



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

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STATE OF WASHINGTON
FILED

DATE: April 26, 2019

TIME: 11:16 AM

WSR 19-10-038

Agency: Department of Retirement Systems

Effective date of rule:

Permanent Rules

- 31 days after filing.
 Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: Public Safety Employees' Retirement System (PSERS) – Amending the rules to reflect the changes to PSERS membership that were enacted by [Chapter 241, Laws of 2018](#).

Citation of rules affected by this order:

New:
Repealed:
Amended: WAC 415-106-010, 415-106-100, 415-106-110
Suspended:

Statutory authority for adoption: RCW 41.50.050

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as [WSR 19-07-080](#) on March 20, 2019 (date).
Describe any changes other than editing from proposed to adopted version: None.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Web site:
Other:

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	<u>3</u>	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	___	Amended	___	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	<u>0</u>	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

Date Adopted: April 26, 2019

Name: Tracy Guerin

Title: Director

Signature:



WAC 415-106-010 Definitions. The definitions in RCW 41.37.010 and WAC 415-02-030 apply to terms used in this chapter. Other terms relevant to the administration of chapter 41.37 RCW are defined in this chapter.

(1) **AFC** means average final compensation as defined in RCW 41.37.010(14).

(2) **City corrections department** means any subsection or unit of a city employing correctional employees.

(3) **County corrections department** means any subsection or unit of a county employing correctional employees.

(4) **Employer** means the state or local government entities as defined in RCW 41.37.010(4) employing members eligible for PSERS.

(5) **Full-time employee** means an employee who is regularly scheduled to provide at least one hundred sixty hours of compensated service for an employer each calendar month.

(6) **LEOFF** means the law enforcement officers' and firefighters' retirement system.

(7) **Nursing care**, for purposes of membership eligibility under RCW 41.37.010(19), refers to services provided on behalf of a qualifying PSERS employer in which an employee is required to hold a valid certification and/or license in the state of Washington and the primary duty is to provide direct patient nursing care. Services include the identification of, and discrimination between, the individual's physical and psychosocial needs, treatment, counseling, patient education, self-care and the administration of medication.

(8) **PERS** means the public employees' retirement system.

~~((+8))~~ (9) **Primary responsibility** means the fundamental, crucial job duty performed in a position. It does not include marginal responsibilities, which are extra or incidental to the primary responsibility. The primary responsibility of a position may be considered the primary responsibility because:

(a) The position exists to perform that function; or

(b) There are a limited number of employees available who could perform that function; or

(c) The function is highly specialized, and the incumbent is hired for special expertise or ability to perform it.

~~((+9))~~ (10) **PSERS** means the public safety employees' retirement system.

~~((+10))~~ (11) **Reportable compensation** means compensation earnable as that term is defined in RCW 41.37.010(6).

~~((+11))~~ (12) **SERS** means the school employees' retirement system.

~~((+12))~~ (13) **TRS** means the teachers' retirement system.

~~((+13))~~ (14) **WSPRS** means the Washington state patrol retirement system.

AMENDATORY SECTION (Amending WSR 08-02-046, filed 12/27/07, effective 1/27/08)

WAC 415-106-100 Am I eligible for PSERS membership? (~~On or after July 1, 2006,~~) (1) You are eligible for PSERS membership (according to the provisions in this section.

~~(1) Subject to the exceptions in subsection (2) of this section, you will be a PSERS member on the date you become employed in a full-time position for an employer as defined in WAC 415-106-010, provided one or more of the following applies:~~

~~(a) The position requires completion of a certified criminal justice training course and you are authorized by your employer to arrest, conduct criminal investigations, enforce the criminal laws of the state of Washington, and carry a firearm as part of the job.~~

~~(b) Your primary responsibility is to ensure the custody and security of incarcerated or probationary individuals.~~

~~(c) You are a limited authority Washington peace officer, as defined in RCW 10.93.020.~~

~~(d) Your primary responsibility is to supervise members eligible under this section)~~ if you meet the definition of member in RCW 41.37.010.

(2) You are exempt from PSERS membership if:

(a) One or more of the exemptions in RCW 41.37.020 apply to you;

(b) You are a retirement system retiree, estopped from membership under RCW 41.04.270;

(c) You are, or have been, a public employees' retirement system (PERS) Plan 1 member; or

(d) You were a PERS Plan 2 or 3 member (~~on July 1, 2006, and are~~) and were not required to join PSERS membership according to WAC 415-106-110.

AMENDATORY SECTION (Amending WSR 08-02-046, filed 12/27/07, effective 1/27/08)

WAC 415-106-110 If I am a member of PERS, may I change my membership to PSERS? You may have the right to change your retirement system membership from PERS to PSERS according to the requirements in this section.

(1) You may change retirement system membership from PERS to PSERS if:

(a) You were a member of either PERS Plan 2 or Plan 3 (~~prior to~~) before July 1, 2006; and

(b) On July 1, 2006, you meet the requirements for membership in (~~WAC 415-106-100.~~

~~(2) If you meet the conditions in subsection (1) of this section and wish to change membership from PERS to PSERS, you must))~~ RCW 41.37.010 (19) (a), (b), (c) or (f); and

(c) You submit a properly completed election form to your employer ((during the election period that begins on)) between July 1, 2006, and ((ends on)) September 30, 2006.

(2) You may also change retirement system membership from PERS to PSERS if:

(a) You were a member of either PERS Plan 2 or Plan 3 before January 1, 2019; and

(b) On January 1, 2019, you met the requirements for membership in RCW 41.37.010 (19) (d), (e) or (f); and

(c) You submit a properly completed election form to your employer between January 1, 2019, and March 1, 2019.

(3) Your change in membership is prospective only.

~~((a) You become a member of PSERS on the election date shown on your election form.~~

~~(b))~~ (4) You will become a dual member of PSERS and PERS. All service credit and compensation previously reported in PERS will remain in PERS. Your retirement benefits will be governed by the dual member "portability" provisions in chapters 41.54 RCW and 415-113 WAC.

~~((4))~~ (5) If you meet the conditions in subsection (1) or (2) of this section and do not ((change membership to)) elect PSERS ((on or before September 30, 2006, you may not)) membership during the election window, you cannot become a member of PSERS while you continue employment with the same employer((.)); however, if you terminate your employment with ((the)) that employer ((with whom you were employed on July 1, 2006, and)) after the election window begins, and subsequently become employed in a PSERS eligible position ((with another employer after July 1, 2006)), you will be mandated into PSERS membership.