

**Notice No.:** 92-007

**Date:** April 27, 1992

**Applies to:** School district employers of PERS members

**Subject:** "Classified substitute" employees and PERS eligibility

DRS Notice 90-005 notified all Public Employees' Retirement System (PERS) employers that effective **June 7, 1990**, temporary employment is not an exclusion to PERS membership. Any employee who occupies a PERS eligible position is required to be enrolled and reported in PERS, even if the employment is not permanent. This applies to all temporary employees, including those whom the school district calls "classified substitutes."

## **Facts About Temporary Employment**

There are a number of different ways a temporary employee might occupy a position. The responsibility to determine which position the temporary employee occupies lies with the employer. Please maintain adequate documentation of your eligibility determinations for each position and adequate documentation as to which position the staff member occupies.

DRS Notice 92-002 detailed the two essential elements of an employer's determination regarding the eligibility of any position.

- The employer determines **which position** the classified substitute or temporary employee is occupying. The employer determines whether the substitute employee is actually filling the position of the absent employee, filling his/her own separate position, or filling some other position. Once the employer determines which position the employee occupies, the employer must then determine whether that position is eligible.
- The **position** determines whether or not you will enroll and report an employee in PERS. This includes any employee who is hired on a temporary basis, including anyone employed as a PERS classified substitute.

There are a number of ways in which school districts can structure the positions of classified substitutes. Some of these involve placing the classified substitute in his or her own "substitute" position; others involve establishing specially designated substitute positions which are used to employ any temporary employee. Other school districts do not have separate positions for their classified substitutes, but actually place the classified substitute in the position of the absent employee. The type of position your district uses will affect whether and how you report classified substitutes to the retirement system.

## Reporting Employees Who Always Occupy the Same Position

Some of the ways in which school districts employ temporaries or classified substitutes are detailed below. You may find other situations in your school district, but two elements are always the key to determining whether to report the employee:

- You as the employer determine which position the employee occupies
- Once you have determined which position, you apply the standard eligibility criteria to determine if this is an eligible position.

### *Case 1:*

A school district establishes a separate position for each individual it employs as a classified substitute. Regardless of whom the individual is substituting for, he or she is occupying his/her own classified substitute position.

The district must then evaluate each position, to determine whether the position is being occupied at least 70 hours per month in at least five months of each year. Whenever a position meets the eligibility standard, the employee occupying it must be reported to the retirement system.

### *Case 2:*

The school district has several positions that are used to employ all classified substitutes. Any temporary employee is hired into one of these positions. Each position is occupied by more than one classified substitute.

These positions may or may not be eligible; the employer must evaluate each of them using the standard eligibility criteria: is the position usually occupied for 70 or more hours per month at least five months each year?

### *Example:*

A school district has three separate, defined positions for classified substitutes.

Whenever any classified substitute works for the district, he or she occupies one of these positions. Multiple employees occupy each position.

When the district evaluates the eligibility of these positions during the past school year, it finds that two positions always were occupied at least 70 hours per month during the school year and determines that these are eligible positions. The third position, however, was occupied for 70 or more hours per month during only four months. The district must now decide whether that position **normally** is occupied for 70 hours during only four months of the year. If so, this is an ineligible position. However, if the district decides that the school year being evaluated is an exception and the position normally does require 70 hours in most months, the district will declare the position eligible.

*Case 3:*

The school district has a single position that is used to employ all classified substitutes. Any temporary employee is hired into this position. In a large district, as many as 50 people may be filling this position.

A position such as this will usually be eligible because the number of hours worked in it during any month will be more than 70. (However, in a small district that rarely uses this position, the position might be ineligible.)

*Example 1:*

A school district has a single separate, defined position for classified substitutes. Whenever any classified substitute works for the district, he or she occupies this position. Usually 25 to 50 people work in this position in any month, and the total number of hours worked by people filling this position always exceeds 70 hours per month during the school year. This is an eligible position and any classified substitute working in it should be reported to the retirement system.

*Example 2:*

A school district has a single, defined position used for all classified substitutes. However, this district does not have the need to employ classified substitutes very often and sometimes the collective number of hours worked by classified substitutes in this position is less than 70 hours per month. This position may or may not be eligible; the employer must evaluate it using the standard eligibility criteria: is this position usually occupied for 70 or more hours per month at least five months each year?

## Reporting Employees Who Work In Multiple Positions

Some school districts have no separate position(s) for temporary or substitute employees. A classified substitute occupies the position of the absent employee.

- If the temporary or substitute employee actually occupies the **position** of the absent person, and that position is eligible, you must enroll and report the temporary (substitute) employee regardless of the number of hours worked.
- A classified substitute working **only** in an ineligible position or positions would not be reported.
- If an employee substitutes in multiple positions, all compensation is reported if **any one** position is eligible. Once an employee works in an eligible position, all earnings in that month are to be reported on the transmittal report.

- If a previously reported classified substitute works in no eligible position(s) during a specific calendar month, you must separate that employee from the transmittal report, using status code "S" and an "End Date," and submit a Notice of Separation. If in the future you again report the employee, don't forget to provide a "Begin Date" on the transmittal report.

*Case 4:*

A school district employs a PERS member as a bus driver in a position that requires five hours per day of work each day of the week. This is an eligible position. Any person who substitutes **in this position** must be reported to DRS even if he/she only works one day or one hour.

*Case 5:*

An employee substitutes in ineligible positions from November 5 through November 10, then occupies eligible positions from November 18 through November 28. Report all November compensation you pay the employee.

If this employee is again employed in December, working in both an eligible and an ineligible positions, the school district continues to report all of the employee's compensation on the transmittal report. If the employee is not employed in any eligible position during December, the school district submits a separation code for the employee, using a November "End Date" on the transmittal report.

## Establishing Ineligible Positions for Classified Substitutes

Employers may establish ineligible positions in which to place classified substitutes. If an ineligible position is not available to hire the classified substitute into, or if the employer is unable to formally establish an ineligible position, the employer may take the following steps.

- The employer may document a policy, signed by the appropriate authority, which indicates that each retirement eligible position has a corresponding retirement ineligible position.
- Send a copy of this policy to DRS Membership Services.
- When you hire a classified substitute into the ineligible position, the employee must sign a statement that he or she understands that he/she is being hired into a position that is not eligible for retirement.
- Maintain the employee's statement in the employee's personnel file. At a minimum, you should review and update the statement annually
- As with all ineligible positions, the employer should evaluate the position at least annually to determine if it still meets the definition of an ineligible position.

Retirement law prohibits an employer from defining an employee's monthly work in such a way that an individual employee's work for that employer is divided into more than one position. For this reason, please monitor the work pattern of any employee working in multiple ineligible positions. If the employee's pattern of work is such that he/she works 70 or more hours per month in at least five months per year, evaluate whether the employee is still in an ineligible position.

## Questions?

If you have questions related to temporary or "substitute" employment in PERS positions, please reference the "Guidelines to PERS Membership" (revised September 1991) in your *Monthly Transmittal Reporting Handbook*. The examples at the end of that section of the *Handbook* should help you apply the membership rules to specific situations. [The above publications are no longer available. Please refer to the current publication *Employer Handbook*, chapter 2, PERS Membership for additional information.]

If you have additional questions, you may contact DRS Membership Services at (206) 753-3109, SCAN 234-3109. [This contact information is no longer current. Please contact Employer Support Services.]

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