



STATE OF WASHINGTON

DEPARTMENT OF RETIREMENT SYSTEMS

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Notice to Interested Parties

January 24, 2017

SUBJECT: Rule Adoption, Concise Explanatory Statement, as required by RCW 34.05.325

NEW RULE: WAC 415-02-325, 2008 Early Retirement Factors.

REASON FOR ADOPTION: [Chapter 491, Laws of 2007](#) provided optional enhanced early retirement factors, referred to as 2008 ERFs, for Plan 2 and Plan 3 members in the state's retirement systems, with restrictions on post-retirement employment. This new rule will clarify how the department interprets those provisions.

HEARING: January 24, 2017, 2:00 PM

SUMMARY OF COMMENTS:

- The Department received a written comment expressing concern about how this rule would affect a member who receives a "very small stipend" for serving as an elected official within a small town or district. The commenter believes it was not the legislature's intent that the member should be required to resign an elected position or forfeit the retirement benefit.
- A written inquiry received during the comment period (although not stated as being a response to this rule making action), expressed concern about the shortage of substitute coaches, and requested that the exception for substitute teaching ([Chapter 233, Laws of 2016](#)) be extended to coaches as well.

DRS RESPONSE: DRS believes this rule reflects the Legislature's intent as expressed in the statutes. It would exceed the department's authority to revise the rule to permit the employment situations requested by the commenters.

EXPLANATION: The legislation that created the 2008 ERFs ([Chapter 491, Laws of 2007](#)), specifically prohibits the post-retirement public sector employment that is allowed for retirees who select the non-enhanced early retirement factors, before reaching full retirement age. The prohibition also includes personal service contracts, temporary and

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project employment, and “any other similar compensated relationship” with a public employer.

DRS analyzed the statutory language and determined that an elected official who receives compensation for the role is in a “similar compensated relationship.” The legislature could have granted an exception for elected officials, or could have established a threshold to allow for compensation in the form of a small stipend, but did not do so.

In 2015, a temporary exemption was authorized to allow a 2008 ERF Teachers’ Retirement System retiree to serve exclusively as a substitute teacher in an instructional capacity ([Chapter 233, Laws of 2016](#)). A bill has been introduced in the 2017 legislative session to extend the exemption to coaches, but DRS does not have the authority to do so in the absence of such legislation.

DIFFERENCES IN TEXT: The text being adopted is identical to the text as proposed in WSR 17-01-030, filed on December 12, 2016.

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