



June 20, 2018

## Career Change Alternatives

### INITIAL CONSIDERATION

By Jacob White

Senior Research & Policy Manager

360-586-2327

[jacob.white@leoff.wa.gov](mailto:jacob.white@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

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.

### BACKGROUND AND POLICY ISSUES

#### General Background

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. Meanwhile, 26% of LEOFF 2 members are currently eligible to retire. 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 laws do not allow this. However, LEOFF 2 retirees can work in positions covered by other state-wide public retirement systems, while receiving their pension. Furthermore, LEOFF 2 retirees can work in law enforcement and fire fighter positions in other states and draw their pension.

#### 2005 Career Change Law

Prior to 2005 a LEOFF 2 retiree's pension stopped if they returned to work in a job covered by any state-wide public retirement system. The LEOFF 2 Board recognized members could age out of LEOFF positions before they were ready or could afford to leave the workforce. The Board

proposed career change legislation in 2005 enabling LEOFF 2 retirees to start a second career in non-LEOFF public employment.

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 their employment.

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.

### **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 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 the Department of Retirement Systems (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.

### **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, able to continue 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 therefore 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.

### **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, attached as 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).

### **Members Impacted**

According to the 2017 Actuarial Valuation there are currently 4,200 LEOFF 2 retirees. According to data provided by 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 reentered LEOFF membership by working a LEOFF eligible position.

## **SUPPORTING INFORMATION**

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

Appendix B: Data from DRS, sent to LEOFF 2 Board on June 6, 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](#)

# Appendix B

**From:** [Pierson, Stacy \(DRS\)](#)  
**To:** [White, Jacob \(LEOFF\)](#)  
**Subject:** RE: LEOFF 2 Retiree return to work data  
**Date:** Wednesday, June 06, 2018 1:15:59 PM

---

Hi Jacob,

Here is the data we were able to pull.

Since January 2005 a total of 636 people have returned to work after retiring from LEOFF 2.

65 of those 636 people returned to membership.

Return to membership system details:

- 55 LEOFF
- 1 SERS
- 1 PSERS
- 7 PERS
- 1 TRS

\*Neither Washington State nor DRS guarantee the accuracy of the data provided. All risk and liabilities of use and misuse of information provided pursuant to this request for information are understood and assumed by LEOFF Plan 2 Retirement Board.

Please feel free to contact me if I can be of further assistance.

Sincerely,

Stacy Pierson  
**Stacy Pierson**  
Public Records Officer

---

Washington State Department of Retirement Systems  
360.664.7854 | [Stacy.Pierson@drs.wa.gov](mailto:Stacy.Pierson@drs.wa.gov) | [www.drs.wa.gov](http://www.drs.wa.gov)  
**Once you qualify, apply for retirement anytime in [online account access](#).**

---

**From:** White, Jacob (LEOFF)  
**Sent:** Monday, June 4, 2018 9:02 AM  
**To:** Pierson, Stacy (DRS) <[stacy.pierson@drs.wa.gov](mailto:stacy.pierson@drs.wa.gov)>  
**Subject:** RE: LEOFF 2 Retiree return to work data

Thank you

---

**From:** Pierson, Stacy (DRS)  
**Sent:** Monday, June 04, 2018 8:49 AM  
**To:** White, Jacob (LEOFF) <[jacob.white@leoff.wa.gov](mailto:jacob.white@leoff.wa.gov)>

**Cc:** Merchant, Shawn (DRS) <[ShawnM@DRS.WA.GOV](mailto:ShawnM@DRS.WA.GOV)>

**Subject:** RE: LEOFF 2 Retiree return to work data

Hi Jacob,

I am the new Public Records Office for the Department of Retirement Systems (DRS). I was forwarded your request for information for the LEOFF 2 retirees who have returned to work since 2005. It is my understanding that we are able to pull the data requested and anticipate being able to provide this to you by the end of this week. Please feel free to contact me if I can be of further assistance.

Sincerely,

Stacy Pierson

**Stacy Pierson**

Public Records Officer

---

Washington State Department of Retirement Systems

360.664.7854 | [Stacy.Pierson@drs.wa.gov](mailto:Stacy.Pierson@drs.wa.gov) | [www.drs.wa.gov](http://www.drs.wa.gov)

**Once you qualify, apply for retirement anytime in [online account access](#).**

---

**From:** White, Jacob (LEOFF)

**Sent:** Friday, May 25, 2018 12:19 PM

**To:** Merchant, Shawn (DRS) <[ShawnM@DRS.WA.GOV](mailto:ShawnM@DRS.WA.GOV)>

**Subject:** LEOFF 2 Retiree return to work data

Shawn – I'm assuming I should send these types of requests to you, if they need to go to someone else just let me know. I'm putting together materials for a presentation next month on retiree return to work. I was hoping I could get data on the number of LEOFF 2 retirees who have returned to work since 2005 (when the current LEOFF return to work law was passed). Also, I was curious if that data could be broken down to whether those retirees choose to enter membership in a new system or not.

Thank you,

**JACOB WHITE** | Senior Research & Policy Manager

LEOFF Plan 2 Retirement Board | PO Box 40918 | Olympia, WA 98504-0918

☎ 360.586.2327 | 📠 360.586.2329 | ✉ E-mail: [jacob.white@leoff.wa.gov](mailto:jacob.white@leoff.wa.gov)

***They keep us safe, we keep them secure.***



# Career Change Alternatives

Initial Briefing  
June 20, 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

- 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.**

# Overview

- **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.

## 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.

## 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?

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

# Examples

- **Fully Compensated**
- **Full-time**
- **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.

# Shortage of LEOFF employees

- **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



**Thank You**

**Jacob White**

**Senior Research and Policy Manager**

**(360) 586-2327**

**[jacob.white@leoff.wa.gov](mailto:jacob.white@leoff.wa.gov)**