



# RULE-MAKING ORDER PERMANENT RULE ONLY

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

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FILED

DATE: December 11, 2019

TIME: 4:05 PM

WSR 20-01-079

**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:** To implement Sections 307-309 of Chapter 295, Laws of 2019 (HB 1139) Educator Workforce Supply, relating to postretirement employment.

**Citation of rules affected by this order:**

New:

Repealed:

Amended: WAC 415-02-030, 415-02-325, 415-110-710, 415-112-525, and 415-113-300

Suspended:

**Statutory authority for adoption:** RCW 41.50.050

**Other authority:**

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 19-20-118 on October 2, 2019 (date).

Describe any changes other than editing from proposed to adopted version: WAC 415-112-525 (6)(a) describes newly enacted provisions that allow retirees to work in a non-administrative position on or after May 8, 2019, while still receiving a retirement benefit based on the 2008 Early Retirement Factors (ERF). Subsection (6)(b) describes prior statutory provisions that allowed a 2008 ERF retiree to work only in the capacity as a substitute teacher between June 10, 2016 and May 7, 2019, while receiving a retirement benefit. A stakeholder expressed concern that subsection (6)(b) could be mistakenly interpreted to mean that a 2008 ERF retiree could no longer receive their retirement benefit while working as a substitute teacher after May 7, 2019. WAC 415-112-525 (6)(b) has therefore been revised to clarify that substitute teaching after May 7, 2019, will continue to be allowed under the provisions of subsection (6)(a).

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>5</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	___	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:** December 11, 2019

**Name:** Tracy Guerin

**Title:** Director

**Signature:**



**WAC 415-02-030 Definitions.** This section contains definitions of words and phrases commonly used in the department of retirement systems' rules. It also serves as a directory for finding definitions within the RCW and WAC.

(1) **Accumulated contributions** means the sum of all contributions paid into a member's defined benefit account, including interest.

(2) **Appeal** means the proceeding through which a party obtains review of a department action in an adjudicative proceeding conducted under chapter 34.05 RCW (the Administrative Procedure Act) and chapter 415-08 WAC (the department's appeal rules).

(3) **Average final compensation** is defined in RCW 41.32.010(30) (TRS); RCW 41.35.010(14) (SERS); RCW 41.40.010(17) (PERS); and RCW 41.37.010(14) (PSERS).

(4) **Average final salary** for WSPRS is defined in RCW 43.43.120(15).

(5) **Cafeteria plan** means a "qualified" employee benefit program under IRC section 125, such as certain health and welfare plans.

(6) **Calendar month.**

(a) Refers to one of the twelve named months of the year, extending from the first day of the named month through the last day. For example: January 1st through January 31st is a calendar month. February 1st through February 29th is a calendar month in a leap year. March 13th through April 12th is **not** a calendar month.

(b) Exception: For the purpose of administering the break in employment required by RCW 41.32.570, 41.32.802, 41.32.862, 41.35.060, 41.37.050 and 41.40.037 for retirees returning to work, one calendar month means thirty consecutive calendar days. For example: Kim's retirement date is August 1st. August 31st would be the earliest Kim could return to work and meet the requirement for a one calendar month break in employment.

(7) **Compensation earnable or earnable compensation** definitions can be found in RCW 41.32.010(10) and 41.32.345 (TRS); RCW 41.35.010(6) (SERS); RCW 41.37.010(6) (PSERS); and RCW 41.40.010(8) (PERS).

(8) **Contribution rate** is:

(a) For employees: The fraction (percent) of compensation a member contributes to a retirement system each month.

(b) For employers: The fraction (percent) of payroll a member's employer contributes to a retirement system each month. Contribution rates vary for the different systems and plans.

(9) **Deferred compensation** refers to the amount of the participant's compensation, which the participant voluntarily defers from earnings before taxes to a deferred compensation program.

(10) **Defined benefit plan** is a pension plan in which a lifetime retirement allowance is available, based on the member's service credit and compensation.

(11) **Defined contribution plan** is a plan in which part of members' or participants' earnings are deferred into investment accounts in which tax is deferred until funds are withdrawn. The benefit is based on the contributions and the amount of return from the investment of the contributions. Members or participants receive the full market rate of return minus expenses. There is no guaranteed rate of

return and the value of an account will increase or decrease based upon market fluctuations.

(12) **Department** means the department of retirement systems.

(13) **Director** means the director of the department of retirement systems.

(14) **Employee** means a worker who performs labor or services for a retirement systems employer under the control and direction of the employer as determined under WAC 415-02-110(2). An employee may be eligible to participate as a member of one of the state-administered retirement systems according to eligibility requirements specified under the applicable retirement system.

(15) **Employer** is defined in RCW 41.26.030(2) (LEOFF), 41.32.010(11) (TRS), 41.34.020(5) (Plan 3), 41.35.010(4) (SERS), 41.37.010(4) (PSERS) and 41.40.010(4) (PERS).

(16) **Ex-spouse** refers to a person who is a party to a "dissolution order" as defined in RCW 41.50.500(3).

(17) **Final average salary for LEOFF** is defined in RCW 41.26.030(12).

(18) **HERPs** mean higher education retirement plans described in chapter 28B.10 RCW, which are non-DRS retirement plans offered by institutions of higher education, such as, but not limited to, University of Washington retirement plan (UWRP) and Western Washington University retirement plan (WWURP).

(19) **Independent contractor** means a contract worker who is not under the direction or control of the employer as determined under WAC 415-02-110 (2) and (3).

(20) **IRC** means the Federal Internal Revenue Code of 1986, as subsequently amended.

(21) **Indexed retirement allowance** means a defined benefit retirement allowance from an indexed retirement plan, payable to a member who separates after having completed at least twenty service credit years, that is increased by twenty-five one-hundredths of one percent, compounded for each month from the date of separation to the date that the retirement allowance commences.

(22) **Indexed retirement plan** means one of the following retirement plans, which are administered by the department of retirement systems and provide an indexed retirement allowance: Law Enforcement Officers' and Firefighters Retirement System Plan 2 (RCW 41.26.530), Public Employees' Retirement System Plan 3 (RCW 41.40.790), School Employees' Retirement System Plan 3 (RCW 41.35.620), and Teachers' Retirement System Plan 3 (RCW 41.32.840).

(23) **JRF** means the judges' retirement fund created by chapter 2.12 RCW.

(24) **JRS** means the Washington judicial retirement system created by chapter 2.10 RCW.

(25) **LEOFF** means the Washington law enforcement officers' and firefighters' retirement system created by chapter 41.26 RCW.

(26) **Member** means a person who is included in the membership of one of the retirement systems created by chapters 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW.

(27) **Nonadministrative position or nonadministrative capacity** refers to retirees returning to work in a position at a school district, charter school, educational service district, state school for the deaf, state school for the blind, or tribal school which:

(a) Does not require an administrative certification, as defined by the office of the superintendent of public instruction, (currently positions requiring the certification include: Principal, vice princi-

pal, program administrator, conditional administrator, superintendent or program administrator certifications); or

(b) Does not evaluate staff.

(28) Normal retirement means qualifying for retirement based on the standard age and service credit requirements as specified in RCW 2.10.100 (JRS), 2.12.020 (JRF), 41.26.090 (LEOFF Plan 1), 41.26.430(1) (LEOFF Plan 2), 41.32.470 (TRS Plan 1), 41.32.765(1) (TRS Plan 2), 41.32.875(1) (TRS Plan 3), 41.35.420(1) (SERS Plan 2), 41.35.680(1) (SERS Plan 3), 41.37.210(1) (PSERS), 41.40.180 (PERS Plan 1), 41.40.630(1) (PERS Plan 2), 41.40.820(1) (PERS Plan 3), or 43.43.250 (WSPRS).

~~((28))~~ (29) Participant means an eligible employee who participates in a deferred compensation plan.

~~((29))~~ (30) Participation agreement means an agreement that an eligible employee signs to become a participant in a deferred compensation plan.

~~((30))~~ (31) Pension plan is a plan that provides a lifelong post retirement payment of benefits to employees.

~~((31))~~ (32) PERS means the Washington public employees' retirement system created by chapter 41.40 RCW.

~~((32))~~ (33) Petition means the method by which a party requests a review of an administrative determination prior to an appeal to the director. The department's petitions examiner performs the review under chapter 415-04 WAC.

~~((33))~~ (34) Plan 1 means the retirement plans in existence prior to the enactment of chapters 293, 294 and 295, Laws of 1977 ex. sess.

~~((34))~~ (35) Plan 2 means the retirement plans established by chapters 293, 294 and 295, Laws of 1977 ex. sess., chapter 341, Laws of 1998, and chapter 329, Laws of 2001.

~~((35))~~ (36) Plan 3 means the retirement plans established by chapter 239, Laws of 1995, chapter 341, Laws of 1998, and chapter 247, Laws of 2000.

~~((36))~~ (37) Plan year is the twelve-month period that begins on January 1st and ends on December 31st of the same calendar year.

~~((37))~~ (38) Portability is the ability to use membership in more than one Washington state retirement system in order to qualify for retirement benefits. See chapters 41.54 RCW and 415-113 WAC.

~~((38))~~ (39) PSERS means the Washington public safety employees' retirement system created by chapter 41.37 RCW.

~~((39))~~ (40) Public record is defined in RCW 42.17.020(41).

~~((40))~~ (41) Restoration is the process of restoring a member's service credit for prior periods.

~~((41))~~ (42) Retirement system employer - See "employer."

~~((42))~~ (43) Rollover means a distribution that is paid to or from an eligible retirement plan within the statutory time limit allowed.

~~((43))~~ (44) Separation date is the date a member ends employment in a position eligible for retirement.

~~((44))~~ (45) SERS means the Washington school employees' retirement system created by chapter 41.35 RCW.

~~((45))~~ (46) Split account is the account the department establishes for a member or retiree's ex-spouse.

~~((46))~~ (47) Surviving spouse refers to a person who was married to the member at the time of the member's death and who is receiving or is eligible to receive a survivor benefit.

~~((47))~~ (48) **Survivor beneficiary** means a person designated by the member to receive a monthly benefit allowance after the member dies.

~~((48))~~ (49) **Survivor benefit** is a feature of a retirement plan that provides continuing payments to a designee after the death of a member or retiree.

~~((49))~~ (50) **TRS** means the Washington state teachers' retirement system created by chapter 41.32 RCW.

~~((50))~~ (51) **The Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA)** is the federal law that requires employers to reemploy and preserve job security, pension and welfare benefits for qualified employees who engage in military service.

~~((51))~~ (52) **WSPRS** means the Washington state patrol retirement system created by chapter 43.43 RCW.

AMENDATORY SECTION (Amending WSR 17-04-050, filed 1/26/17, effective 2/26/17)

**WAC 415-02-325 2008 Early retirement factors.** (1) **What are the 2008 early retirement factors?** In chapter 491, Laws of 2007, the legislature created optional early retirement factors (ERFs) for members retiring on or after September 1, 2008. Referred to as the 2008 ERFs, these optional factors are available to Plan 2 and Plan 3 members of the following retirement systems: Public employees' retirement system (PERS); school employees' retirement system (SERS); and teachers' retirement system (TRS). The 2008 ERFs provide a higher retirement benefit than the three percent ERFs, but impose stricter return to work rules.

(2) **If I retire before age sixty-five using the 2008 ERFs, how will my benefit be calculated?** Your normal (age sixty-five) retirement benefit will be multiplied by the factor shown in the following table, based on your age at the time of your early retirement.

Retirement Age	2008 Early Retirement Factor
55	0.80
56	0.83
57	0.86
58	0.89
59	0.92
60	0.95
61	0.98
62	1.00
63	1.00
64	1.00
65	1.00

(3) **Am I eligible for the 2008 ERFs?** Plan 2 and Plan 3 members of PERS, SERS, and TRS, who entered membership prior to May 1, 2013, must be at least age fifty-five and have at least thirty service credit years to be eligible for retirement using the 2008 ERFs.

(4) **What are the return to work rules if I retire under the 2008 ERFs?** The legislation that created the 2008 ERFs also established re-

restrictions on retirees who return to an employer after selecting the 2008 ERF option. The 2008 ERF return to work restrictions are a broad prohibition to avoid incentives for early retirement while the member continues to collect payments from a public employer before reaching full retirement age. A retiree's benefit will stop if they retire under the 2008 ERFs and return to a DRS-covered employer, in any capacity for which they receive compensation, before age sixty-five.

**(5) What are the exceptions to the return to work rules if I retire from SERS or TRS under the 2008 ERFs?** Under legislation effective May 8, 2019, you may return to work in a nonadministrative position as defined in WAC 415-02-030 for a school district, charter school, educational service district, state school for the deaf, state school for the blind, or tribal school without suspension of your benefit until you exceed eight hundred sixty-seven hours in a calendar year.

**(6) What organizations are DRS-covered employers?** For the purpose of this section, a DRS-covered employer is any organization that employs one or more members of any retirement system administered by DRS. This includes, but is not limited to, public agencies, boards and commissions, counties, cities and towns, public schools and educational service districts, higher education institutions, libraries and utilities throughout the state. It also includes first class cities that maintain separate retirement systems but also employ members of the law enforcement officers' and fire fighters' retirement system.

**((+6)) (7) What types of compensation impact my benefit if I retire under the 2008 ERFs and return to work before age sixty-five?** The legislature defines "employment with an employer" for purposes of the 2008 ERF return to work restrictions as including "any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer." The phrase "any other similar compensated relationship with any employer" includes both employment with a DRS-covered employer and any other type of compensated relationship with a DRS-covered employer.

**Example:**

**Bob, an attorney for the city of Olympia, retires using the 2008 ERFs. Can Bob receive his pension if he subsequently provides legal services to Spokane County?** It depends on whether Bob's compensated relationship with Spokane County meets the definition of "employment with an employer." Below are examples of the different types of potential compensated relationships Bob could have, and whether those relationships would be considered "employment with an employer."

**Personal service contract.** If Bob has a personal service contract with Spokane County to provide legal services, then Bob would be considered to be in a "similar compensated relationship with an employer" within the meaning of the statute. Bob's monthly benefit would be suspended for any month in which he provides this compensated service to Spokane County.

**Sole proprietorship or partnership. 2008 ERF retiree is sole proprietor or partner.** If Bob is a sole proprietor or a partner of a law firm; the firm contracts with Spokane County to provide services; and Bob or any other employee of the law firm provides legal services to Spokane County, then Bob would be considered to be in a "similar compensated relationship with an employer" within the meaning of the statute. Bob's monthly benefit would be suspended for any month in which he or his firm provides service to Spokane County under the contract.

**Corporation. 2008 ERF retiree is a shareholder of a publicly traded corporation.** If Bob is a shareholder of a publicly traded corpora-

tion and the corporation contracts with Spokane County to provide services, then Bob would not be considered to be in a "similar compensated relationship with an employer" within the meaning of the statute. Bob's monthly benefit would not be suspended for any month in which the corporation provides service to Spokane County.

**Corporation. ERF retiree is an employee of the corporation.** If Bob is working for the corporation solely on matters unrelated to the corporation's contract with Spokane County, Bob is not in a "similar compensated relationship" with Spokane County. Bob's monthly benefit would not be suspended for any month in which the corporation provides service to Spokane County.

If Bob is working for the corporation on matters that are related to the corporation's contract with Spokane County, then Bob would be considered to be in a "similar compensated relationship with an employer."

((+7)) **(8) What is considered compensation?** Compensation is financial consideration for work performed, regardless of whether that consideration is paid as a salary, hourly amount, or flat dollar amount. A reimbursement is not considered compensation.

**Examples:**

**(~~Basketball referee~~) Independent contractor** - A TRS Plan 2 member retires using the 2008 ERFs at age 62. He receives a \$2,500 monthly pension payment. When he is 64, he (~~referees one high school basketball game~~) enters a contract to provide training for school employees. He receives a flat dollar amount of \$50 (~~for refereeing the game~~) per trainee. Under the 2008 ERF return to work restrictions, he has (~~returned to the employment of an employer and~~) received compensation from a DRS-covered employer. Therefore, his \$2,500 pension benefit is forfeited for the month he (~~earned the \$50 payment~~) performed the services.

**Board/commission** - A PERS Plan 3 member retires using the 2008 ERFs at age 60. She receives a \$1,200 monthly pension payment. When she is 62, she is elected as a member of the local school board. As a school board member she does not receive a salary; however, she does receive reimbursements for travel and food. Under the 2008 ERF return to work restrictions, she is able to continue to receive her pension while receiving those reimbursements.

((+8)) **(9) What are a DRS employer's responsibilities for determining whether an employee is a 2008 ERF retiree?** RCW 41.50.139 requires DRS employers to obtain, in writing, the retirement status of all new employees. If the employer fails to report a 2008 ERF retiree's retirement status to the department, the employer is liable for any overpayments that may occur.

((+9)) **(10) What are a DRS employer's responsibilities for determining whether a contractor's employees are 2008 ERF retirees?** DRS employers who hire a contractor to perform services for their organization will need to inquire with the contractor and confirm with DRS to determine if any of the workers providing services to the DRS employer through the contractor retired using the 2008 ERFs, or if the company is owned by an individual who retired using the 2008 ERFs, and whether the nature of the service and compensation would result in a retirement benefit being suspended. See WAC 415-108-710 (PERS), 415-110-710 (SERS), and 415-112-525 (TRS).

**WAC 415-110-710 What are the return to work rules for SERS Plan 2 and Plan 3? (1) How soon can I return to work after I retire without impacting my SERS retirement benefit?**

(a) You may begin working immediately after you retire without impacting your SERS retirement benefit if:

(i) You go to work for a private employer;

(ii) You are an independent contractor as defined in WAC 415-02-110; or

(iii) Your only employment is as an elected official and you end your SERS membership under RCW 41.35.030 (2)(b).

(b) If you retire and then return to work sooner than thirty consecutive calendar days from your accrual date (effective retirement date), your monthly retirement benefit will be reduced in accordance with RCW 41.35.060(1) until you remain absent for at least thirty consecutive calendar days.

(c) If you retire and remain absent at least thirty consecutive calendar days from your accrual date, you may return to work in any position (eligible or ineligible) for any employer whose retirement plan is administered by the department of retirement systems (DRS) or a public institution of higher education, without impacting your SERS retirement benefit until you reach your applicable hour limit.

**Example:** Amy's last day at work for the ABC school district is June 19, 2015, and her official retirement date is September 1, 2015, (when she starts getting her monthly benefit). She wants to return to work at the start of the new school year on September 8, 2015. She needs to wait thirty consecutive calendar days from her September 1st retirement date before returning to work. If she returns to work before October 1st, her benefit will be reduced until she meets the required thirty-day break from employment.

(2) **What is the annual hour limit?** Except as provided in subsection (5) of this section regarding the 2008 early retirement factors (ERFs), after being absent at least thirty consecutive calendar days as described in subsection (1)(c) of this section, your annual hour limit will be based on the position you return to.

(a) **No limit.** You may work as many hours as you want without affecting your retirement benefit if you work:

(i) In a position that is not eligible for membership in a DRS or higher education retirement plan;

(ii) As an independent contractor;

(iii) For a private employer; or

(iv) If you end your SERS membership as an elected official under RCW 41.35.030 (2)(b).

(b) **Eight hundred sixty-seven-hour limit.** You may work up to eight hundred sixty-seven hours in a calendar year, in a position which is eligible for membership in a DRS or public institution of higher education retirement plan, before your retirement benefit is suspended.

(3) **What hours count toward the limit?**

(a) **Counted toward the eight hundred sixty-seven hour limit:** All compensated hours that are worked in an eligible position covered by a DRS or higher education retirement plan, including the use of earned sick leave, vacation days, paid holidays, compensatory time, and cash-outs of compensatory time.

(b) **Not counted toward the hour limit:** Cashouts of unused sick and vacation leave.

(4) **What happens if I work more than the annual eight hundred sixty-seven hour limit?**

(a) If you work more than the annual limit, your retirement benefit will be suspended. The suspension will be effective the day after you exceed the hour limit. DRS will prorate your retirement benefit for the month in which you exceed the limit.

(b) Your retirement benefit will be restarted beginning the next calendar year (January) or the day after you terminate all eligible employment, whichever occurs first.

(c) DRS will recover any overpayments made to you for the month(s) in which you exceeded the hour limit and received a retirement benefit. See RCW 41.50.130.

(5) ~~((What if I retired using the 2008 early retirement factors (ERFs)?~~

~~(a) If you retire using the 2008 ERFs and then return to work before age sixty-five:~~

~~(i) You will not receive your retirement benefit for any month in which you are an employee in a position covered by a DRS or higher education retirement plan including, but not limited to, permanent, non-permanent, project, temporary, eligible and ineligible positions.~~

~~(ii) You will not receive your retirement benefit for any month in which you earn compensation for service performed as a contractor, or as the result of service performed by those in your employ, for an employer covered by a DRS or higher education retirement plan.~~

~~(iii) Your retirement benefit will stop effective the first day of the month you return to work and will restart the first day of the month after you stop working.~~

~~(b) If you retire using the 2008 ERFs and then return to work at or after age sixty-five, you can work under the rules described in subsections (2) and (3) of this section.~~

~~(6-)) **If you retire using the 2008 ERFs and return to work before age sixty-five except as described in subsection (6) of this section:**~~

~~(a) (i) You will not receive your retirement benefit for any month in which you are an employee in a position covered by a DRS or higher education retirement plan including, but not limited to, permanent, nonpermanent, project, temporary, eligible and ineligible positions.~~

~~(ii) You will not receive your retirement benefit for any month in which you earn compensation for service performed as a contractor, or as the result of service performed by those in your employ, for an employer covered by a DRS or higher education retirement plan.~~

~~(iii) Your retirement benefit will stop effective the first day of the month you return to work and will restart the first day of the month after you stop working.~~

~~(b) Upon reaching age sixty-five you can work under the rules described in subsections (2) and (3) of this section.~~

~~(6) **As a 2008 ERF retiree, can I work and still receive my retirement benefit?**~~

~~(a) If you retire using the 2008 ERFs, effective May 8, 2019, you may return to work before age sixty-five in a nonadministrative position at a school district, charter school, educational service district, state school for the deaf, state school for the blind, or tribal school and work up to eight hundred sixty-seven hours in a calendar year. If you work more than eight hundred sixty-seven hours, your benefit will be subject to suspension and restarting as described in subsection (4) of this section.~~

(b) Upon reaching age sixty-five you can work under the rules described in subsections (2) and (3) of this section.

(7) Can I return to SERS membership?

(a) If you retire from SERS, you have the option to return to membership if you are employed by a SERS employer and meet the eligibility criteria. The option to return to membership is prospective from the first day of the month following the month in which you request to return to membership. See RCW 41.35.030(3).

(b) If you reenter SERS membership and later choose to retire again, DRS will recalculate your retirement benefit under the applicable statutes and regulations. See WAC 415-110-830. You will be subject to the return to work rules in place at the time of your reretirement.

(c) If you are a retiree from another retirement system administered by DRS, you may choose to enter SERS membership if you are eligible. See WAC 415-110-725. The option to enter membership is prospective from the first day of the month following the month in which you request membership. See RCW 41.04.270 and 41.35.030.

~~((7))~~ (8) What if I retired from SERS and another DRS retirement system?

(a) If you retired from SERS using the 2008 ERFs and another DRS retirement system and are under age sixty-five:

(i) Your SERS retirement benefit will be impacted as described in subsections (5) and (6) of this section.

(ii) The retirement benefit from the other DRS retirement system will be impacted based on the rules for that system.

(b) If you retired from SERS and another DRS retirement system without using the 2008 ERFs, or using the 2008 ERFs and have reached age sixty-five, see WAC 415-113-300 to determine the effect of returning to work.

Note: You may have a choice of returning to membership. See the following WAC sections for more information: WAC 415-108-725, 415-110-725, 415-112-546, 415-106-725, and 415-104-111.

~~((8))~~ (9) Terms used.

(a) 2008 Early retirement factors (ERFs) - RCW 41.35.420 (3) (b) for SERS Plan 2, or RCW 41.35.680 for SERS Plan 3.

(b) Accrual date - RCW 41.35.450, 41.35.640.

(c) Elected official - WAC 415-110-550.

(d) Eligible position - RCW 41.35.010; WAC 415-110-680 through 415-110-700.

(e) Ineligible position - RCW 41.35.010.

(f) Member - RCW 41.35.010.

(g) Month - Calendar month as defined in WAC 415-02-030.

(h) Nonadministrative position - WAC 415-02-030.

(i) Public institution of higher education - RCW 28B.10.400.

~~((i))~~ (j) SERS - School employees' retirement system.

**WAC 415-112-525 What are the return to work rules for TRS Plan 1, Plan 2, and Plan 3? (1) How soon can I return to work after I retire without impacting my TRS retirement benefit?**

(a) You may begin working immediately after you retire without impacting your TRS retirement benefit if:

(i) You go to work for a private employer;  
(ii) You are an independent contractor as defined in WAC 415-02-110; or

(iii) You are a TRS Plan 1 retiree, your only employment is as an elected official, and you end your TRS membership under RCW 41.32.263.

(b) If you retire and then return to work for a public employer except as provided in (a) of this subsection, sooner than thirty consecutive calendar days from your accrual date (effective retirement date), your retirement allowance will be reduced until you remain absent for at least thirty consecutive calendar days. See RCW 41.32.570 (TRS Plan 1), 41.32.802 (TRS Plan 2), or 41.32.862 (TRS Plan 3).

(c) If you retire and remain absent at least thirty consecutive calendar days from your accrual date, you may return to work in any position (eligible or ineligible) for any employer whose retirement plan is administered by the department of retirement systems (DRS) or a public institution of higher education, without impacting your TRS retirement benefit until you reach your applicable hour limit.

**(d) Examples:**

**(i) Return to work with no reduction**

Casey's last day of work is January 20th. Her accrual date (effective retirement date) is February 1st, and there are 28 days in February. If Casey wants to return to work for a public employer after she retires, she will need to wait until at least March 3rd to avoid the daily percentage reduction in her retirement allowance.

**(ii) Return to work before thirty day waiting period ends**

Brian's last day of work is September 1st. His accrual date (effective retirement date) is October 1st. Brian returns to work October 10 through October 17th. In November, Brian's retirement allowance will be reduced by 5.5% for every seven hours worked during October. Brian's new thirty day wait period would be October 18th through November 16th.

(2) **What is the annual hour limit?** Except as provided in subsection (5) of this section regarding the 2008 early retirement factors, after being absent at least thirty consecutive calendar days as described in subsection (1)(c) of this section, your annual hour limit will be based on the position you return to.

(a) **No limit.** You may work as many hours as you want without affecting your retirement benefit if:

(i) You go to work for a private employer;  
(ii) You are an independent contractor as defined in WAC 415-02-110; or

(iii) You are a TRS Plan 1 retiree, and:

(A) Your only employment is as an elected official, and you end your TRS membership under RCW 41.32.263; or

(B) You go to work for a nonpublic educational institution.

(iv) You are a TRS Plan 2 or Plan 3 member working as an on-call substitute teacher.

(b) **Eight hundred sixty-seven-hour limit.** You may work up to eight hundred sixty-seven hours in a year (July through June for TRS Plan 1, January through December for TRS Plan 2 and Plan 3) before your retirement benefit is suspended.

(3) **What hours count toward the limit?**

(a) **Counted toward the eight hundred sixty-seven-hour limit:** All compensated hours that are worked in an eligible position, including the use of earned sick leave, vacation days, paid holidays, compensatory time, and cashouts of compensatory time.

(b) **Not counted toward the hour limit:** Cashouts of unused sick and vacation leave.

(4) **What happens if I work more than the annual eight hundred sixty-seven-hour limit?**

(a) If you work more than the annual limit, your retirement benefit will be suspended. The suspension will be effective the day after you exceed the hour limit. DRS will prorate your retirement benefit for the month in which you exceed the limit.

(b) Your retirement benefit will be restarted beginning the next year (July for TRS Plan 1, January for TRS Plan 2 or Plan 3) or the day after you terminate all eligible employment, whichever occurs first.

(c) DRS will recover any overpayments made to you for the month(s) in which you exceeded the hour limit and received a retirement benefit. See RCW 41.50.130.

(5) **What if I am a TRS Plan 2 or Plan 3 member and retired using the 2008 early retirement factors (ERFs)?**

(a) If you retire using the 2008 ERFs and ~~((then))~~ return to work before age sixty-five except as described in subsection (6) of this section:

(i) You will not receive your retirement benefit for any month in which you are an employee in a position covered by a DRS or higher education retirement plan including, but not limited to, permanent, non-permanent, project, temporary, eligible and ineligible positions.

(ii) You will not receive your retirement benefit for any month in which you earn compensation for service performed as a contractor, or as the result of service performed by those in your employ, for an employer covered by a DRS or higher education retirement plan.

(iii) Your retirement benefit will stop effective the first day of the month you return to work and will restart the first day of the month after you stop working.

(b) ~~((If you retire using the 2008 ERFs,))~~ Upon reaching age sixty-five you can work under the rules described in subsections (2) and (3) of this section.

(6) **As a 2008 ERF retiree, can I work and still receive my retirement benefit?**

(a) If you retire using the 2008 ERFs, effective May 8, 2019, you may return to work before age sixty-five in a nonadministrative position at a school district, charter school, educational service district, state school for the deaf, state school for the blind, or tribal school and work up to eight hundred sixty-seven hours in a calendar year. If you work more than eight hundred sixty-seven hours, your benefit will be subject to suspension and restarting described in subsection (4) of this section.

(b) If you retired using the 2008 ERFs and returned to work as a substitute teacher in a classroom between June 10, 2016, and May 7, 2019, you will continue to receive your retirement benefit for up to eight hundred sixty-seven hours in a calendar year. After May 7, 2019,

(a) of this subsection will continue to allow the provisions of this section for substitute teachers.

(c) Upon reaching age sixty-five you can work under the rules described in subsections (2) and (3) of this section.

**(7) Can I return to TRS membership?**

(a) You may choose to return to membership if you are employed by a public educational institution and are otherwise eligible. Membership will be prospective from the first day of the month following the month in which you request to return to membership. See RCW 41.32.044.

(b) If you reenter TRS membership and later choose to retire again, DRS will recalculate your retirement benefit under the applicable statutes and regulations. You will be subject to the return to work rules in place at the time of your reretirement.

(c) If you are a retiree from another retirement system administered by DRS, you may choose to enter TRS membership if you are eligible. See WAC 415-112-546. The option to enter membership is prospective from the first day of the month following the month in which you request membership. See RCW 41.04.270 and 41.35.030.

~~((7))~~ **(8) What if I retired from TRS and another DRS retirement system?**

(a) If you retired from TRS using the 2008 ERFs and another DRS retirement system, and are under age sixty-five:

(i) Your TRS retirement benefit will be impacted as described in subsections (5) and (6) of this section.

(ii) The retirement benefit from the other DRS retirement system will be impacted based on the rules for that system.

(b) If you retired from TRS and another DRS retirement system without using the 2008 ERFs, or using the 2008 ERFs and have reached age sixty-five, see WAC 415-113-300 to determine the effect of returning to work.

Note: You may have a choice of returning to membership. See the following WAC sections for more information: 415-108-725, 415-110-725, 415-112-546, 415-106-725, and 415-104-111.

~~((8))~~ **(9) Terms used.**

(a) "Accrual date" - WAC 415-112-520; RCW 41.32.795, 41.32.855.

(b) "Eligible position" - RCW 41.32.010.

(c) "Employer" - RCW 41.32.010.

(d) "Nonadministrative position" - WAC 415-02-030.

(e) "Year."

(i) For TRS Plan 1, a "year" is July 1st through June 30th.

(ii) For TRS Plan 2 and Plan 3, a "year" is January 1st through December 31st.

**WAC 415-113-300 How is my benefit affected if I return to work after retiring from multiple DRS retirement systems?** (1) If you (~~re-~~tired using the 2008 early retirement factors (ERFs) and return to work for a DRS employer before age sixty-five, your retirement benefit(s) based on the 2008 ERFs will be immediately suspended. Any benefit(s) not based on the 2008 ERFs will be subject to rules for that system.

(2) ~~If you are retired from multiple DRS systems and return to work for a DRS employer, your benefits will be affected according to rules of each respective system with the following exception:)~~ are retired from multiple DRS systems and return to work for a DRS employer, your benefits will be affected according to rules of each respective system.

(a) If your system and plan has an annual hourly limit, the annual hourly limit is based on the calendar year, except as described in subsection (b) of this section.

(b) If one of the systems you retired from is TRS Plan 1, your annual hourly limit for all your systems will be counted using a fiscal year (July through June).

See WAC 415-108-710 (PERS), 415-110-710 (SERS), (~~(415-112-541 (TRS Plan 1), 415-112-541 (TRS Plan 2 and Plan 3))~~) 415-112-525 (TRS), 415-106-700 (PSERS), RCW 41.26.500 (LEOFF Plan 2), 43.43.130 (WSPRS).

~~((3))~~ (2) Term used.

Employer - See WAC 415-02-030.