



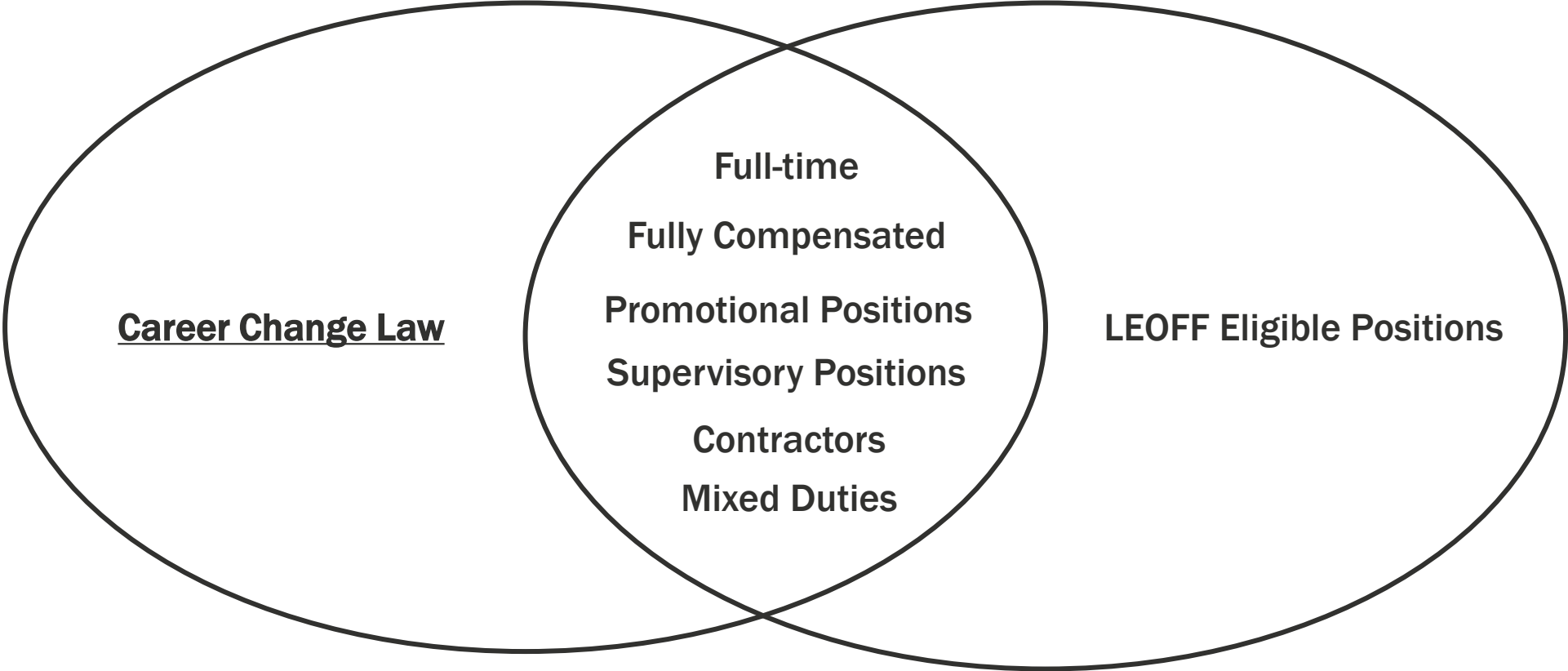
Career Change

Educational Briefing
June 15, 2022

Issue

- **The LEOFF 2 Career Change law allows retirees to return to work in ways that the Board may not have intended**

Intersection of Career Change and LEOFF Position



Career Change Law

- **Pre-2005: LEOFF 2 benefits suspended if retiree returns to work in any public position**
- **2005 Career Change Law: LEOFF 2 retiree can begin a second career in a non-LEOFF position and:**
 - **Establish membership in the new public retirement system suspending their LEOFF Plan 2 pension; or**
 - **Choose not to establish membership in the new public retirement system and continue to receive their LEOFF Plan 2 pension**

How many retirees use Career Change?

Year	Total Retirement	Don't Use Career Change	Use Career Change
2014	183	115	68
2015	178	120	58
2016	173	96	77
2017	188	116	72
2018	212	138	74
2019	173	117	56
2020	175	127	48
2021	243	187	56
Total	1525	1016	509

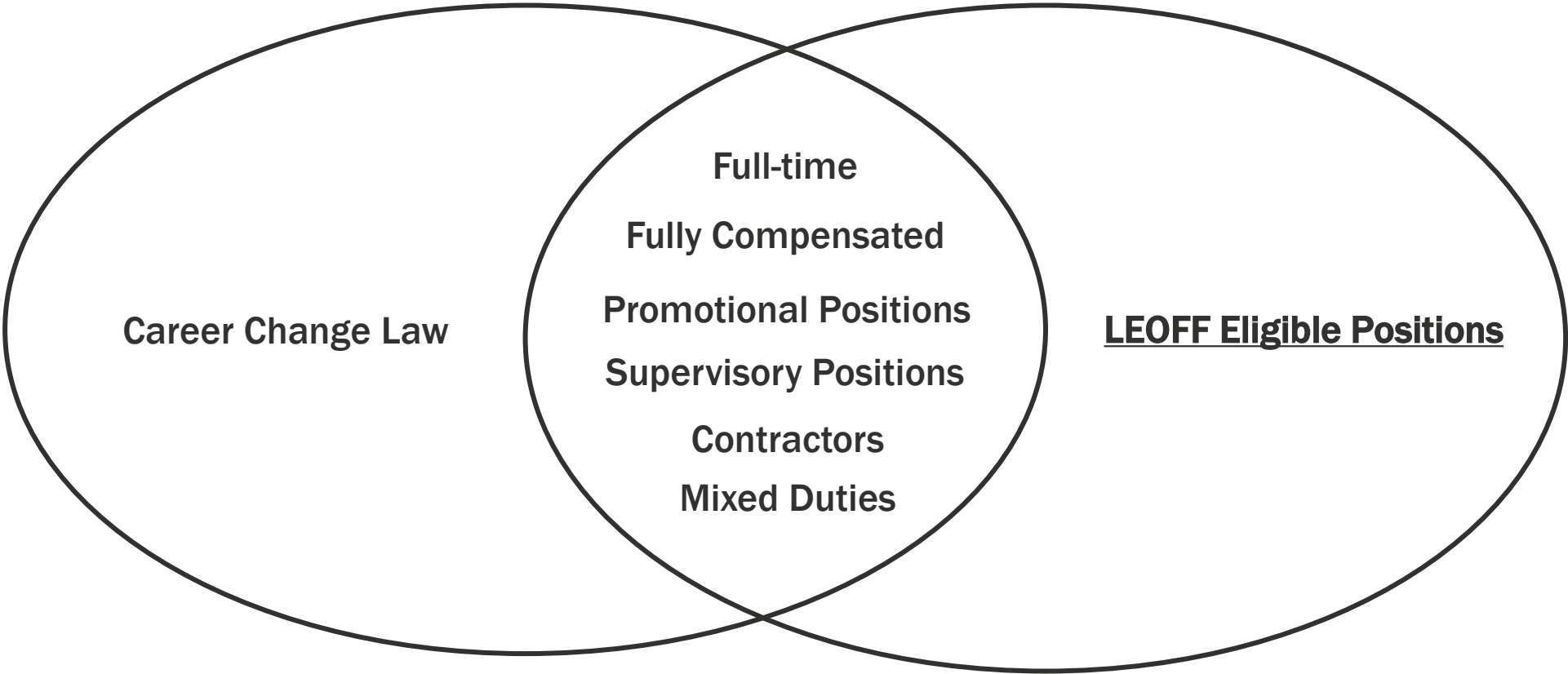
How do members use Career Change?

Year	Join New Plan	Don't Join
2014	3	65
2015	0	58
2016	0	77
2017	2	70
2018	0	74
2019	0	56
2020	0	48
2021	1	55
Total	6	503

Potential Concerns

- Concerns have occurred at the intersection of career change law and the definitions of LEOFF eligible positions
- Resulted in situations where traditionally LEOFF covered positions have been changed by an employer and filled with a LEOFF 2 retiree

Intersection of Career Change and LEOFF Position



Law Enforcement Officer Definition

- "Law enforcement officer [...] means any person who is commissioned and employed by an employer on a full-time, fully compensated basis to enforce the criminal laws of the state of Washington generally [...]"

EMT Definition

- Any person who is employed on a full-time, fully compensated basis by an employer as an emergency medical technician that meets the requirements of RCW 18.71.200 or 18.73.030(12), and whose duties include providing emergency medical services as defined in RCW 18.73.030

Firefighter Definition

- Any person who is serving on a full-time, fully compensated basis as a member of a fire department of an employer and who is serving in a position which requires passing a civil service examination for firefighter, and who is actively employed as such;
- Anyone who is actively employed as a full-time firefighter where the fire department does not have a civil service examination;
- Supervisory firefighter personnel; [...]

Firefighter WAC

- You are a firefighter if you are employed in a uniformed firefighter position by a fire department of an employer on a full-time, fully compensated basis, and as a consequence of your employment, you have the legal authority and responsibility to direct or perform fire protection activities that are required for and directly concerned with preventing, controlling and extinguishing fires. The primary duty of a position is defined by what is expected of the full-time position, not by the number of hours or percentage of hours that the duty is performed

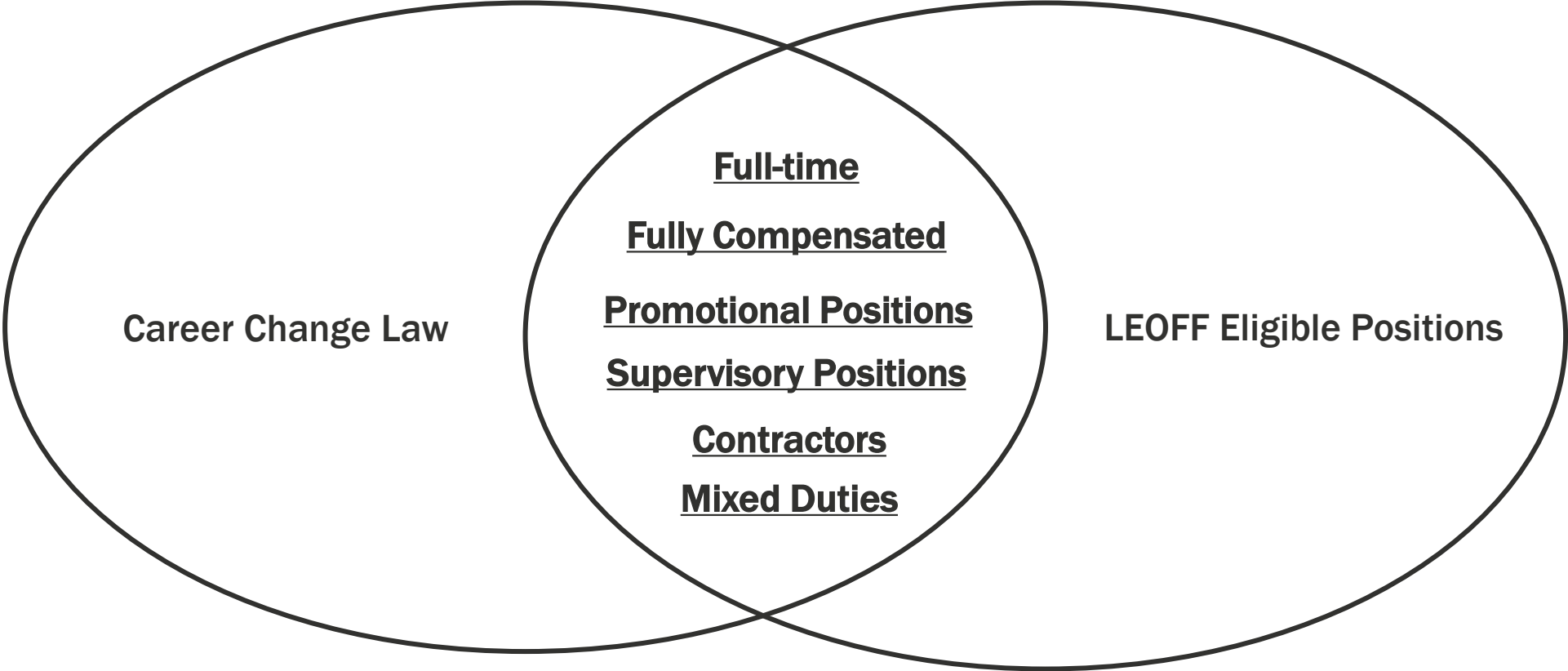
Firefighter WAC continued

- To qualify as "supervisory firefighter personnel" you must:
 - Supervise firefighters or other supervisory firefighter personnel;
 - Be in a position located within a firefighting department or organization whose primary or sole purpose is fire protection activities; and
 - Direct fire protection activities

Firefighter WAC continued

- If your employer requires firefighters to pass a civil service examination, you must be actively employed in a position that requires passing such an examination in order to qualify as a firefighter *unless* you qualify as supervisory firefighter personnel
- You are a firefighter if you meet the requirements of this section regardless of your rank or status as a probationary or permanent employee or your particular specialty or job title
- You do not qualify for membership as a firefighter if you are a volunteer firefighter or resident volunteer firefighter

Intersection of Career Change and LEOFF Position



Full-time Fully Compensated

- In 2014 DRS sought to address concerns by narrowing the definitions in WAC
- Full-time “means an employee who is normally expected to earn basic salary from an employer for a minimum of one hundred sixty hours in a calendar month”
- Fully Compensated “means an employee who is normally expected to earn a basic monthly salary no less than one hundred sixty times the state minimum hourly wage [...]”

2014 “Full-time” Bill

- 2014 Board endorsed legislation restricting the Career Change law
- Would have clarified that the pension of a LEOFF 2 retiree who returns to work as a law enforcement officer or firefighter will be suspended until the retiree separates from that employment, even if the position technically does not qualify for LEOFF because it is not full-time or fully compensated
- Did not pass legislature

Full-time

- **Pros of existing law**
 - Employers, especially smaller ones, may not find qualified applicants so hiring LEOFF retirees as part-time employees may be their best option
 - Allows LEOFF retirees to continue to use their skills and experience to serve Washington State
- **Cons of existing law**
 - Reputational risk of “double dipping”
 - Limits promotions of active LEOFF 2 members
 - Incentivizes hiring retirees from out-of-state or other pension systems

Contractors

- **Past cases of employers converting traditionally LEOFF 2 positions to contractors and filling with LEOFF 2 retirees**
 - **Employee/Contractor Analysis**
 - **Employers were unsuccessful in challenging DRS determination that contractors were employees**
- **Since 2014 DRS is not aware of any instances of a traditionally LEOFF position being converted to a contractor**

Promotional Positions

- **Potential issue where a position does not fight fires and does not directly supervise firefighters, but position is a promotion that requires an experienced firefighter**

Mixed Duties

- Full-time positions that are part law enforcement, part firefighter
 - Question about LEOFF eligibility

Options

1. Motion to further study this issue
2. No further action at this time



Thank You

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