



May 25, 2016
Non-LEOFF Fire Fighters

EDUCATIONAL BRIEFING

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ISSUE STATEMENT

Some employees performing firefighting duties are not included in LEOFF Plan 2.

BACKGROUND

The original LEOFF definition of fire fighter dates back to 1970. The profession has changed since that time. Some of those changes have been recognized in statute. Those changes include expansions in the definition of LEOFF employer and the inclusion of emergency medical technicians (EMT) as fire fighters. Such changes have led to increasing questions about LEOFF membership for other employee groups, including:

- Public hospital district EMT
- Local government consortium EMT
- DSHS fire fighters
- Private hospital (UW) EMT
- Aircraft rescue fire fighters
- Volunteer and part-time fire fighters

The following sections discuss these examples of non-LEOFF fire fighters working for public employers.

Public Hospital District EMT

Public hospital districts employ EMTs. The Department of Retirement Systems (DRS) has issued a final order that, as a "district" they are LEOFF employers. DRS's related determination whether hospital district EMTs are LEOFF eligible is pending. Once the second question is decided, hospital districts have the right to appeal.

Consortium EMT

In some counties, local governments have created consortiums to provide Emergency Medical Services (EMS) to citizens in multiple local jurisdictions. These consortiums may be funded in whole or in part by a dedicated EMS levy under RCW 84.52.069. The employee's status can be unclear because of confusion about which entity is the actual employer. This confusion can result in service credit gaps.

- **PERS Credit for Past Service**

The 2016 Legislature authorized consortium EMTs in Snohomish County to establish PERS credit for pre-2005 service¹. Establishing the service credit is optional and requires the employees to pay both employer and employee contributions. The new law only deals with past service credit because the EMTs in question became fire department employees in 2005 and have been in

¹ chapter 236, laws of 2016

LEOFF ever since. There are LEOFF EMTs with past service for other consortiums that have not received credit for that service.

- **LEOFF Credit for Current Service**

Other consortiums still continue to employ EMTs directly. DRS ruled one such entity, the Skagit County ambulance authority, is not a “district” and therefore not a LEOFF employer. Those EMTs have no service credit in either PERS or LEOFF.

DSHS Fire Fighters

The Department of Social and Health Services (DSHS) runs a fire station employing fire fighters at its McNeil Island civil commitment facility. Those fire fighters are not in LEOFF because DSHS is not a LEOFF employer.

Private Hospital EMT

Originally conceived as a non-profit corporation, a recent court case found University of Washington (UW) hospitals to be state entities for certain purposes.² UW hospitals employ a number of EMTs, including medivac EMTs. To the extent that UW hospitals qualify as a public employer, their EMTs represent another group of fire fighters not currently included in LEOFF.

Airport Rescue Fire Fighters

FAA regulations require fire fighters to be on standby from 15 minutes before a commercial airplane lands until 15 minutes after it departs. In a large airport such as SeaTac this requires round-the-clock full time fire fighters, who are in LEOFF. At smaller airports with fewer flights, the issue is less clear. Under DRS’s rule, to qualify as a fire fighter, and employee’s “primary duty” must be controlling, extinguishing, and preventing fires.

Port of Bellingham aircraft rescue fire fighters petitioned DRS to enroll them in LEOFF. The Department closely examined the employees’ duties and determined they were not full-time fire fighters. The Court of Appeals upheld that decision in a published opinion *Fire fighters v DRS*, 97 Wn. App. 715; 987 P.2d 115 (1999).

The court’s decision relied heavily on the facts as they existed at the Bellingham airport in the mid-90s. How the balance adopted by the Court would apply at another airport, with different facts, is uncertain.

Volunteer and Part-time Fire Fighters

Volunteer fire fighters are, by definition, not full-time and therefore not eligible for LEOFF. They participate in the Volunteer Fire Fighters and Reserve Officer Retirement System, Chapter 41.24 RCW. As compensation for volunteers evolves, the distinction between volunteer fire fighters and paid fire fighters has blurred.

In 2016 the Senate Ways and Means Committee passed SB 6250 allowing LEOFF members working for a fire department or fire district to serve as a volunteer, on-call, or as a part-time fire fighter as long as it did not interfere with their LEOFF position. SB 6250 did not pass the full Senate.

² *Hyde v UW Physicians*, 186 Wn.App. 926 (2015)



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NON-LEOFF FIRE FIGHTERS



1. **Public Hospital District EMT**
2. **Consortium EMT**
3. **State Fire Fighters**
 - **DSHS**
 - **Private Hospital EMT**
4. **Airport Rescue Fire Fighters**
5. **Volunteer and Part-Time Fire Fighters**

PUBLIC HOSPITAL DISTRICT EMT



- ▶ **DRS has determined public hospital districts are LEOFF employers**
 - the public hospital district in Chelan County has appealed
- ▶ **Hearing on individual membership status is pending the outcome of the appeal**

CONSORTIUM EMT



- ▶ **Local government consortiums provide EMS services across jurisdictions – some consortium members are PERS employers, some are not**
 - **May be funded by multiple jurisdiction EMS Levy**
 - **Question about who is controlling employer**

CONSORTIUM EMT

▶ Service Credit Issues

- Past PERS Service
 - Some consortium EMTs in LEOFF since mid-2000's
 - SB 6523 allowed past PERS credit for some
- Current LEOFF Credit
 - Skagit Valley Ambulance Authority

STATE FIRE FIGHTERS

- ▶ **Fire fighters excluded from LEOFF because state agencies are not LEOFF employers**
 - **DSHS: McNeil Island fire fighters at civil commitment facility**
 - **UW hospitals are state entities for some purposes**
 - Unclear if state entity for pension purposes
 - UW hospital employs EMTs, including Medivac

AIRPORT RESCUE FIRE FIGHTERS



- ▶ **Airports with Commercial Flights must have fire fighters**
 - On stand-by while plane on the ground
 - Large airports
 - always have fire fighters in station
 - those fire fighters are in LEOFF
 - Smaller airports
 - fewer flights, status less clear
- ▶ **Bellingham fire fighters case**
 - ARFF fire fighters not in LEOFF
 - Fact-specific determination

UNTEER & PART-TIME FIRE FIGHTERS

- ▶ **Only full-time fire fighters qualify for LEOFF**
- ▶ **Some volunteer fire fighters are salaried. Blurs the line between volunteer and professional fire fighters**
- ▶ **Some LEOFF members wish to volunteer or work part-time for another employer concurrent with primary employment**

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