



September 26, 2018

## Career Change Alternatives

### COMPREHENSIVE REPORT

By Ryan Frost

Senior Research & Policy Manager

360-586-2325

ryan.frost@leoff.wa.gov

### ISSUE STATEMENT

Since the passage of the Board's 2005 career change law, multiple issues have surfaced related to employers' interest in hiring LEOFF retirees into LEOFF positions.

### OVERVIEW

The LEOFF Plan 2 membership is aging. According to the 2017 Actuarial Valuation there are currently 4,200 LEOFF 2 retirees; 1,750 of those retirees retired in the last 3 years and 1,297 are under age 60. This means 26% of LEOFF 2 members are currently eligible to retire.

According to a Federal Reserve Board<sup>1</sup> study, a full 1/3 of those who retire eventually reverse retirement and return to work on either a full or part time basis. As more LEOFF 2 members retire, some employers are struggling to fill open LEOFF positions. In some instances employers are looking for ways to hire experienced law enforcement officers and fire fighters to temporarily fill those vacancies. Some LEOFF 2 retirees, in turn, are interested in returning to work in LEOFF positions, while continuing to receive their pension. Current rules do not allow this. While LEOFF Plan 2 retirees can work full time in a Public Employees' Retirement System (PERS) and draw a pension, that pension is suspended while working in a LEOFF position. The tension between that prohibition and the desire to employ LEOFF Plan 2 retirees in LEOFF positions has led some to redefine positions to avoid the restrictions. Some of those efforts have been successful, while some have not.

Past Board studies on career change alternatives focused on chiefs and other high level positions. Employers and employees have recently expressed interest in employing retirees at all levels, including line positions.

This report will provide information on the history of the current LEOFF 2 career change law; issues that occurred from employers attempting to fill law enforcement and fire fighter positions with LEOFF 2 retirees; and the continued and evolving interest in hiring retirees into LEOFF positions.

---

<sup>1</sup> <https://www.federalreserve.gov/econresdata/feds/2016/files/2016053pap.pdf>

## BACKGROUND AND POLICY ISSUES

### Career Change Law

Before 2005 a LEOFF Plan 2 retiree's pension stopped if they worked in a job covered by any state-wide public retirement system. The Board recognized member's may no longer be able to fulfill the physical demands of law enforcement or firefighting before they were ready, or could afford, to stop working. The Legislature passed the Board's proposed Career Change legislation in 2005 enabling retired LEOFF Plan 2 retirees to start a second career in non-LEOFF public employment. A retiree accepting such a job can either establish membership in another public system, thus suspending their LEOFF Plan 2 pension, or waive membership in the new system and continue receiving their pension.

The Board intended to facilitate transition from a physically demanding profession to a second less strenuous career. The Board did not contemplate enabling retirees to continue working as a law enforcement officer or fire fighter while receiving their pension.

The vast majority of participating retirees use Career Change as intended: to facilitate public employment as something other than a law enforcement officer or fire fighter. According to data provided by the Department of Retirement Systems (DRS), 581 retirees utilized the provisions of the career change law since 2005. Ten of those retirees opted to enter membership in a new retirement system:

- 7 PERS
- 1 SERS
- 1 PSERS
- 1 TRS

Fifty-five LEOFF retirees re-entered LEOFF membership by working a LEOFF eligible position.

### Prior Board Studies

Career change concerns have been revisited multiple times since the passage of the 2005 law. During the 2013 interim the Board learned some LEOFF 2 retirees used the 2005 career change law to work as law enforcement officers or fire fighters while drawing their pensions. Some employers facilitated this expansion of the law's original intent by narrowly crafting historically LEOFF positions to avoid LEOFF eligibility.

In 2014 the Board proposed curtailing retirees' ability to draw a LEOFF 2 pension and work in a historically LEOFF position (HB 2479). Under this bill retirement benefits for retired members of LEOFF 2 would be suspended if a member returned to work in a position that was not covered by LEOFF 2, but would have qualified except that the position:

- is less than full time;
- is less than fully compensated;
- is not fully commissioned;
- includes additional non-LEOFF duties; or
- is designated as an independent contractor.

The Legislative debate revealed tension between the Board’s original career change policy goal and the goal of allowing smaller jurisdictions to compete for law enforcement officers and fire fighters they could not otherwise afford. HB 2479 did not pass.

The Board revisited this issue during 2014, 2015 and 2016 interims but did not take action.

### **Current Post-retirement Employment Rules**

The essential differences between provisions covering uniformed and civilian employees are:

- Uniformed Employees: There is no effect on a retiree’s LEOFF 2 pension if the retiree’s job is covered by a different retirement system. However, their pension is suspended immediately if they take a LEOFF position. When they re-retire their pension is recalculated with the additional service credit and salary.
- Civilian Employees: A PERS, TRS, or SERS retiree may work up to 867 hours per year regardless of system, so long as they are not a 2008 Early Retirement Factor (ERF) retiree. For instance, a PERS retiree can work up to 867 hours per year in a PERS, TRS, SERS, or LEOFF position before his or her pension is stopped. A 2008 ERF retiree may not return to work for a public employer in any capacity for any amount of time without having their pension suspended.

Whether employing LEOFF retirees as chiefs or in line positions, the primary determination governing continued pension payments is: Is it a LEOFF position?

To be eligible for LEOFF as a law enforcement officer, an employee must (1) be employed on a full-time, fully compensated basis by a governmental entity that meets the definition of a general authority law enforcement agency; (2) be a general authority law enforcement officer; and (3) meet the training or other requirements of that job.

To be eligible for LEOFF as a firefighter, an employee must be serving on a full-time, fully compensated basis as a member of a fire department as a qualified firefighter, emergency medical technician, or as firefighter supervisory personnel.

For both law enforcement officers and fire fighters, DRS defines “fully compensated” as “an employee who is normally expected to earn a basic monthly salary no less than 160 times the

state minimum hourly wage [currently \$1840 per month]" and "full-time" as 160 or more hours per month.

### Return to Work Restrictions by System

System	Qualified Full Retiree if:	Return to Work Restrictions	
		Employed in position eligible for system retired from	Employed in position eligible for other system
<b>LEOFF 2</b>	Receive at least one retirement check	Mandatory return to membership – pension stopped.	Option to: <ul style="list-style-type: none"> <li>• Join new system and have LEOFF pension suspended; or</li> <li>• Stay out of new system and continue LEOFF pension.</li> </ul>
<b>WSPRS</b>	Receive at least one retirement check	Mandatory return to membership – pension stopped.	Retiree continues to receive pension; prohibited from establishing membership in second system.
<b>TRS, SERS and PERS</b>	Remain absent for at least one full calendar month	Optional return to membership. <ul style="list-style-type: none"> <li>• If retiree returns to membership, pension stops.</li> <li>• If retiree does not return to membership – same restrictions as if he or she was employed in position eligible for other system. →</li> </ul>	<ul style="list-style-type: none"> <li>• Prohibited from membership in second system</li> <li>• May work up to 867 hours (5 months) per calendar year</li> <li>• If retiree exceeds 867 hours pension stopped for remainder of year</li> <li>• Clock starts over with new calendar year<sup>9</sup></li> </ul>
<b>PSERS</b>	Remain absent for at least one full calendar month	Mandatory return to membership, pension stops.	If retiree works in non-PSERS position, same return to work rules as TRS, SERS, and PERS. ↗

### Avoiding LEOFF 2 Career Choice Restrictions

Issues have occurred where employers narrowly crafted positions with the alleged intent of avoiding membership in LEOFF 2, so they could hire a LEOFF 2 retiree. The examples of this happening have typically involved Chief positions, not line positions.

An instance of an employer narrowly crafting a historically LEOFF eligible position to avoid membership in LEOFF 2, was a city hired a LEOFF 2 retiree as Police Chief, and officially scheduled him to work 159 hours per month, so that he would not be "full-time". DRS audited the employer and found the position was full-time and therefore LEOFF eligible. However, there

have also been examples of LEOFF 2 retirees who were hired into legitimately part-time chief positions and therefore were able to continue to receive their pension since the position was a PERS position.

Another way in which employers have allegedly attempted to circumvent the current career change laws are by reclassifying Fire Chief and Police Chief positions as independent contractors and filling those positions with LEOFF 2 retirees. Bona fide independent contractors are not employees and are not eligible for membership in state retirement plans. In 2013, DRS began conducting a review of independent contractors and uncovered multiple instances of employers incorrectly classifying employees as independent contractors. DRS's review of independent contractor positions appears to have effectively deterred this issue, as DRS has not found any new instances of LEOFF positions being incorrectly classified as independent contractors since.

### **Expanding Interest in Line Positions**

At the time of the 2013, 2014, and 2015 reports the primary retiree career change issue was LEOFF 2 retirees drawing their pension while returning to work as a chief for a LEOFF employer. Over the last few years retirees and employers have also expressed interest in filling line positions with retirees. One explanation for this interest is the shifting workforce demographics discussed above in the "General Background" section.

Some employers have expressed they are facing recruitment issues and they see employing LEOFF 2 retirees as a way to help alleviate those issues. The Board recently received a letter from Senator Kevin Van De Wege (see Appendix A), requesting the Board explore a change to current career change laws that would assist rural employers who are having trouble recruiting qualified candidates for LEOFF positions. The Senator stated this issue "became apparent through a budget request this past session that some rural departments are having trouble recruiting candidates and having money to pay additional employees. This was in addition to [his] own anecdotal experience."

In recent years the legislature has considered alleviating shortages of certain professions through easing retiree return to work restrictions. Most of these bills have centered on the 2008 ERF restrictions, which impact plans 2 and 3 for PERS, SERS, and TRS members. The 2008 ERFs were a benefit enacted by the legislature when they repealed the gain sharing benefit in 2007. Under the 2008 ERFs a member with 30 years of service credit can retire at 62 without taking a reduction in their benefit. However, if a 2008 ERF retiree returns to work for a DRS covered employer, in any capacity, their benefit is suspended. In 2016 the legislature passed a bill which temporarily lifted the prohibition on teachers who retired under the 2008 ERFs returning to work as substitute teachers (E2SSB 6455).

## **Public Pension and Public Salary**

Receiving both a public pension and a public salary at the same time is a common hot-button topic with the general public. Newspaper articles generally refer to it as “double dipping”, highlighting the pension and the salary received by a retiree who returns to public employment. One could argue adding together pensions for previous service and the salaries earned for current service is mixing apples and oranges. LEOFF 2 pensions, unlike salaries for current service, are not paid out of current revenues. Those pensions are fully funded at retirement by employer and employee contributions paid over the course of the employee’s career, plus earnings on those contributions. When a public employee retires and goes to work in the private sector or for a public entity in another state, no objections are heard. Some question why the result is different if that same public retiree goes to work in the public sector.

A result of restrictions on LEOFF retirees returning to work in LEOFF positions, is that some employers filled positions with retired law enforcement officers and fire fighters from other states. These retirees are able to collect their pension from another state pension system, while working in a LEOFF position and earning a LEOFF 2 pension. LEOFF retirees would have the same option to work in another state

The vast majority of retiree-return-to-work situations that become publicized are regarding public employees in high ranking positions, such as Police and Fire Chiefs. When the legislature has allowed retirees to return to work into lower paying positions or with other limitations, this receives much less negative attention. For example in 2016 the legislature passed a bill which temporarily lifted the prohibition on teachers who retired under the 2008 ERFs returning to work as substitute teachers (E2SSB 6455). This change in the law did not result in newspaper articles or public outcry. However, it was met with resistance in the legislature as the proposal took three legislative sessions to pass.

The public shows concern when a retiree’s total income, pension plus salary, appears excessive. Concern is especially likely if the combination doubles or nearly doubles the person’s compensation. While the objection is debatable, it is clearly an area of public concern. This issue could be addressed by limiting the combined amount of a LEOFF Plan 2 retiree’s salary and pension. Options may include:

- **Limiting total compensation to a percentage of Final Average Salary:** Limiting total pension and salary to a set percentage of Final Average Salary (FAS) would ensure that the retiree’s total compensation would be similar to what he or she earned prior to retirement. This could address perceptions of abuse. On the other hand, requiring DRS

to develop and track a new, LEOFF Plan 2 specific, post-retirement employment standard could generate an administrative cost.

- **Limit the Timeframe for Collecting Both Pension and Salary:** The State’s other Plan 2 and 3 systems allow retirees to work in a system-covered position for up to 867 hours per year (approximately 5 months). Once a retiree reaches that point, their pension stops for the remainder of the calendar year. It restarts at the beginning of the next year, stopping again if the retiree works another 867 hours. DRS has systems and reporting requirements in place to track the 867 hour rule for the State’s other Plan 2 systems. Adopting this same standard for LEOFF Plan 2 retirees working in historically LEOFF positions would effectively limit the combined salary and pension, thus mitigating public concern over “double-dipping”. It would be consistent with current policy in the State’s other plan 2 systems. Finally, it would be easier for DRS than administering a new standard.

## POLICY OPTIONS

### **Option 1: Restrict the ability of LEOFF 2 Retiree to receive a pension and work in a historically LEOFF position.**

In 2014 the Board proposed curtailing retirees’ ability to draw a LEOFF 2 pension and work in a historically LEOFF position (HB 2479). Under this bill retirement benefits for retired members of LEOFF 2 would be suspended if a member returned to work in a position that was not covered by LEOFF 2, but would have qualified except that the position:

- is less than full time;
- is less than fully compensated;
- is not fully commissioned;
- includes additional non-LEOFF duties; or
- is designated as an independent contractor.

### **Option 2: Create Limited Retiree Return to Work Option**

Reconcile the policies discussed above by proposing legislation that would amend HB 2479 by retaining prohibition on avoiding LEOFF membership by modifying positions; and allowing LEOFF Plan 2 retirees to work in LEOFF positions under specified circumstances.

Possibilities include:

- a) Require the retiree to work for a different employer;
- b) Limit LEOFF reemployment to chief positions;
- c) Limit LEOFF reemployment to line positions;
- d) Limit LEOFF reemployment to employers who have a documented recruitment shortage;

- e) Limit LEOFF reemployment to retirees with 25 or more years' experience;
- f) Limit combined pension and salary to a percentage of FAS
- g) Limit pension eligibility to 867 hours per year
- h) Senator Kevin Van De Wege's proposal
- i) Limit LEOFF reemployment to employees who have been retired for at least 365 days
- j) Take no further action on this issue

**Option 3: Combination of Option 1 and 2**

## SUPPORTING INFORMATION

Appendix A: Senator Van De Wege's email sent to LEOFF 2 Board on April 28, 2018.



Jackson, Jessie (LEOFF)

---

**From:** Kevin Van De Wege <kevinvandewege@hotmail.com>  
**Sent:** Saturday, April 28, 2018 7:58 PM  
**To:** Nelsen, Steve (LEOFF); Dennis Lawson; bud@wacops.org  
**Subject:** Idea for LEOFF 2 Board

Hi Steve,

As we spoke about on the phone I could like to ask the board to explore a small retire/rehire LEOFF 2 program. It became apparent through a budget request this past session that some rural departments are having trouble recruiting candidates and having money to pay additional employees. This was in addition to my own anecdotal experience.

The idea I came up with would allow police or fire departments the ability to hire a small number of retirees for a short period and would include the following restrictions:

Retirees would have to eligible for LEOFF 2 retirement (age 50 with minimum 20 years of service or age 53).

Retirees could only go to work for a department that is outside the county they retired from.

Retirees could only be rehired for a maximum of 24 months.

Departments would have a minimum and maximum pay to pay rehires (say 3,000/month and 4,000/month).

The goal of this program would be to allow rural departments (but urban departments would not specifically be exempted) to rehire retirees that are desiring to help out the community in which they live or planning to retire to for a short period. These retirees would be able to collect their pension and also be receiving additional pay for a couple of years. The target would be line personnel but again, administrative positions would not be specifically exempted.

For this to come to fruition in any form I think the LEOFF 2 board would need to support as would police and fire labor groups (I cc'd Dennis and Bud on this email). In addition I think a study of its usefulness and success would need to coincide with the program. Lastly I think an expiration date in case it is abused would need to be included (for instance a start date of January 1, 2020 with an expiration of January 1, 2024; thus, if it is not renewed by the Legislature the last retire/rehire would need to leave employment by December 31, 2025.)

I think this is something that potentially could be useful for retirees and rural departments but of course do not want to do anything without support of labor. The goal here would not be minimizing additional positions but actually to maximize positions. Rural departments are having recruiting issues. Retirees could fill some of those positions, pass on their experience and knowledge, while at the same time free up a position in the department that they are leaving and actually encourage them to retire. A maximum age to enter the retire/rehire program, like 55, might also be worth consideration. I think the LEOFF 2 board is well positioned to explore this option. I hope you will consider.

Thanks,

Kevin Van De Wege

Sent from [Outlook](#)



# Career Change Alternatives

Comprehensive Report  
September 26, 2018

# Issue

- **Since the passage of the Board's 2005 career change law, multiple issues have surfaced related to employers' interest in hiring LEOFF retirees into LEOFF positions.**

# Overview

- According to a Federal Reserve Board study, a full **1/3** of those who retire eventually reverse retirement and return to work on either a full or part time basis
- This presentation will provide information on:
  - the history of the current LEOFF 2 career change law.
  - issues that occurred from employers attempting to fill law enforcement and fire fighter positions with LEOFF 2 retirees.
  - the continued and evolving interest in hiring retirees into LEOFF positions.

## 2005 Career Change Law

- **The 2005 career change law allows a LEOFF 2 retiree to return to work in a non-LEOFF position and to choose to either:**
  - **receive LEOFF 2 retirement benefits while employed in the non-LEOFF position and be prohibited from entering a new retirement plan; or**
  - **enter into the membership of his or her new position's retirement plan, make contributions and accrue service credit, and have their LEOFF 2 retirement benefit suspended until the employment covered by the other retirement plan ends. The member receives the suspended pension payments when they separate from employment.**

## Board Intent of 2005 Law

- In proposing the 2005 career change law, the Board intended to facilitate members' transition to a less physically demanding profession that would allow LEOFF retirees to utilize their knowledge and skills while continuing to serve the public.
- The Board did not intend to enable LEOFF 2 retirees to return to work as law enforcement officers or fire fighters while continuing to receive their pension.

## Concerns with Current Law

- Concerns have been brought to the board in the past where employers narrowly crafted positions with the alleged intent of avoiding membership in LEOFF 2, so they could hire a LEOFF 2 retiree.



## Retirement Data

- **581** retirees utilized the provisions of the career change law since 2005.
  - 10 opted to enter membership in a new retirement:
    - 7 PERS
    - 1 SERS
    - 1 PSERS
    - 1 TRS
- **55** LEOFF retirees reentered LEOFF membership.

# Return to Work Restrictions by System

System	Qualified Full Retiree if:	Return to Work Restrictions	
		Employed in position eligible for system retired from	Employed in position eligible for other system
<b>LEOFF 2</b>	Receive at least one retirement check	Mandatory return to membership – pension stopped.	Option to: <ul style="list-style-type: none"> <li>• Join new system and have LEOFF pension suspended; or</li> <li>• Stay out of new system and continue LEOFF pension.</li> </ul>
<b>WSPRS</b>	Receive at least one retirement check	Mandatory return to membership – pension stopped.	Retiree continues to receive pension; prohibited from establishing membership in second system.
<b>TRS, SERS and PERS</b>	Remain absent for at least one full calendar month	Optional return to membership. <ul style="list-style-type: none"> <li>• If retiree returns to membership, pension stops.</li> <li>• If retiree does not return to membership – same restrictions as if he or she was employed in position eligible for other system. →</li> </ul>	<ul style="list-style-type: none"> <li>• Prohibited from membership in second system</li> <li>• May work up to 867 hours (5 months) per calendar year</li> <li>• If retiree exceeds 867 hours pension stopped for remainder of year</li> <li>• Clock starts over with new calendar year<sup>9</sup></li> </ul>
<b>PSERS</b>	Remain absent for at least one full calendar month	Mandatory return to membership, pension stops.	If retiree works in non-PSERS position, same return to work rules as TRS, SERS, and PERS. ↗

## Is it a LEOFF position?

- **Law Enforcement Officer**: Must (1) be employed on a full-time, fully compensated basis by a governmental entity that meets the definition of a general authority law enforcement agency; (2) be a general authority law enforcement officer; and (3) meet the training or other requirements of that job.
- **Fire Fighter**: Must be serving on a full-time, fully compensated basis as a member of a fire department as a qualified firefighter, emergency medical technician, or as firefighter supervisory personnel.

## Is it a LEOFF position?

- “Full-time” = 160 or more hours per month
- “Fully Compensated” = Normally expected to earn a basic monthly salary no less than 160 times the state minimum hourly wage [currently \$1840 per month]

# Examples

- **Full-time**
- **Fully Compensated**
- **Independent Contractor**
  - **DRS conducted a review of independent contractors in 2014 to determine if the positions were employees.**
    - **“Scope of Control” test**

## Interest in hiring retirees into LEOFF positions

- Some employers are struggling to fill LEOFF positions and believe retired LEOFF members could help.
  - Approximately 4,200 LEOFF 2 retirees.
    - 1,750 retired in the last 3 years.
    - 1,297 are under age 60.
  - 26% of LEOFF 2 members are currently eligible to retire.
- Legislature has precedent of utilizing retirees to help ease shortages of certain professions.

# Expanding Interest in Line Positions

- At the time of the 2013, 2014, and 2015 reports, the primary career change issue was LEOFF 2 retirees drawing their pension while returning to work as a chief for a LEOFF employer.
- Over the last few years retirees and employers have also expressed interest in filling line positions with retirees.
- **Senator Kevin Van De Wege's Letter**
  - Return to work outside the county they retired from
  - Rehired for a max of 2 years
  - Minimum salary of \$3,000/month
  - Maximum salary of \$4,000/month

# Public Pension and Public Salary

- Receiving both a public pension and a public salary at the same time is a common hot-button topic with the general public.
- Adding together pensions for previous service and the salaries earned for current service is mixing apples and oranges.
  - LEOFF 2 pensions are fully funded at retirement by employer and employee contributions paid over the course of the employee's career
  - When a public employee retires and goes to work in the private sector or for a public entity in another state, no objections are heard



# Public Pension and Public Salary

- The public shows concern when a retiree's total income, pension plus salary, appears excessive.
- Concern is especially likely if the combination doubles or nearly doubles the person's compensation.
- While the objection is debatable, it is clearly an area of public concern. This issue could be addressed by limiting the combined amount of a LEOFF Plan 2 retiree's salary and pension. Options may include:
  - Limiting total compensation to a percentage of Final Average Salary
  - Limit the Timeframe for Collecting Both Pension and Salary

# Policy Options

- **Option 1: Restrict the ability of LEOFF 2 Retiree to receive a pension and work in a historically LEOFF position**
- **Option 2: Create Limited Retiree Return to Work Option**
- **Option 3: Combination of Option 1 and 2**



**Thank You**

**Ryan Frost**

**Senior Research and Policy Manager**

**(360) 586-2325**

**[ryan.frost@leoff.wa.gov](mailto:ryan.frost@leoff.wa.gov)**