

SF 2957; HF 3136: Continuing pension payments for health care workers who return to work or continue working past retirement

Prepared by: Susan Lenczewski, Executive Director

Date: February 7, 2022

Introduction

- Affected Plans:** Public Employees Retirement Association (PERA) General Plan
Minnesota State Retirement System (MSRS) General Plan
Any other pension plan administered by PERA or MSRS that covers "health care workers" as defined in the bill
- Applicable Laws:** Session law enacted in 2020: Laws 2020, Chapter 79, Article 5, Section 1
- Brief Description:** The bill amends a session law that was enacted in 2020 to extend the time during which health care workers who are receiving a retirement annuity from a PERA or MSRS pension plan may continue to receive the annuity, without reduction or suspension, upon reemployment or continued employment after retirement or under a phased retirement agreement. The bill also corrects language to ensure that health care workers who did not meet the technical requirements of the session law will not be required to repay their annuity.
- Attachment:** LCPR Staff memo, dated April 13, 2020, summarizing the 2020 bill (LCPR 20-030)

Background

The attached LCPR Staff memo, dated April 13, 2020, provides the background information on the 2020 session law that is being amended by SF 2957/HF 3136. In brief, the 2020 session law was enacted in 2020, early in the pandemic, to encourage retired health care workers to come back to work or continue working without regard to limits on earnings or hours or percentage of time worked. The LCPR Staff memo explains current law that impacts retirees who return to employment and employees who reach retirement age but continue employment under a phased retirement agreement or in a postretirement option position. In either case, the annuity recipient risks a reduction or suspension of the annuity if earnings limits or limits on hours or percentage of time worked are exceeded.

The session law expired on December 31, 2020, the last day of the year in which the peacetime emergency, declared by the Governor and renewed several times, ended.

The need for health care workers experienced by public employers, such as Hennepin County Medical Center (HCMC) and other health care facilities around the state, during 2020 and 2021 continues,

leading these employers to seek to reactivate the 2020 session law. In addition, language in the session law had the unintended consequence of omitting health care workers who entered into a phased retirement agreement *after* the effective date of the session law. Two of these health care workers were asked to repay annuity payments when it was discovered that they had exceeded the limits on hours and percentage of time worked.

SF 2957/HF 3136 extends the session law for another two years and makes several changes to the language to correct errors in the 2020 session law and clarify confusing language. The bill also replaces language that is no longer relevant, relating to “peacetime emergency” and “reemployment year,” and adds language to ensure that all health care workers returning or continuing to work may do so without risking reduction or suspension of their retirement annuity.

Section by Section Summary

SF 2957/HF 3136 has only one section, so the following describes the bill by subdivision.

Subdivision 1

Subdivision 1 deletes the definition of “peacetime emergency” and “reemployment year” which are no longer relevant, and adds new definitions for “phased retirement agreement,” “postretirement option position,” and “retiree.”

Subdivision 1a

Subdivision 1a is a new subdivision that sets forth the overall intent of the session law, to clearly state that any health care worker employed on or after March 13, 2020, the effective date of the original session law, is entitled to the relief provided by the session law and may continue employment without risking reduction or suspension of the worker’s annuity.

Subdivision 2

Subdivision 2 deletes confusing language in paragraph (a) about the 30-day requirement that is applied by the plans to ensure a bona fide separation from service and adds a more general statement that is intended to allow the plans to apply existing conditions on whether and when a member may begin to receive a retirement annuity.

Language is inserted into paragraph (b) to ensure that no limits that would otherwise apply to a retiree who returns to employment will apply to a returning health care worker.

Subdivision 3

Subdivision 3 corrects the language that applied the relief from limits only to health care workers who had entered into a phased retirement agreement or were employed in a postretirement option position *before* the effective date of the session law. Instead of “before,” the new language is “before, on, or

after the effective date of this section,” so any health care worker employed under a phased retirement agreement or in a postretirement option position will benefit under the session law.

Paragraph (c) is amended to state that a phased retirement agreement or the postretirement option position will be extended only if elected by the health care worker with the consent of the public employer.

Subdivision 4

Subdivision 4 is amended to delete the reference to the expiration of the peacetime emergency and insert a specific expiration date for the session law of December 31, 2023.

Effective date

The effective date is amended to apply retroactively to the effective date of the original 2020 session law, March 13, 2020.

Amendment

We understand that the Senate author intends to offer an amendment, numbered A22-0298, at the Commission meeting on February 8. The amendment makes the following changes:

At line 1.14: The definition of “health care worker” in subdivision 1 is amended to clarify that the intended beneficiary of the session law is “any person who provides operational support to a direct patient care environment.”

At line 4.13: The expiration of the session law in subdivision 4 is shortened by two years to December 31, 2023. This required the reference to “January 1, 2026” in line 3.28 to be changed to the “expiration date in subdivision 4.”

At line 4.14: The retroactive effective date of May 13, 2020, is deleted and the effective date of “the day following final enactment” is inserted. This change required replacing “the effective date of this section” in lines 3.15 and 3.17 with “May 13, 2020”.

Attachment: April 13, 2020 Staff Memo

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Attachment

LCPR 20-030: Continuing pension payments for retirees who return to work during a peacetime emergency, including for COVID-19

Prepared by: Susan Lenczewski, Executive Director

Date: April 13, 2020

Introduction

- Affected Plans:** Public Employees Retirement Association (PERA) General Plan, Minnesota State Retirement System (MSRS) General Plan, and any other pension plan administered by PERA and MSRS that covers "health care workers" as defined in the bill.
- Applicable Laws:** Minnesota Statutes, Sections 53.371; 43A.346; 352.115, Subdivision 10; and 353.37
- Brief Description:** The bill permits retirees who are already employed or will become employed as health care workers during a peacetime emergency, such as the current one due to Covid-19, to work as many hours as needed without suspension or reduction of the retiree's pension payments. The bill modifies current law so that, whether a retiree returns to employment under a phased retirement arrangement or is hired without such an arrangement, the limitations under Minnesota law on the number of hours the retiree may work if the retiree wants to continue receiving pension payments will not apply.

Background

Hennepin County Medical Center and other health care facilities around the state that are public employers may need to increase staff in order to respond to the current peacetime emergency due to the COVID-19 pandemic. Retirees could help to fill this need but are less likely to do so if reemployment will result in the suspension or cessation of their pension payments.

Some retirees have returned to employment under retiree reemployment programs available under Minnesota law. These programs allow retirees to return to employment and continue to receive pension payments, as long as they work less than a full-time schedule. If the retiree exceeds annual limits on hours and percentage of time worked, the retiree's pension payments are suspended. Retirees who have returned to employment as health care workers may be willing to work longer hours due to the peacetime emergency, but are less likely to do so if working more hours will result in the suspension of their pension payments, as required under current law.

The bill addresses both situations by allowing retirees to continue receiving pension payments and:

- if the retiree is not currently employed by a public employer, return to employment and work as many hours as needed by the employer, without regard to the earnings limitations that would otherwise apply under applicable law; or
- if the retiree is currently employed by a public employer under a phased retirement agreement or in a postretirement option position, work more hours than would otherwise be permitted under applicable law.

Minnesota law applicable to retirees who return to public employment

After a public employee retires and begins to receive pension payments, the former employee has two options if he or she wants to return to public employment and continue to receive pension payments. The first option is under a so-called "phased retirement agreement" if the retiree is receiving pension payments from the PERA General Plan, or in a "postretirement option position" if the retiree is a former state employee receiving pension payments from a pension plan administered by MSRS, such as the MSRS General Plan. The second option is to return to public employment but not earn more than the threshold annual earnings amount specified in applicable state law.

No earnings restrictions if returning to work at age 66 or 67. Neither of the foregoing options are necessary if the retiree has reached the retiree's "full retirement age" under the federal Social Security Act, which is 66, if born before 1955, or 67, if born after 1954. Under current Minnesota law, the retiree can return to public employment without any reduction in the retiree's pension payments.

PERA's phased retirement and MSRS' postretirement option arrangements. Under a phased retirement agreement (the PERA program) or in a postretirement option position ("PRO," the MSRS program), a retiree is able to return to public employment and continue receiving pension payments if the following conditions are met:

To be eligible for a phased retirement agreement, under Minnesota Statutes, Section 353.371, a retiree must:

- (1) have been regularly scheduled to work 1,044 or more hours per year in a PERA-covered position for at least five years immediately preceding retirement;
- (2) have retired after reached at least age 62, after having met the age and service requirements to begin receiving a retirement annuity immediately after retirement;
- (3) agree to continue employment with the same governmental subdivision, working a reduced schedule that is (i) a reduction of at least 25 percent from the employee's regularly scheduled work hours and (ii) 1,044 hours or less.

To be eligible for a postretirement option position, under Minnesota Statutes, Section 43A.346, an employee must satisfy the same requirements as under PERA's program, except that the employee must have met the age and service requirements to receive an "unreduced" retirement annuity, i.e., not an annuity following early retirement, and the new position can be with a different state employer.

Under both programs, the arrangement is in effect for one year, but can be renewed for up to five years and during the period of employment, no employer or employee contributions are made based on salary paid and the employee does not receive additional service credit toward a larger pension benefit.

Earnings limitation without phased retirement or a PRO in place. A retiree can return to public employment without a phased retirement agreement under PERA or without taking a postretirement option position under MSRS, but to continue receiving pension payments, the retiree must abide by the annual earnings limit. Under Minnesota Statutes section 353.37, for PERA-covered employment, and Section 352.115, Subdivision 10, for MSRS-covered employment, the annual earnings limit is the limit allowed by federal Social Security. For 2020, until the retiree reaches his or her full retirement age under Social Security (66 or 67, as noted above), the maximum annual earnings amount is \$18,240. When the retiree reaches full retirement age, the annual earnings limit is \$48,600, but counting only earnings up to the month in which the retiree reaches full retirement age.

When the earnings limit is exceeded, pension payments cease, but the retiree does not forfeit them. Instead, the suspended payments are held in an account and eventually paid in a lump sum to the retiree. Under Minnesota Statutes, Section 356.47, a retiree is able to receive payment of the withheld amount in a lump sum one year after the reemployment withholding period ends, upon the filing of a written application.

Section- by- Section Summary

LCPR20-030 is a session law, which means it will not be included as a new section or chapter in the Minnesota Statutes. There is only one section in the bill, so the following describes the bill by subdivision.

Subdivision 1

Subdivision 1 defines certain terms used in the session law. Definitions are provided for "health care worker," "peacetime emergency," "public employer," and "reemployment year."

Subdivision 2

Subdivision 2 allows a retiree who is receiving pension payments to come back to work as a health care worker for a public employer during a peacetime emergency without regard to the earnings limits under applicable law. This allows the reemployed retiree to continue receiving pension payments while working as many hours as needed by the public employer and without regard to earnings limitations.

Subdivision 3

Subdivision 3 allows a retiree who is currently employed as a health care worker under a phased retirement agreement, if covered by PERA, or in a postretirement option position, if covered by MSRS, to work as many hours as needed by the public employer, without regard to the limits on hours and percentage of time worked under applicable law. The limits are annual limits that apply to each

"reemployment year," which is each 12-month period covered by the phased retirement agreement or in a PRO position.

Under paragraph (b) of Subdivision 3, the limits on hours and percentage worked do not apply until the first reemployment year after the expiration of this session law, which is December 31 of the year in which the peacetime emergency ends.

Under paragraph (c) of Subdivision 3, the period of employment during the peacetime emergency is added to and extends the period of time under the phased retirement agreement or in the postretirement option position.

Paragraph (d) of Subdivision 3 states that no employer or employee contributions will be made with respect to the reemployed retiree and the monthly amount of the retiree's pension payments will not change due to the period of reemployment.

Paragraph (e) of Subdivision 3 confirms that the session law does not terminate a phased retirement agreement or reemployment in a postretirement option position.

Subdivision 4

Subdivision 4 states that the session law expires on December 31 of the year in which the peacetime emergency ends or, if there is more than one peacetime emergency, December 31 of year in which the last of the peacetime emergencies ends.

Effective date

The session law is effective the day following final enactment.

LCPR20-030 Memo Covid bill re retired health care workers.docx

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