MEMORANDUM

To: House Financial Institutions and Pensions

From: Alan D. Conroy, Executive Director

Date: February 15, 2023

Subject: HB 2195; Working After Retirement

When a member retires from KPERS, there are statutory rules regarding that retiree returning to work for a KPERS employer in a covered position. The statutory rules include:

1. **Waiting Period.** Members who retire before age 62 have a 180-day waiting period before being rehired by a KPERS employer. Members who retire at age 62 or later have a 60-day waiting period.
2. **No Prearrangements.** Before retirement and during the waiting period, retirees and employers cannot communicate in any way about returning to work.
3. **Employer Contributions.** If a retiree returns to work in a covered position, the employer makes contributions to KPERS to help fund the System. Employers pay the statutory contribution rate (currently 12.57% for the State/School Group) for the first $25,000 of the retiree's salary, and a 30% contribution rate on earnings over $25,000.

   Some employers may adjust the salary paid to a retiree to shift the cost of the contributions to the retiree, but statutorily the contribution is an employer contribution.

KPERS retirees who return to work do not have an earnings limitation.

If a KPERS member retires and goes to work for a private company or other non-KPERS employer, there are no restrictions.

KP&F and Judges retirees can return to work for a KPERS employer without considering working after retirement rules. Because they are separate plans, the KP&F or Judges retiree is enrolled as an active member of KPERS.

A summary of the current working after retirement rules are included in Attachment A.

Statutory Changes in HB 2195

HB 2195 makes two changes to the current statutory working after retirement rules:

1. Raising the threshold for the 30% employer contribution from $25,000 per calendar year to $35,000 per calendar year.
2. Create an 18-month window from July 1, 2023, to December 31, 2024, when employers would only make the statutory employer contribution on all retiree compensation (the 30% rate is waived).

The existing rules prohibiting prearrangements to return to work and the waiting period would remain the same.

HB 2195 also strikes several expired sections of K.S.A. 74-4914.

Working After Retirement Experience
In the 12/31/2021 KPERS actuarial valuation there were over 4,700 retirees with reported compensation during the calendar year. Since the current working after retirement rules went into effect on January 1, 2018, the number of retirees returning to work has trended slightly downward but has averaged about 5,000 retirees reported as working each year.

KPERS does not collect position information for retirees who return to work, so we do not know how many retirees are working as teachers, in management positions, or any other position. However, if a retiree is working in a position that is less than 1,000 hours for State and Local employers or less than 630 hours for School employers, they are considered non-covered positions and not subject to working after retirement contributions.

Internal Revenue Service Regulations
Working after retirement rules are necessary to remain compliant with the Internal Revenue Code. The IRS requires a "bona fide" retirement before members begin receiving retirement benefits. This requires termination from covered employment and no agreement to return to work.

As part of the plan design, the Legislature includes a statutory waiting period as a proxy test to establish that termination from covered employment has occurred and therefore establishes bona fide retirement. In general terms, the longer the waiting period in place the stronger the test of a bone fide retirement. The IRS has not specified the required length of the waiting period to be considered a valid test, but a 60-day waiting period was in place during the last plan review by the IRS and the plan passed the review without comment on the waiting period.

However, employer contributions are not considered under the internal revenue code and left up to the plan sponsor. HB 2195, as introduced, would not create any compliance issues with the internal revenue code.

Actuarial Cost Implications
The actuarial cost implications of HB 2195 are based on two factors:

1. The loss of expected employer contributions due to the change and
2. Potentially changing the pattern of retirement behavior by changing the working after retirement rules.

Based on the data for the calendar year 2021, the estimated employer contributions for working after retirement would have there were about 4,700 working after retirement members. Total contributions for 2021, based on the existing $25,000 threshold, were approximately $15.6 million. If the compensation limit for the 30% contribution rate had been increased to $35,000, the total contributions would be reduced by $1.4 million to $14.2 million, about 10% lower. The difference of about $1.4 million would directly reduce the assets and therefore increase the unfunded actuarial liability. Given the total KPERS (State, School and Local) unfunded actuarial liability of $8.7

billion, the loss of $1.4 million annually does not greatly impact the long-term funding of KPERS and would not be actuarially significant.

In addition, HB 2195 also provides that only the statutory employer contribution rate will be assessed on all compensation paid to retirees who return to work in covered employment from July 1, 2023, through December 31, 2024. Based on the available data, the estimated loss of contributions for this 18-month period is $5.5 million (approximately $3.7 million during FY 2024). Since this is a time-limited window, the long-term impact on the funding of the plan is negligible.

As the threshold for the 30% contribution rate increases, it becomes more attractive for employers to rehire retirees rather than seeking to fill the job with a new employee. This has the potential to encourage active members to retire earlier than they would otherwise and then return to work because of the financial incentives. If retirement behavior changes and members retire earlier, it can create a negative actuarial impact that was not expected or intended. However, this cost cannot be easily quantified.

Administrative Costs
The changes in HB 2195 would require some technical work to the pension administration system and updating of publications and education efforts. These costs can be accomplished within the existing appropriation request.

I would be pleased to respond to any questions the Committee has regarding HB 2195.

Attachment

KPERS Working After Retirement

Who is included & why?

Working After Retirement rules **apply** to all KPERS retirees returning to work for any KPERS employer. These statutory provisions were put in place to comply with **IRS regulations**.

The rules **don't apply** to non-KPERS employers.

Waiting period

All KPERS retirees have a waiting period before they can go back to work for any KPERS employer.

No prearrangement to return to work

Members cannot make "prearrangements" to return to work while still employed or during the waiting period. There should be **no communication** in any way about an interest or intent to return to work with a KPERS employer.

Statutory penalty for violations

Retirees who violate these rules will have their **benefit suspended** starting the month they returned to work and ending six months after they end employment. They must also **repay benefits** paid while working after retirement.

No earnings limit

KPERS retirees do not have an earnings limit, and they **do not** make member contributions.

Employer contributions

Employers **pay contributions** on salaries of retirees who return to work in positions covered by KPERS benefits. Covered positions are not seasonal or temporary and meet other membership requirements.

Retiree Earnings	Rate Type	***Local*** (CY22)	***State/School*** (FY22)
First $25,000	Regular employer rate	8.90%	13.33%
More than $25,000	Working After Retirement rate	30%	30%

Statutory exceptions

These positions do follow the prearrangement and waiting-period rules, but do not pay employer contributions.

- Positions covered by the Board of Regents Mandatory Retirement Plan
- State/local elected officials (30-day wait, no wait if filling vacant office)
- Legislative staff, election poll workers, State hospital nurses