

Temporary Return-to-Work Changes for Local School Districts Only

House Bill 1 (22 RS), the budget law, extends and expands for school districts only certain temporary changes made previously to the retired return-to-work (RTW) rules of the Teachers' Retirement System (TRS). This outlines the changes of HB 1, which took effect April 13, 2022. The temporary changes apply only to retirees returning to work for a school district. This also provides reminders of permanent RTW rules that remain unchanged and still must be followed. If you have any questions, contact TRS at 800-618-1687 before returning to work. Retirees may want to confer with a tax adviser concerning these matters.

- Federal and state laws continue to prohibit any active member from having an agreement before retirement to return to work for any TRS employer in any position. For local school districts, this applies regardless of whether the position is certified or classified.
- Retirees initially returning in certified positions in 2022 will have their RTW accounts in TRS 4.
- Reciprocity retirees still must observe the breaks in service required of each Kentucky retirement system in which they have had service regardless of the position to which they are returning. Failing to meet the required breaks can result in both retirements being voided.
- Regardless of the age at retirement, it is the burden of any taxpayer to prove that a bona fide retirement occurred. Any retiree returning to work in a certified or classified position before age 59½ under the temporary changes increases the risk that the IRS may conclude that a bona fide retirement did not occur. On advice of counsel to protect the tax qualified status of TRS, annuity earnings will be reported on Form 1099-R to the IRS as a potential in-service distribution until the retiree is 59½. In-service distributions may be subject to a 10% taxpayer penalty on annuity earnings. Also, if the IRS determines that a bona fide retirement did not occur, any such retirement may have to be voided and any benefits received would have to be repaid with interest.
- TRS retirees who return to work in a school district in a certified or classified position after April 12, 2022, and before July 1, 2024, are temporarily required to have a break in service of no less than one month. This is an expansion from previous temporary changes with prior legislation that limited the pool of retirees eligible to those who retired before Aug. 1, 2021.
- Anyone who retired between Sept. 1, 2021, and April 12, 2022, *and* who returned to work between Sept. 1, 2021, and April 12, 2022, still must meet the permanent breaks in service.
- Until the temporary changes expire, school districts may hire a greater-than-permanently allowed number of retirees in the critical shortage program. Critical shortage allows retirees to return to work without limitations on salary or a daily wage threshold (DWT). The decision to hire retirees in critical shortage positions is at the discretion of the district, regardless of whether it is under the permanent or temporary RTW provisions. Districts pay higher employer contributions for critical shortage positions, because of the actuarial cost, than are required for other positions.
- A district, at its discretion, may elect to convert a teacher from the critical shortage program to the permanent RTW program with wage (and potentially day) limitations. A retiree working in a critical shortage position under the temporary changes could have to switch on July 1, 2024, to the permanent RTW program that has wage (and potentially day) limitations.
- Retirees who follow the permanent return-to-work program are less likely to face a determination by the IRS that a bona fide retirement did not occur and the potential tax consequences that would follow.
- Retirees who are active in the workforce must drop health insurance coverage through TRS if they are eligible for health insurance through their job. If insurance is available through the employer, TRS insurance, regardless of whether it's the Kentucky Employees' Health Plan (KEHP) or the Medicare Eligible Health Plan (MEHP), must be waived. Additionally, once a retiree loses eligibility for the active-employment insurance, the retiree should contact TRS immediately to enroll in its coverage within the qualifying event period (usually 30 days).
- For TRS retirees who aren't in critical shortage teaching positions, the normal day and pay limitations, such as DWT, apply. The only temporary exception for RTW retirees who aren't in critical shortage is the break in service duration.