



bulletin

2023 legislative changes affecting TRS employers

TRS Working Retiree Provisions Will Change in FY 2024

In light of the ongoing teacher shortage, the TRS Board requested a bill to relax certain restrictions on the employment of TRS retirees in positions reportable to the system. [HB 117](#) was passed by the Legislature; however, each provision carries a delayed effective date.

Effective July 1, 2023:

1. §19-20-731, MCA is amended to increase the annual earnings limitation for working retirees from one-third to **49%** of their annual final compensation (AFC) or 49% of the median AFC of all members who retired in the previous year, whichever is greater.
 - TRS systems, correspondence, and other documentation will be updated in the coming months to reflect the higher earnings limit for FY 2024.
 - You will continue to submit TRS Form 146 annually and report working retiree earnings to TRS as you normally would.
2. §19-20-732, MCA (known as the “emergency hire” provision) is amended so that the position of Superintendent is no longer excluded. Under this provision, a Class 2 or Class 3 school district can temporarily re-employ certain retired teachers, specialists, or administrators with no loss of benefits and no restriction on earnings, provided that all other requirements are met, including submission of the required forms and approval from TRS prior to entering into a contract.
 - TRS has revised Form 143-EE *Retired Member Application to Return to Work Pursuant to 19-20-732 MCA* and Form 143-ER *Employer Certification to Employ a Retired Member Pursuant to 19-20-732 MCA* to remove language excluding superintendents. The updated forms are available on the TRS website.

Effective January 1, 2024:

§19-20-734, MCA is amended to shorten the required break in service from 150 to **120** calendar days, **only for TRS members who terminate employment on or after January 1, 2024 and retire.**

- Note: Members who terminate employment during calendar year 2023 and retire remain subject to the existing 150-day break-in-service requirement.
- TRS is often asked why the break in service cannot be shortened to 90 days. The IRS requires a *bona fide separation from service* (employer/employee relationship is completely severed). In public education, the employment relationship is not severed during the summer break. For this reason, a 90-day break is not appropriate for TRS.

Changes Implemented by TRS "Housekeeping Bill"

[HB 135](#) was requested by the TRS Board to clarify and make technical corrections to existing language in TRS law. Two provisions of this bill affect TRS employers, as described below.

1. *TRS's statutory authority to require records for audit*

Effective July 1, 2023, §19-20-208, MCA is clarified to state that TRS has the authority to require that you provide payroll, personal service, and other records for all employees, independent contractors, or employees of a third party to aid in the completion of TRS participation audits.

Understandably, some TRS employers selected for audits have requested confirmation that TRS may collect these records. This clarification in statute provides assurance that the records are necessary to confirm that each member's service has been reported and credited accurately.

2. *New process for establishing Independent Contractor status*

This provision has a delayed effective date of July 1, 2024.

§19-20-307, MCA provides a more stringent process by which TRS employers will establish that an individual is an independent contractor. The employer must report the individual to TRS as an active member or working retiree, as appropriate, until independent contractor (IC) status is conclusively established for that specific individual and position.

TRS will accept IRS form SS-8, a court order, or a written determination (prepared by an attorney, an employment or human resources professional, or another individual who is qualified to make worker status determinations) that comprehensively describes how IRS criteria were applied in making the determination.

- Note: Additional guidance will be provided to employers in Fall 2023 and posted to the TRS website. This will include revisions to the existing Independent Contractor fact sheet and any forms that may be required for compliance.

Questions?

If you have questions about any information provided in this bulletin, please call TRS at (406) 444-3134 or toll free at (866) 600-4045.