "pick-up" less than the full amount of the employee contribution?

A: No. The employer's employment policy(ies) or agreement(s) must be to assume and pay or pick-up the full 6% member contribution. This is mandated by ORS 238A.330 and ORS 238A.335.

Q7: May a participating employer's policy(ies) or agreement(s) apply to only some of its employees?

A: Yes. The employer's policy(ies) or agreement(s) may apply to all its employees or some of its employees. If it applies only to some employees, it must apply uniformly to employees of the public employer who are similarly situated, such as, but not limited to:

- (A) The chief executive officer or administrative head of a public employer.
- (B) Management personnel, as defined by the public employer, not otherwise covered by a collective bargaining agreement.
- (C) Confidential personnel, as defined by the public employer, not otherwise covered by a collective bargaining agreement.
- (D) Administrative personnel, as defined by the public employer, not otherwise covered by a collective bargaining agreement.
- (E) Personnel covered by a collective bargaining agreement.
- (F) Other personnel, whether full time, part time, temporary, or as a substitute, who are not covered by a collective bargaining agreement.
- (G) Personnel hired on or after a date established or agreed upon by the employer.

Q8: When does the employer's written employment policy or agreement(s) to change the contribution type become effective?

A: The employer's written employment policy(ies) or agreement(s) to change employee contribution type shall be submitted to PERS for review and approval, and shall become effective on the date the valid notification is received by PERS. This means that **contribution-type elections cannot be applied retroactively, and the contribution type cannot be changed by an employer until after an employer submits the required notification to PERS.**