



Oregon

Kate Brown, Governor

Public Employees Retirement System

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November 20, 2015

TO: Members of the PERS Board

FROM: Stephanie Vaughn, Manager, Policy Analysis & Compliance Section

SUBJECT: Adoption of Rules to Implement 2015 Legislation:
459-005-0001, *Definitions, Generally*
459-005-0310, *Date of Participation and Transfer of Employee Funds to the Optional Retirement Plan*
459-005-0350, *Membership Status of Persons in Concurrent Employment Eligible to Participate in an Optional or Alternative Retirement Plan*
459-011-0500, *Accumulated Unused Sick Leave*
459-080-0150, *Employee Contributions into the IAP Account*

OVERVIEW

- Action: Adopt modifications to the rules affected by 2015 legislation.
- Reason: Implement 2015 legislation impacting PERS.
- Policy Issue: No policy issues were identified.

BACKGROUND

The 2015 Oregon Legislative Assembly passed three bills which require rulemaking:

Senate Bill 80 (Chapter 767, Oregon Laws 2015), became effective July 27, 2015. The bill requires amending the rules relating to the Optional Retirement Plan (ORP). Section 2 of SB 80 abolishes the Oregon University System as of July 1, 2015. Each of the seven public universities now has an independent governing board. The modifications to the rules reflect this change.

Senate Bill 454 (Chapter 537, Oregon Laws 2015), which becomes effective on January 1, 2016, requires Oregon employers to provide a minimum rate of accrual of “sick time” to employees (up to 40 hours per year), whether paid or unpaid. The bill specifically amends sections within ORS Chapters 653 and 659 but makes no reference to ORS Chapter 238. ORS 238.350 allows employers to elect to participate in the unused sick leave program. Under that program, the rate at which the participating employer’s covered group of employees may accrue sick leave for the purpose of the unused sick leave program is limited to the lowest rate in effect for the covered group. Staff received many questions from employers regarding the effect of SB 454 on the unused sick leave program. Staff’s analysis of the bill concluded that it is highly unlikely that the employees who would benefit from SB 454 would be a part of a participating employer’s group of employees covered by the unused sick leave program.

In addition, the language of SB 454 specifies that this law is not to be construed to “preempt, limit or otherwise impact any employer policy . . . that provides for greater use of paid or unpaid sick time.” This language indicates that the legislature specifically intended not to interfere with

any similar, existing policy or program. Therefore, construing “sick time” in SB 454 as limiting the “sick leave” used for purposes of ORS 238.350 could have a limiting effect with respect to the number of hours accrued under the PERS program, contrary to the legislative intent.

For these reasons, PERS staff concluded that SB 454 does not impact the unused paid sick leave accrual available to Tier One and Tier Two members under ORS 238.350. The proposed amendments to OAR 459-011-0500 confirm this understanding by specifically stating that “sick time” (the term used by SB 454) does not constitute “sick leave” for PERS purposes.

House Bill 3495 (Chapter 326, Oregon Laws 2015), amending ORS 238A.100 and 238A.330, becomes effective on January 1, 2016. This bill amends the “contribution start date” for new OPSRP and IAP members, such that employer contributions to fund the OPSRP pension and employee contributions to the IAP will be due for wages attributable to services performed by the employee during the first full pay period following the new member’s six-month waiting time. The modifications to OAR 459-080-0150 implement this change for new members as of January 1, 2016.

SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

No modifications were made to the rules.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held October 27, 2015, at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended November 2, 2015, at 5:00 p.m. No public comment was received.

LEGAL REVIEW

The attached rules were submitted to the Department of Justice for legal review and any comments or changes are incorporated in the rules as presented for adoption.

IMPACT

Mandatory: Yes, changes are necessary to bring the rules in line with changes or additions to statute made by the 2015 legislature.

Impact: Stakeholders will benefit from the rules’ clarification and implementation of the statutory provisions.

Cost: There is no cost specific to the rule changes.

RULEMAKING TIMELINE

September 15, 2015	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
September 25, 2015	PERS Board notified that staff began the rulemaking process.
October 1, 2015	<i>Oregon Bulletin</i> published the Notice. Notice sent to employers, legislators, and interested parties. Public comment period began.
October 27, 2015	Rulemaking hearing held at 2:00 p.m. at PERS in Tigard.

November 2, 2015

Public comment period ended at 5:00 p.m.

November 20, 2015

Board may adopt the permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to the 2015 Legislation rules, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: Implement 2015 legislation impacting PERS.

If the Board does not adopt: Staff would return with rule modifications that more closely fit the Board’s policy direction if the Board determines that a change is warranted.

B.4. Attachment 1 – OAR 459-005-0001, *Definitions, Generally*

B.4. Attachment 2 – OAR 459-005-0310, *Date of Participation and Transfer of Employee Funds to the Optional Retirement Plan*

B.4. Attachment 3 – OAR 459-005-0350, *Membership Status of Persons in Concurrent Employment Eligible to Participate in an Optional or Alternative Retirement Plan*

B.4. Attachment 4 – OAR 459-011-0500, *Accumulated Unused Sick Leave*

B.4. Attachment 5 – OAR 459-080-0150, *Employee Contributions into the IAP Account*