



Career Change

Educational Briefing  
November 28, 2012

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### Discussion Points

- Issue
- Retirement Environment and Outlook
- Retirement Policies



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### Issue

- Retirees who continue in public employment following separation or retirement from a Washington State public pension plan may be restricted from receiving their pension or establishing membership in a second public retirement system.



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## Retirement Environment

- Outlook has changed since the Great Recession
  - Loss/Lack of retirement savings
  - Employer cost cutting
- Those nearing retirement face decisions regarding when & how they transition into retirement



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## Retirement Outlook

- Low retirement confidence; Many plan to retire later, work longer
  - 39% saving enough
  - 69% wont save enough working to 65
  - 54% plan to work after they retire
  - 56% plan to work past age 65 or do not plan to retire



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## Retirement Outlook

- Working past age 65 will help bridge savings gaps
  - 64% want or need the income or they need health benefits



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### Retirement Policies

- Complex overlay of rules
  - Estoppel
  - Dual Membership
  - Retiree Return to Work

**LEOFF**  
Plan 2 Retirement Board

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### Retirement Policies

- Estoppel
  - Cannot establish any rights in a public retirement system if:
    - retired or eligible to retire from a public retirement system; or
    - receiving a disability allowance from a public retirement system
  - Application of general rule is complicated by a number of exceptions

**LEOFF**  
Plan 2 Retirement Board

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## Retirement Polices

- Estoppel
  - Exceptions:
    - Less than 15 years of service
    - Prior Membership
    - Dual Member
- Restricts certain retirees and members from accruing a benefit in another system



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## Retirement Polices

- Dual Membership
  - Currently a member of a dual member systems
  - Previously a member of a different dual member systems
  - Not retired for service or disability
- Advantages:
  - Restoration of withdrawn service credit
  - Eligibility for retirement
  - Highest base salary used in retirement benefit



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## Retire-Rehire

- Most retirees can work limited amount without suspension of benefits
  - WSPRS may return to employment (other than to WSP) without suspension of benefits
  - LEOFF Plan 2 may return to employment (Other than LEOFF) with choice of treatment
- Correction to recent Legislation



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## Any Questions?

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November 28, 2012  
CAREER CHANGE

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## EDUCATIONAL BRIEFING

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### ISSUE

Retirees who continue in public employment following separation or retirement from a Washington State public pension plan may be restricted from receiving their pension or establishing membership in a second public retirement system.

### MEMBERS IMPACTED

There are 276,221 active members in PERS, TRS, SERS, PSERS, WSPRS combined as reported in the Office of the State Actuary's *2010 Actuarial Valuation Report*.

### CURRENT SITUATION

The state administers nine retirement systems for the state and local public employees. Retirement system membership is determined according to the participant's occupation and employer. Employees covered by each system are defined in separate chapters of the Revised Code of Washington (RCW).

Many workers covered by the state retirement systems may be planning on delaying retirement and working longer. Many of these workers will seek to utilize skills developed during their careers and continue public service with a different employer. Retired public employees who are returning to public service will face a complex set of rules that will impact their current pensions and possible accrual of additional pensions.

### BACKGROUND INFORMATION & POLICY ISSUES

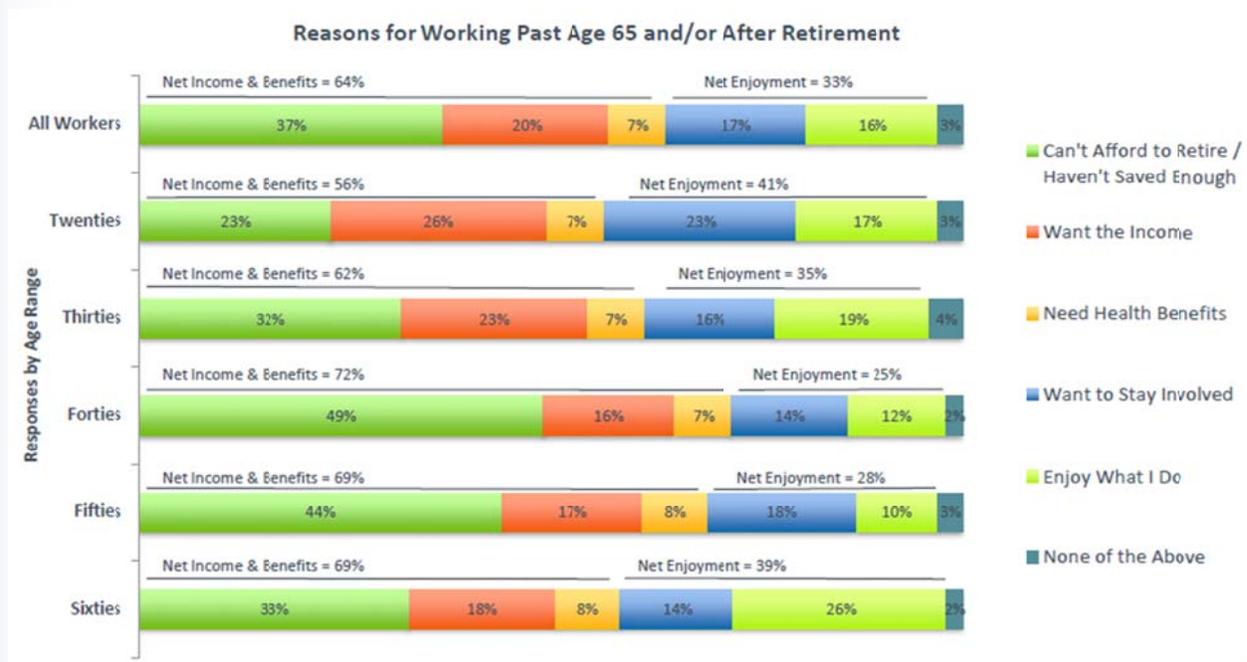
Retirement experts have long voiced concerns that American workers are not adequately saving for retirement. The Great Recession has negatively impacted the confidence of Baby Boomers nearing retirement making concerns about retirement security greater than ever. At the same time, many employers have had to make difficult cost-cutting decisions during the last five years including downsizing, layoffs, salary freezes, and other cutbacks.

Consequently, many workers report that their retirement outlook has changed since the Great Recession began. Those nearing retirement face a myriad of decisions regarding when and how they transition into retirement. (Transamerica Center for Retirement Studies)

Recent national surveys have found decreasing levels of ‘retirement readiness’ among workers, and for many, saving enough to retire by age 65 may be unrealistic. (Collinson)

- Only 39 percent agreed that they are building a large enough nest egg (10 percent strongly agreed, 29 percent somewhat agreed).
- 69 percent of workers agreed that they could work until age 65 and not save enough to meet their retirement needs (32 percent strongly agreed, 37 percent somewhat agreed)
- Workers have already begun adjusting their expectations and the notion of retiring at age 65 has changed dramatically. Most workers plan to either work past age 65 and/or work part-time in retirement:
  - More than half (56 percent) plan to work past age 65 or do not plan to retire
  - More than half (54 percent) plan to work after they retire

For many, working past age 65 will help bridge savings gaps. Of the workers who plan to work past age 65 or work after they retire, the majority (64 percent) plan to do so because they want or need the income or they need health benefits. (Collinson)



### Retirement and Continuing Public Employment

Many members who retire or separate from a public service career are still capable of productive employment and interested in remaining in the public sector. However, retirees who continue in public employment following separation or retirement from a Washington State public pension plan may be restricted from receiving their pension or establishing membership in a second public retirement

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system. The current statutory framework for pensions can present challenges to continuing public service after retirement.

Post retirement employment is governed by a complex overlay of pension statutes including retire-rehire, estoppel<sup>1</sup>, and dual membership. The retire-rehire provisions govern impacts to a retiree's pension if the retiree returns to public employment. The estoppel provision affects the membership for persons who retire or are eligible to retire out of one retirement system and return to work in a position covered by a different retirement system. The dual membership provisions provide an additional layer of rules about when and who may or may not participate in each system. Each of these policies are discussed below.

### **RETIRE-REHIRE**

The various plans of the Washington State Retirement System each contain rules prescribing the circumstances under which a retired employee may return to employment within a retirement system-covered position and continue to receive retirement benefits.

Between 2001 and 2012, the retire-rehire have undergone a series of changes, including the addition of (and subsequent removal of) rules that permitted Public Employees' Retirement System (PERS) and Teachers' Retirement System (TRS) Plan 1 members to work for up to 1,500 hours per year for three years (or certain part-time equivalents) without suspension of retirement benefits. For the Plans 2 and 3 of PERS and TRS, as well as for the School Employees' Retirement System (SERS) and the Public Safety Employees' Retirement System (PSERS), upon returning to employment into a retirement system-covered position, a retiree generally is able to receive retirement benefits for the first 867 hours of employment each year. The Plan 1 systems are now currently subject to the same 867 return to work limit.

A retiree from PERS, SERS, and TRS must wait 30 calendar days before returning to eligible employment in any other system. If the retiree returns to eligible employment before 30 calendar days, the retiree's benefit is reduced 5.5% for every eight hours worked in PERS or SERS and 5.5% for every seven hours in TRS. The benefit reduction is applied up to a maximum of 160 hours in PERS or SERS and up to a maximum of 140 hours in TRS each month until the retiree satisfies the required 30 calendar day break in service.

After a retiree has been separated for 30 calendar days, the retiree may work in eligible employment up to 867 hours during a calendar year in LEOFF, PERS, SERS, or TRS eligible position without suspension of benefits. If a retiree exceeds 867 hours, the retiree's benefit is suspended. The retiree's benefits are reinstated when the retiree terminates the employment that caused the benefits to be suspended. At

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<sup>1</sup> **Estoppel** is the doctrine that prevents a party from acting in a certain way because it is not equitable to do so.

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the beginning of a new calendar year, the retiree may again work 867 hours while receiving their pension.

### **WSPRS Plan 2 Retire-Rehire**

The Washington State Patrol Retirement System (WSPRS) Plan 2 does not contain specific statutory language for suspension of benefits upon reemployment as the other systems do. A WSPRS retiree who returns to work as a commissioned officer of the Washington State Patrol is required to return to WSPRS membership beginning on the first day of employment. The retiree's pension stops when membership begins. A WSPRS retiree may go to work under any other retirement system without interruption of benefit.

### **LEOFF Plan 2 Career Change**

Due in part to the lower Normal Retirement Age of 53, the LEOFF Plan 2 post retirement rule is different from those of the PERS, TRS, SERS, and PSERS Plans. The LEOFF Plan 2 Retirement Board addressed Post-LEOFF Plan 2 Retirement employment through legislation in the 2005 Legislative Session<sup>2</sup>. Under this legislation, a retiree of LEOFF Plan 2 who becomes employed in a non-LEOFF eligible position may choose to either: receive LEOFF Plan 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 Plan 2 retirement benefit suspended until the employment covered by the other retirement plan ends.

### **ESTOPPEL**

The estoppel law was created to stop Plan 1 members from jumping from one system to another system after thirty years of accumulated service. The benefit of Plan 1 members is capped after 30 years. At that time, it was a general expectation that a person works a full career with an employer and then retires. There was not an expectation to begin a new career.

Enacted on March 19, 1976, the estoppel law<sup>3</sup> provides a general rule regarding membership for persons who retire out of one retirement system and return to work in a position covered by a different retirement system. The provisions of RCW 41.04.270 prohibit certain individuals from establishing any rights in a public retirement system listed in RCW 41.50.030 (DRS administered plans) or First Class City systems if:

- the person is retired or eligible to retire<sup>4</sup> from a public retirement system; or
- the person receives a disability allowance from a public retirement system

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<sup>2</sup> House Bill 1270 (2005)

<sup>3</sup> RCW 41.04.270

<sup>4</sup> "Retired and eligible to retire" includes those persons who qualify under any "normal retirement", "early retirement", or "alternate early retirement" criteria.

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The law also provides that persons receiving a benefit or who were eligible to receive a benefit are not subject to the provisions of the statute if the person accumulated less than 15 years of service.

Although estoppel law prevents a person from *establishing* membership in another system, estoppel does not unilaterally prevent someone from *continuing* previously established membership in another system. A person who has retired or is eligible to retire from a Washington State retirement system cannot participate in another system unless the person *established* membership in the other system prior to March 19, 1976 when the law was enacted.

While the estoppel law prohibits certain individuals from establishing membership in another retirement system, there are some statutory exceptions to the rule. RCW 41.04.270(1) begins with a proviso that states in part: "Except as provided in chapter 2.10, 2.12, 41.26, 41.28, 41.32, 41.35, 41.37, 41.40, or 43.43 RCW".

This language means that unless there is a specific provision in a system's rules allowing otherwise, the estoppel rule applies. Therefore, exceptions can be created in each system through specific statutory provisions affecting the membership of retirees. The LEOFF Plan2 post retirement employment rules passed in 2005 are an example of exception the estoppel law created in the LEOFF statutes (RCW 41.26).

In 1987, the law was amended to provide that it does not apply to a *dual member* who is eligible to receive a benefit from a system.

## **DUAL MEMBERSHIP**

Dual membership<sup>5</sup> was created in 1987 to allow for some sharing of Final Average Salary (FAS) and service credit when a person has membership in more than one public retirement system. As noted above, RCW 41.40.270 was amended at the same time so that the estoppel law would not apply to a dual member.

A person, who has established membership before retirement in either system, may retire from one system and continue membership in the other system regardless of if the person had more than 15 years of service in the first system. Estoppel would not apply.

A person who is an active member in any of the retirement systems and who once belonged to another of the public systems, may be eligible for benefits under the provisions for dual membership.

Dual members can qualify for retirement with a multiple system benefit by combining service credit earned in the multiple systems. A dual member may also substitute base salary between systems for the purpose of calculating his or her retirement allowance.

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<sup>5</sup> The dual member laws are contained in RCW 41.54 and WAC 415-113.

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Determining whether a dual member is eligible for a multiple system benefit requires combining service credit and evaluating eligibility under the laws of each system. A person who is eligible for a benefit may, in some cases, choose to defer the benefit, waive the benefit, or receive the benefit in a lump sum.

A dual member may elect to retire from a system or systems without the benefits or restrictions of the portability law. A dual member must retire from all dual member systems he or she participates in. If a dual member's combined service and age qualify him or her to retire from one system but not from a second, the dual member must either:

- begin drawing an actuarially reduced retirement allowance from the second system (and have the benefit reduced from the earliest age at which the person's combined service would allow retirement from the second system); or
- defer receipt of the benefit from the second system

If the dual member chooses to begin receiving a retirement allowance from a system before being fully eligible, the benefit is actuarially reduced. The benefit is reduced from the earliest age at which the person's combined service would allow retirement from the second system.

Under some circumstances, a dual member may be eligible for a retroactive retirement allowance at the time he or she elects to retire with a multiple system benefit. If a dual member retires from all dual member systems, his or her retirement allowance from a prior system will be retroactive back to the accrual date under the prior system.

RCW 41.54.020(1) requires that, in some cases, if membership in a subsequent system would have been prohibited under RCW 41.04.270, except for a person's status as a dual member, and the person attempts to retire retroactively from a prior system while continuing in the second system, the person's membership will be canceled and contributions in the subsequent system will be refunded.

### **ENTERING LEOFF PLAN 2 AFTER RETIRING FROM ANOTHER SYSTEM**

Due to the nature of the work and the earlier normal retirement age (compared to other plans, see table below) in LEOFF Plan 2, it is not common for someone to become employed in a LEOFF Plan 2 eligible position after working a full career and retiring from another WA public pension system.

Table: Washington Public Retirement System Retirement Age Comparison

System/Plan	Normal Retirement (Age/YOS) <i>A=Any</i>	Early Retirement (Age/YOS)	Inactive Retirement (Age/YOS)
PERS 1	A/30, 55/25, 60/5		65/5, 60/5 <sup>6</sup> , 60/20 <sup>7</sup>
PERS 2	65/5	55/20	
PERS 3	65/10	55/10	
TRS 1	A/30, 55/25, 60/5		65/5, 60/5 <sup>6</sup> , 60/20 <sup>7</sup>
TRS 2	65/5	55/20	
TRS 3	65/10	55/10	
WSPRS 1	A/25, 55/A		
WSPRS 2	A/25, 55/A		
LEOFF 2	53/5	50/20	
Seattle	62/5, 57/10, 52/20, A/30		
Spokane	50/5 (pre-2008) 62/5 (post 2008)	50/5 + Rule of 70 (post 2008)	
Tacoma	60/A, A/30, R80	55/10, 45/20	

Although uncommon, there are increasing instances of members taking LEOFF eligible positions to extend their working careers. The initial cases that have been reviewed involve members who were in positions originally enrolled in PERS, but later reclassified to LEOFF with an option to remain in PERS or transfer to LEOFF. Those who remained in PERS in a public safety capacity may have an opportunity to continue working in a senior LEOFF eligible position.

Given the rules discussed in the prior sections, such an individual is likely to have difficulty establishing membership in LEOFF and may be restricted from their pension from their previous employment. Members that fall in this category could include University Law Enforcement and Fire, Fish and Wildlife Enforcement, and Emergency Medical Technicians. Similarly, a retiree from any of the other state administered retirement systems in most cases will be estopped from membership in LEOFF Plan 2 and will be subject to having their pension suspended while working in a LEOFF Position. The table on the following page demonstrates some of the common outcomes that could occur.

<sup>6</sup> Age 60 with five or more years of service credit (benefit will be reduced, based on life expectancy factors from the state actuary, for each year under age 65).

<sup>7</sup> Age 60 or older, if separated from service on or after January 1, 2002, were at least age 50 at separation, and have at least 20 years of service credit at separation.

Possible outcomes for a person from another system/plan becomes who becomes employed in an eligible LEOFF Plan 2 position:

SYS/PLAN	SERVICE	OUTCOME
WSPRS	Retired with less than 15 years	<ul style="list-style-type: none"> <li>• Not Estopped</li> <li>• Required to become an active L2 member</li> <li>• WSPRS benefit continues.</li> </ul>
	Retired with more than 15 years	<ul style="list-style-type: none"> <li>• Estopped from membership.</li> <li>• Cannot participate in L2.</li> <li>• WSPRS benefit continues.</li> </ul>
	Age 50 with 25 years in WSPRS Eligible, but not retired 3 years prior L2 service	<ul style="list-style-type: none"> <li>• Dual member, estoppel does not apply.</li> <li>• Required to become an active L2 member</li> </ul>
Other DRS Covered Plans (includes HERP)	Retired with less than 15 years	<ul style="list-style-type: none"> <li>• Not Estopped</li> <li>• Required to become an active L2 member</li> <li>• Benefit suspended after 867 hrs for remainder of year</li> </ul>
	Retired or eligible to retire with 15 or more years	<ul style="list-style-type: none"> <li>• Estopped</li> <li>• Cannot participate in L2</li> <li>• Benefit suspended after 867 hrs for remainder of year</li> </ul>
	Eligible to retire AND Prior service in LEOFF 2	<ul style="list-style-type: none"> <li>• Dual member</li> <li>• Not Estopped (estoppel does not apply.)</li> <li>• Required to become an active L2 member.</li> </ul>

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